

**MEMORANDUM OF AGREEMENT BETWEEN THE UNITED STATES DEPARTMENT OF
VETERANS AFFAIRS AND THE MAINE STATE HISTORIC PRESERVATION OFFICER
REGARDING THE NEW RESIDENTIAL REHABILITATION TREATMENT PROGRAM
BUILDING AT THE TOGUS VETERANS AFFAIRS MEDICAL CENTER, AUGUSTA,
KENNEBEC COUNTY, MAINE (MHPC# 2093-21, VA# 402/185)**

WHEREAS, the United States Department of Veterans Affairs (“VA”) plans to carry out construction of the new Residential Rehabilitation Treatment Program (“RRTP”) building at the Togus Veterans Affairs Medical Center (“VAMC”), Augusta, Kennebec County, Maine (“undertaking”); and

WHEREAS, the undertaking consists of construction of the RRTP, which will provide needed program space not currently available at the VAMC. The proposed construction is a new two-story, twenty-four (24) bed building located between existing buildings 206 and 207 (“B206 and B207”). The location for the undertaking was selected for its proximity to B206, dining facilities, and utilities. Other factors influencing the RRTP location include a lack of sufficient vacant space elsewhere at VAMC, considerations relating to patient proximity to essential services, and staff and patient safety concerns; and

WHEREAS, VA has identified the following historic property within the APE: the VAMC campus that is listed in the National Register of Historic Properties (“NRHP”) as an historic district (NRIS# 12000826); and

WHEREAS, B206 and B207 are both contributing resources to the VAMC historic district; and

WHEREAS, VA has defined the undertaking’s area of potential effects (“APE”) as the courtyard between B206 and B207; and

WHEREAS, VA has determined that the undertaking will have an adverse effect on the VAMC historic district, which is listed in the NRHP, and has consulted with the Maine State Historic Preservation Officer (“SHPO”) pursuant to 36 CFR Part 800, the regulations implementing 54 U.S.C. § 306108 of the National Historic Preservation Act (54 U.S.C. § 300101 et seq.); and

WHEREAS, VA invited the following parties to consult on the undertaking: the Aroostook Band of Micmacs, Houlton Band of Maliseets, Passamaquoddy Tribe of Indians, and the Penobscot Nation; and none chose to participate in consultation; and

WHEREAS, in accordance with 36 CFR § 800.6(a)(1), VA 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, VA and the SHPO 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

VA shall ensure that the following measures are carried out:

I. ADMINISTRATION

- a. The Anti-Deficiency Act, 31 U.S.C. § 1341, prohibits federal agencies from incurring an obligation of funds in advance of or in excess of available appropriations. VA's obligations under this Agreement are subject to the availability of appropriated funds, and the stipulations of this

Agreement are subject to the provisions of the Anti-Deficiency Act. VA shall make reasonable and good faith efforts to secure the necessary funds to implement this Agreement in its entirety. If compliance with the Anti-Deficiency Act alters or impairs VA's ability to implement the stipulations of this Agreement, VA shall consult in accordance with the amendment and termination procedures found at Stipulations VI and VII of this Agreement.

- b. All Signatories shall send and accept official notices, comments, requests for additional information and/or documentation, draft materials, final deliverables, and all other communications required by this MOA via email.
- c. Time designations in this MOA shall be in calendar days. Failure of any party to this MOA to respond within the specified comment period shall not preclude VA from implementing measures of this MOA.
- d. For the purposes of this MOA, the definitions provided in 36 CFR § 800.16(a) through (z) inclusive shall apply.
- e. VA shall ensure that federal or contractor staff who meet the applicable Secretary of the Interior's Professional Qualification Standards for architectural history, history, archaeology, architecture, and/or historic architecture (36 CFR Part 61) participate as required by this MOA.

II. MITIGATION

VA will provide three (3) interpretive signage panels within the APE addressing the history and significance of the property.

- a. One (1) panel will address the history and significance of the courtyard area and two (2) panels will convey the history and significance of the overall campus during the nineteenth and early twentieth centuries.
- b. Each panel shall include text about the agreed upon topic and historic images of the campus.
- c. The panel materials shall be at the discretion of VA and in accordance with all VA health and safety protocols.
- d. VA shall produce a digital draft of the panels no more than six (6) months following the execution of this MOA.
 - i. VA shall submit the digital draft of the panels, including all draft text, to the Signatories for a thirty (30) day review.
 - ii. VA shall take all timely comments into account when finalizing the design and text.
 - iii. VA shall submit a digital copy of the final display to all Signatories.
- e. VA shall produce the panels no later than three (3) months following the finalization of the design and will notify Signatories of the installation through the procedures outlined in Stipulation IV.

VA will provide SHPO twenty-four (24) digital photographs of the APE in its current, pre-construction state.

- f. Said photographic documentation will, at minimum, comport with the "Acceptable" standards specified in the "National Register Photo Policy Factsheet updated 5/15/2013" (Photo Policy).
- g. The twenty-four (24) photographs will document the following views:
 - i. The APE as viewed facing northwest from approximately one hundred fifty (150) feet southeast of the southeast corner of B206.

