

**MEMORANDUM OF AGREEMENT (MOA)
BETWEEN
THE U.S. DEPARTMENT OF VETERANS AFFAIRS (VA)
LEXINGTON VA HEALTH CARE SYSTEM (VAHCS)
AND THE KENTUCKY STATE HISTORIC PRESERVATION OFFICER (KY SHPO)
REGARDING CONSTRUCTION OF A FISHER HOUSE
AT THE FRANKLIN R. SOUSLEY CAMPUS IN
LEXINGTON, FAYETTE COUNTY, KENTUCKY**

WHEREAS, the U.S. Department of Veterans Affairs (VA) Lexington VA Health Care System (VAHCS), located at 2250 Leestown Road, Lexington, Fayette County, Kentucky 40511-1052, proposes to partner with the Fisher House Foundation to construct a Fisher House (undertaking) on the Franklin R. Sousley Campus (Sousley Campus), previously referred to as the Lexington Veterans Administration Hospital and Lexington VA Medical Center, Leestown Division; and

WHEREAS, the undertaking consists of constructing a 13,400 square foot home, with associated infrastructure and utilities, that includes sixteen (16) private suites with a common kitchen, dining and living area, to serve veterans' families; and

WHEREAS, Lexington VAHCS has determined that the proposed construction of a Fisher House is a federal action that meets the definition of 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 Section 106 of the National Historic Preservation Act (NHPA) (54 USC § 306108) and its implementing regulations (36 CFR Part 800 – Protection of Historic Properties); and

WHEREAS, Lexington VAHCS has consulted with the Kentucky State Historic Preservation Officer (KY SHPO), consistent with 36 CFR § 800.2(c)(1); and

WHEREAS, Lexington VAHCS has invited the following to be consulting parties consistent with 36 CFR § 800.2(c)(2 through 5): the Fisher House Foundation, Lexington Fayette Urban County Government, Division of Historic Preservation (LFUCG), Blue Grass Trust for Historic Preservation (BGT), Eastern Band of Cherokee Indians, Eastern Shawnee Tribe of Oklahoma; and the Fisher House Foundation, LFUCG, and BGT have chosen to participate in the consultation; and

WHEREAS, Lexington VAHCS 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, Lexington VAHCS, in consultation with the KY SHPO, has determined the area of potential effects (APE) to be the property limits of the Sousley Campus; and

WHEREAS, Lexington VAHCS, in consultation with the KY SHPO, has identified the Lexington Veterans Administration Hospital Historic District, which was listed on the National Register of Historic Places (NRHP) in 2012 (Ref# 12000150) for its significance at the state level under Criteria A and C as "an excellent, intact example of a Period II Second Generation Veterans general medical and surgical hospital that was later converted to a neuropsychiatric hospital," as a historic property within the APE that will be affected by the undertaking; and

WHEREAS, the *Programmatic Agreement among the Lexington Veterans Affairs Medical Center –*

Leestown Division Station 596, the Kentucky State Historic Preservation Officer, and the Advisory Council on Historic Preservation Regarding Routine Management Activities at the Lexington Veterans Affairs Medical Center – Leestown Division, Fayette County, Kentucky (Routine Management PA) was executed on July 2, 2018; and

WHEREAS, in accordance with and Stipulation II.B.1. (Effects to Aboveground Historic Properties) of the Routine Management PA, Lexington VAHCS has complied with the requirement that “all building additions, new construction, and demolition require the [Cultural Resources Management Officer] CRMO to consult with the [KY] SHPO, LFUCG, BGT, and any other identified consulting parties pursuant to 36 CFR Part 800 and the process described in Section 3.2.2 of the [Historic Preservation Plan] HPP;” and

WHEREAS, Lexington VAHCS consulted the *Historic Preservation Plan for the Lexington Veterans Administration Hospital National Register Historic District, Lexington, Kentucky* (HPP), which was finalized in November 2017, to ensure the proposed undertaking follows the guidance in Section 3.2.2 (Consultation During Plan Implementation) of the HPP that states “for large-scale construction and other activities not covered by the PA, formal Section 106 consultation, following the procedures outlined in 36 CFR 800, is still required;” and

WHEREAS, the proposed location of the Fisher House is different than the location specified in Section 7.1.1 of the HPP because the location specified in the HPP is close to a drainage corridor and is a considerable distance from the medical facility and shuttle bus stops; and therefore, is inappropriate for siting the Fisher House; and

