

**MEMORANDUM OF AGREEMENT
BETWEEN
THE UNITED STATES DEPARTMENT OF VETERANS AFFAIRS
NEW JERSEY HEALTH CARE SYSTEM
AND THE NEW JERSEY HISTORIC PRESERVATION OFFICE,
REGARDING THE CONSTRUCTION OF A PARKING GARAGE
AT THE EAST ORANGE VA MEDICAL CENTER,
EAST ORANGE,
ESSEX COUNTY, NEW JERSEY**

WHEREAS, the Department of Veterans Affairs (VA) New Jersey Health Care System (VANJHCS) plans to construct a new parking garage to accommodate actual and future demands for outpatient clinic activities on the campus of the East Orange Veterans Affairs Medical Center (VAMC), described below and collectively referred to as the “Undertaking”; and

WHEREAS, in consultation with the New Jersey Historic Preservation Office (NJHPO), VANJHCS has determined that the East Orange VA Hospital is listed on the National Register of Historic Places under the United States Third Generation Veterans Hospitals Multiple Property Submission; and

WHEREAS, the undertaking consists of the construction of a five-story parking garage, the construction of a circular driveway in front of Building #1 of the facility, the partial reconfiguration of the current driveway into a pathway, and the relocation of a campus entrance; and

WHEREAS, VANJHCS has defined the undertaking’s area of potential effects (APE) as the East Orange VAMC campus; and

WHEREAS, VANJHCS has determined that the undertaking will adversely affect the East Orange VA Hospital due to the construction of a five-story parking garage in front of the primary elevation of Building #1, partially obstructing the viewshed of the façade of Building #1 from the main entrance on Tremont Avenue, will introduce an incompatible element within the historic resource boundaries and alter spatial relationships that characterize the property; and

WHEREAS, VANJHCS has consulted with the New Jersey Historic Preservation Office (NJHPO) pursuant to 36 CFR Part 800, the regulations implementing Section 106 of the National Historic Preservation Act (54 U.S.C. § 306108), and the NJHPO concurred that the undertaking will result in an adverse effect on November 30, 2022 (HPO-K2022-202 PROD); and

WHEREAS, VANJHCS, pursuant to 36 CFR § 800.4(a)(2 through 4), has determined, in consultation with NJHPO, that the Undertaking has no potential to affect archaeological historic properties; and

WHEREAS, VANJHCS, pursuant to 36 CFR § 800.2(c)(2), invited the Delaware Nation of Oklahoma, the Delaware Tribe of Indians, and the Shawnee tribe on February 2, 2023, to be consulting parties as federally recognized tribes, and on March 29, 2023, the Shawnee Tribe responded that this project is outside of their area of interest, and as of the date of this Memorandum of Agreement (MOA), neither the Delaware Nation of Oklahoma nor the Delaware Tribe of Indians have responded, and it is assumed that they have chosen not to participate in consultation; and

WHEREAS, VANJHCS has consulted with the City of East Orange, the East Orange Historical Society, and Essex County Cultural and Historic Affairs regarding the effects of the undertaking on historic properties, and as of the date of this MOA, no response has been received from the City of East Orange, the East Orange Historical Society, and Essex County Cultural and Historic Affairs, and it is assumed that they have chosen not to participate in consultation; and

WHEREAS, in accordance with 36 CFR § 800.6(a)(1), VANJHCS has notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect determination with specified documentation, and the ACHP has chosen not to participate in the consultation pursuant to 36 CFR § 800.6(a)(1)(iii); and

NOW, THEREFORE, VANJHCS and the NJHPO 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

VANJHCS shall ensure that the following measures are carried out:

I. ANTI-DEFICIENCY ACT

VANJHCS's 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 31341). VANJHCS 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, VANJHCS will consult with the NJHPO in accordance with the amendment and termination procedures in Stipulations VIII and IX.

II. MITIGATION

a. Recordation

- i.** Prior to the removal, demolition, or alteration of any components of the Building, the VANJHCS, using the services of an Architectural Historian who meets the Secretary of the Interior's Professional Qualifications Standards [48 FR 44738-91] in Architectural History, shall document the existing conditions of the East Orange VA Hospital. The documentation

shall be completed to Level III equivalent standards of the Historic American Building Survey (HABS). In lieu of large format photography, the VANJHCS shall include high-resolution digital photos that meet the National Park Service National Register Digital Photo Submission Standards. The standards can be found at the following web address: https://www.nps.gov/subjects/nationalregister/upload/Photo_Policy_update_2013_05_15_508.pdf.

- ii. Photographic documentation will include a minimum of thirty (30) digital photographs per the National Park Service standards for digital photography. The photographs will provide representative exterior views of the main building and all affected contributing resources as well as contextual views of the VA Hospital campus. A portion of the photographs can be aerial photographs of the East Orange VA Hospital from publicly available sources such as Google Maps and/or the State of New Jersey's aerial photography library (<https://njgin.nj.gov/njgin/edata/imagery/index.html>).
- iii. The recordation shall include both archival stable, 4-inch by 6-inch black and white prints and high-resolution digital RAW and/or TIFF files on an archival CD-R.
- iv. The VANJHCS shall ensure that all documentation is completed and accepted by the NJHPO prior to construction. The VANJHCS shall provide one original archival copy of the recordation to the NJHPO and duplicate copies, with original photographs, shall be provided to the appropriate repositories as identified in consultation with the NJHPO.

b. Interpretive Sign

- i. VANJHCS, using the services of a person meeting the Secretary of the Interior's Professional Qualification Standards (48 Fed. Reg. 44738-9) in History and/or Architectural History, shall design and install one (1) interpretive sign detailing the history and significance of the East Orange VA Hospital to be displayed in a publicly accessible area. The content of the signage shall include a colorful panel mounted on a pedestal or wall and the content shall incorporate historic photographs as well as text regarding the historic significance of the hospital. The location, content, size and text of the signage shall be submitted to the NJHPO for review and approval prior to fabrication.
 1. VANJHCS will take any timely (e.g. received within the NJHPO's 30-day review period) comments submitted by the NJHPO into consideration before finalizing and installing the sign.
 2. The final interpretive sign shall be prepared and installed upon completion of construction of the new garage and prior to the expiration of the MOA. Photographic documentation

- demonstrating that the sign has been installed shall also be submitted to the NJHPO prior to the expiration of the MOA.
- ii. The narrative shall be developed from various documents, with emphasis on the recent National Register Nomination and shall include:
 1. Location, ownership, and use date
 2. Detailed historical information for the East Orange VA Hospital, including where relevant, dates of construction, architect, builder, alterations, and original and subsequent architectural uses.
 3. An overview of the historical context of the East Orange VA Hospital.
 4. Detailed physical description of the building and landscape features at the East Orange VA Hospital and Hospital Historic District, including, as applicable, the dimensions, materials, structural systems, and architectural details of exterior features, and an overview of the site and setting.

III. SCHEDULE

The East Orange Medical Center may proceed with construction once the NJHPO has reviewed and approved the documentation per Stipulation II. Final documentation outlined in Stipulation II will be submitted to the NJHPO and the VA Federal Preservation Officer no later than three (3) years after the execution of this MOA.

IV. 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, VANJHCS 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

Should a previously unidentified resource be encountered during this undertaking or if an unanticipated effect to a known historic property results from the undertaking, VANJHCS will halt activities in the vicinity of the resource. VANJHCS shall comply with 36 CFR § 800.13(b) by notifying the NJHPO and invite comment from signatories to the Agreement. VANJHCS's notifications 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.

VI. MONITORING AND REPORTING

Each year following the execution of this MOA until it expires or is terminated, VANJHCS shall provide all parties to this MOA a summary report detailing work undertaken pursuant to its terms. Such report shall include any scheduling changes proposed, any problems encountered,

and any disputes and objections received in VANJHCS's efforts to carry out the terms of 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, VANJHCS shall consult with such party to resolve the objection. If VANJHCS determines that such objection cannot be resolved, VANJHCS will:

A. Forward all documentation relevant to the dispute, including the VANJHCS's proposed resolution, to the ACHP. The ACHP shall provide VANJHCS 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, VANJHCS 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. VANJHCS will then proceed according to its final decision.

B. If the ACHP does not provide its advice regarding the dispute within thirty (30) days, VANJHCS may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, VANJHCS 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. VANJHCS'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 (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, VANJHCS 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. VANJHCS shall notify the signatories as to the course of action it will pursue.

Execution of this MOA by the VANJHCS and NJHPO and implementation of its terms evidence that VANJHCS 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:

Department of Veterans Affairs

PATRICIA O'KANE Digitally signed by PATRICIA
O'KANE
Date: 2023.10.17 14:31:32 -04'00'

Date

Patricia O'Kane
Executive Medical Center Director

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New Jersey Historic Preservation Office


Katherine J. Marcopul

Deputy State Historic Preservation Officer

Date 11/28/2023