WHEREAS, the proposed revised placement of the Fisher House to allow families of veterans to have easier access to the medical facility and shuttle bus stops would place it forward of two NRHP-listed contributing resources to the historic district, the Main Building (Resource 1) and Flagpole (Resource 15), as experienced from Leestown Road, re-orient the visual focal point of the campus, and place the view of the Fisher House in direct relation to the historic buildings thus interfering with lines of sight and the standardized courtyard-focused landscape design of the historic campus, detracting from the intended experience of the historic buildings, and diminishing the integrity of design, feeling, and setting of the historic district; and

WHEREAS, Lexington VAHCS has found the undertaking will have an adverse effect on Lexington Veterans Administration Hospital Historic District and has consulted to resolve the adverse effect per 36 CFR § 800.6; and

WHEREAS, Lexington VAHCS has notified the Advisory Council on Historic Preservation (ACHP) of the adverse effect finding, and the ACHP has chosen not to participate in the consultation, pursuant to 36 CFR § 800.6(a)(1)(iii); and

NOW, THEREFORE, Lexington VAHCS and the KY SHPO agree that the adverse effect will be resolved through execution of this Memorandum of Agreement (MOA) pursuant to 36 CFR § 800.6(b)(1)(iv), and that the undertaking will be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties.

STIPULATIONS

Lexington VAHCS will ensure that the following measures are carried out in consultation with the KY SHPO and consulting parties:

I. MEASURES TO MINIMIZE THE ADVERSE EFFECT

A. Fisher House Design

1. Lexington VAHCS, following the guidelines in the HPP and the terms of the Routine Management PA, will design and construct the Fisher House using the National Park Service *Secretary of the Interior's (SOI) Standards for the Treatment of Historic Properties* (i.e., Standards 9 and 10 and Guidelines for Rehabilitating Historic Buildings) as its framework. The Fisher House should suitably complement, but not mimic, the existing design and materials of the NRHP-Listed Lexington Veterans Administration Hospital Historic District by incorporating brick exterior materials, appropriate scaling, and design features that allude to the existing campus buildings. Wherever possible, mature trees that contribute to the historic landscape should be retained and protected to prevent inadvertent damage.
2. If revisions to the initially proposed Fisher House design are needed, Lexington VAHCS will share the proposed revisions with the KY SHPO and consulting parties for their review and comment. If no comments from the KY SHPO and consulting parties are received within fifteen (15) calendar days of receipt, Lexington VAHCS will move ahead with the design process as proposed.
3. If Lexington VAHCS and the KY SHPO cannot reach agreement that proposed revisions to the initial Fisher House design continue to meet SOI Standards and the Fisher House is unable or unwilling to make recommended design revisions, Lexington VAHCS will consult to amend the MOA in accordance with Stipulation VII. (Amendments) below. If agreement on the terms of an amendment is not reached, Lexington VAHCS will follow the provisions in Section VI. (Dispute Resolution) below.

II. MEASURES TO MITIGATE THE ADVERSE EFFECT

A. Historic Preservation Plan and Master Plan Integration

1. In concert with Stipulation XIII. (Periodic Review) of the Routine Management PA, which requires Lexington VAHCS and the KY SHPO to assess the Routine Management PA every three (3) years, Lexington VAHCS will host a meeting (virtual or in-person) at the time of the first periodic review. In accordance with the aforementioned stipulation, this first assessment should be scheduled around July 2, 2021. Lexington VAHCS will invite the KY SHPO and consulting parties to this meeting to discuss any needed revisions or updates to the HPP. Discussions should focus on ways to improve integration of the HPP into the master planning process. In particular, discussants should consider amending Stipulation VII. (Master Planning) in the Routine Management PA to clarify how and when consulting parties will be provided the opportunity to comment on future master plans and to add language strengthening Lexington VAHCS' commitment to prioritize following the guidelines in the HPP.

B. Interpretive Displays

1. Within two (2) years following execution of this MOA, Lexington VAHCS will develop the content for and install interior and exterior interpretative displays on the Sousley Campus that will provide information on the history of the Sousley Campus to the public.
 - a. **Interior Display:** Lexington VAHCS will install an interior interpretive display in the Fisher House (either in the lobby, library, or another public setting) that will consist of at least one (1) stationary interpretive panel and a collection of portable publically accessible material such as informative brochures, pamphlets, or thematically relevant books.
 - b. **Exterior Display:** Lexington VAHCS will install an exterior interpretive display that will consist of at least two (2) historical markers or public signage (each with unique content) of material related to the history of the Sousley Campus.
2. Lexington VAHCS will develop the content for both the interior and exterior displays under the supervision of professionals who meet the *SOI Professional Qualifications Standards* (36 CFR Part 61).
3. Lexington VAHCS will coordinate the information on the interpretive displays with that developed for the web content in Stipulation II.C. (Web Content) below, and explore the possibility of linking the physical interpretive displays with a digital component through use of a Quick Response (QR) code, or similar mechanism.
4. Lexington VAHCS will consult with the KY SHPO and consulting parties on the content, design, and location of the interior and exterior interpretative displays. Lexington VAHCS will submit its proposed content, design, and location to the KY SHPO and consulting parties for review and comment. The KY SHPO and consulting parties will have a thirty (30) calendar day review and comment period. Lexington VAHCS will take into account any timely comments received, make revisions if needed, and will then install the interpretive displays. Lexington VAHCS will notify the KY SHPO and consulting parties when the displays are installed.

C. Web Content

1. Within two (2) years following execution of this MOA, Lexington VAHCS will add information specific to the history of the Sousley Campus to the Lexington VAHCS webpage "Our History" to educate the public.
2. Lexington VAHCS will develop public education material and upload the material to its existing "Our History" webpage or to a stand-alone webpage that is linked to the "Our History" webpage. This public education material will include an overview of the history and significance of the Sousley Campus, differentiating its history from the broader history of the Veterans Health Administration. The webpage will also include an option to download the NRHP nomination form and include historic and current photographs of the contributing buildings and landscape features.

3. Lexington VAHCS will submit the public education material to the KY SHPO and consulting parties for review and comment. The KY SHPO and consulting parties will have a thirty (30) calendar day review and comment period. Lexington VAHCS will take into account any timely comments received, make revisions if needed, and will then post the public education material on the Lexington VAHCS "Our History" webpage or to a stand-alone webpage that is linked to the "Our History" webpage. Lexington VAHCS will notify the KY SHPO and consulting parties when the public education material is posted and made accessible to the public. The web content will be made publically available for a minimum of five (5) years.

D. Oral History

1. Within two (2) years following execution of this MOA, Lexington VAHCS will coordinate one (1) public meeting for acquiring oral histories and documentation related to experiences living, working, or visiting the Sousley Campus and its impact on the City of Lexington. In addition to issuing a general notice to the public of this meeting - to include the KY SHPO and consulting parties, former residents and employees, current employees, local institutions and local governments, as well as any individuals and organizations who may have conducted oral histories or have local knowledge of the Sousley Campus - specific notice will be given to veterans and veterans groups to collect interviews for the Library of Congress's Veterans History Project, with a particular focus on asking questions related to veterans' experiences at the Sousley Campus. At the meeting, in addition to presenting oral histories, attendees may share information by providing photographs, letters, or other documents related to the history of the Sousley Campus. Lexington VAHCS will follow the guidelines of the Library of Congress's Veterans History Project in preparing for and conducting oral interviews with veterans, and will submit the collected material (e.g. audio and/or video interviews and associated documentation) to the Library of Congress following these same guidelines. Lexington VAHCS will notify the KY SHPO and consulting parties when collected material has been submitted.

III. POST-REVIEW DISCOVERIES

- A. During demolition and construction activities, should inadvertent or unknown archaeological resources be discovered or unanticipated effects identified, work in the impacted area will cease and an archaeologist meeting the *SOI Professional Qualification Standards* (Federal Register Volume 61, No. 119, pg. 33713, 33719, 1977) (SOI qualified archaeologist) will evaluate the finding. If appropriate, Indian tribes and the KY SHPO will be consulted.
- B. If unanticipated or archaeological resources are discovered, Lexington VAHCS will:
 1. Ensure the discovery is confirmed, assessed, and recorded by a SOI qualified archaeologist.
 2. Determine eligibility for listing in the NRHP, following the criteria of 36 CFR 60.4 and consult with the KY SHPO on that determination. The KY SHPO will have seven (7) calendar days from receipt to provide comments on Lexington VAHCS' determination.
- C. If Lexington VAHCS, in consultation with the KY SHPO, determines that the discovered site is not eligible for listing in the NRHP, then no further action will be required.

- D. If Lexington VAHCS, in consultation with the KY SHPO, determines that the discovered site is eligible for listing in the NRHP, then Lexington VAHCS will further consult with the KY SHPO on measures to resolve any adverse effects to the historic property.

IV. HUMAN REMAINS

- A. If human remains are discovered, Lexington VAHCS will contact the local police department to determine if the location is a crime scene. If the local police department determines the discovery is a crime scene, investigation of the discovery as such a scene will supersede its treatment as a historic property, but such treatment will resume, if applicable, once crime scene investigation has been completed.
- B. If the local police department determines that the discovery is not a crime scene and Lexington VAHCS, in consultation with VA's Federal Preservation Officer (FPO) and the KY SHPO, determines that the human remains are not Native American, Lexington VAHCS will consult with the KY SHPO to resolve the discovery in a manner consistent with Kentucky Revised Statutes 72.020.
- C. If the local police department determines that the discovery is not a crime scene and Lexington VAHCS, in consultation with VA's FPO and the KY SHPO, determines the human remains, funerary objects, sacred objects, or objects of cultural patrimony are Native American or based on the preponderance of evidence are likely to be Native American, Lexington VAHCS will comply with Section 3 of the Native American Graves Protection and Repatriation Act (NAGPRA) and 43 CFR 10.4.

V. DURATION

This MOA will expire if its terms are not carried out within three (3) years from the date of its execution. Prior to such time, Lexington VAHCS may consult with the KY SHPO to reconsider the terms of the MOA and amend it in accordance with Stipulation VII. (Amendments) below.

VI. DISPUTE RESOLUTION

Should a signatory to this MOA object at any time to the manner in which the terms of this MOA are implemented, Lexington VAHCS will consult with the objector to resolve the objection. If Lexington VAHCS determines that such objection cannot be resolved, Lexington VAHCS will:

- A. Notify the objector and consulting parties in writing that it is invoking Stipulation VI. (Dispute Resolution).
- B. Forward all documentation relevant to the dispute, including Lexington VAHCS' proposed resolution, to the ACHP. The ACHP will provide Lexington VAHCS with its advice on the resolution of the objection within thirty (30) calendar days of receiving adequate documentation.
- C. Prior to reaching a final decision on the dispute, Lexington VAHCS will prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, the

KY SHPO, and consulting parties, and provide them with a copy of this written response. Lexington VAHCS will then proceed according to its final decision.

- D. If the ACHP does not provide its advice regarding the dispute within the thirty (30) calendar day period, Lexington VAHCS may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, Lexington VAHCS will prepare a written response that takes into account any timely comments regarding the dispute from the KY SHPO and consulting parties, and provide the ACHP, the KY SHPO, and consulting parties with a copy of such written response.
- E. Lexington VAHCS' responsibility to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remain unchanged.

VII. AMENDMENTS

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

VIII. TERMINATION

- A. If any signatory to this MOA determines that its terms will not or cannot be carried out, that party will immediately consult with the other signatory to attempt to develop an amendment per Stipulation VII. (Amendments) above. If within thirty (30) calendar 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 signatory.
- B. Once the MOA is terminated, and prior to work continuing on the undertaking, Lexington VAHCS must either (a) execute a 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. Lexington VAHCS will notify the ACHP, the KY SHPO, and consulting parties as to the course of action it will pursue.

IX. ANTI-DEFICIENCY ACT

Lexington VAHCS' obligations under this MOA are subject to the availability of funds and the stipulations of this MOA are subject to the provisions of the Anti-Deficiency Act (31 USC § 1341). Lexington VAHCS will 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 its ability to implement the stipulations of this MOA, Lexington VAHCS will consult with the KY SHPO in accordance with the amendment and termination procedures in Stipulations VII. (Amendments) and VIII. (Termination).

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

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LEXINGTON VA HEALTH CARE SYSTEM (VAHCS)
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AT THE FRANKLIN R. SOUSLEY CAMPUS IN
LEXINGTON, FAYETTE COUNTY, KENTUCKY**

SIGNATORIES:

U.S. DEPARTMENT OF VETERANS AFFAIRS LEXINGTON VA HEALTH CARE SYSTEM



Gregory Goins
Director




Date

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SIGNATORIES:

KENTUCKY STATE HISTORIC PRESERVATION OFFICER



Craig Potts
State Historic Preservation Officer and Executive Director
Kentucky Heritage Council

3/31/2021
Date



Sarah G. Croan
Legal Counsel
Tourism, Arts, and Heritage Cabinet

4/14/2021
Date

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CONCURRING PARTIES:

BLUE GRASS TRUST FOR HISTORIC PRESERVATION

Blue Grass Trust for Historic Preservation

Date

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CONCURRING PARTIES:

LEXINGTON FAYETTE URBAN COUNTY GOVERNMENT

Lexington Fayette Urban County Government

Date