- ii. The APE as viewed facing northeast from approximately one hundred fifty (150) feet southwest of the southwest corner of B207.
- iii. The APE as viewed facing north from the plane of the midpoint between the west elevation of B206 and the east elevation of B207 approximately one hundred (100) feet south of the southernmost extent of the APE.
- iv. The APE as viewed facing north from the plane of the midpoint between the west elevation of B206 and the east elevation of B207 approximately two hundred fifty (250) feet south of the southernmost extent of the APE.
- v. The southwest corner of B206 and immediately surrounding areas as viewed facing northeast from approximately one hundred feet (100) southwest of the southwest corner of B206.
- vi. The southeast corner of B207 and immediately surrounding areas as facing northwest viewed from approximately one hundred (100) feet southeast of the southeast corner of B207.
- vii. The south elevation of B206 and immediately surrounding areas as viewed facing north from approximately one hundred fifty (150) feet south of said elevation. viii. The south elevation of B207 and immediately surrounding areas as viewed facing north from approximately one hundred fifty (150) feet south of said elevation.
- ix. The APE as viewed facing north from the plane of the midpoint between the west elevation of B206 and the east elevation of B207 at the southernmost extent of the APE.
- x. The APE as viewed facing south from the plane of the midpoint between the west elevation of B206 and the east elevation of B207 at the northernmost extent of the APE.
- xi. The APE as viewed facing west from a location no more than five (5) feet west of the approximate center of the west elevation of B206. xii. The APE as viewed facing east from a location no more than five (5) feet east of the approximate center of the east elevation of B207.
- xiii. Facing north from the approximate center point of the APE. xiv. Facing south from the approximate center point of the APE. xv. Facing east from the approximate center point of the APE. xvi. Facing west from the approximate center point of the APE. xvii. Facing northwest from the approximate center point of the APE. xviii. Facing northeast from the approximate center point of the APE. xix. Facing southwest from the approximate center point of the APE. xx. Facing southwest from the approximate center point of the APE. xxi. Facing northeast from the southwest corner of the APE. xxii. Facing northwest from the southeast corner of the APE. xxiii. Facing southeast from the northwest corner of the APE. xxiv. Facing northwest from the northeast corner of the APE.
- h. VA will transmit digital photographs documenting the views detailed above to SHPO via a file transfer website or application no more than two (2) months following the execution of this MOA.
- i. SHPO shall have fourteen (14) days to review the images for consistency with the Photo Policy and verify that said images depict the twenty-four (24) views outlined in Stipulation II(g).

VA will review its archival holdings housed at VAMC for photographs documenting the construction of B206 and/or B207. Should any such photographs be located, digital versions of said images will be provided to SHPO.

- i. VA will transmit digital copies of photographs documenting the construction of B206 and/or B207, should any such images be identified in the archival holdings housed at VAMC, via a file transfer website or application no more than six (6) months following the execution of this MOA.

III. DURATION

This MOA will be effective immediately upon execution by all the Signatories. This MOA may be executed in counterparts, with a separate page for each Signatory. VA shall provide a complete copy of the executed MOA, including all Signatory pages and attachments, to all Signatories and the ACHP.

This MOA shall remain in effect for a period of three (3) years from the date of execution, unless it is concluded, amended, or terminated in accordance with Stipulations VI and VII prior to that date. No later than three (3) months prior to the expiration of the MOA, VA may initiate consultation to determine if the MOA should be allowed to expire or whether it should be extended for an additional term. Unless the Signatories unanimously agree on an extension per Stipulation VI, this MOA shall expire.

IV. MONITORING AND REPORTING

VA shall ensure that federal or contractor staff who meet the applicable Secretary of the Interior's Professional Qualification Standards for architectural history, history, archaeology, architecture, and/or historic architecture (36 CFR Part 61) participate as required by this MOA.

Annually, following the execution of this MOA until it expires or is terminated, VA shall provide all Signatories and consulting parties to this MOA a summary report detailing work undertaken pursuant to its terms. Such report shall include an update on actions described in Stipulation II, scheduling changes proposed, any problems encountered since the last quarter report, and any disputes and objections received in VA's efforts to carry out the terms of this MOA, as well as the status of those objections.

V. DISPUTE RESOLUTION

Should any Signatory to this MOA object via email to the manner in which any stipulation of this MOA is implemented, VA shall consult with that party or parties to resolve the objection. If VA determines that such objection cannot be resolved, VA shall:

- a. Forward all documentation relevant to the dispute, including VA's proposed resolution, to the ACHP. The ACHP shall provide VA with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Adequate documentation shall include reference to this MOA, the written objection of the Signatory, VA's response to the objection, and any supporting documentation.
- b. VA shall forward the documentation relevant to the dispute to all Signatories for their review and comment. VA shall provide these parties thirty (30) days to provide comments via email.
- c. VA shall take into account any timely advice or comments received from the ACHP and other Signatories in determining a final decision on the dispute and provide a response to written objections to all Signatories and consulting parties. If the ACHP does not respond within thirty (30) days, VA shall prepare a written response that takes into account timely comments from other Signatories regarding the dispute.

- d. VA shall prepare a written decision and distribute the decision and the documentation relevant to the dispute to all Signatories. VA shall then proceed in accordance with its final decision.
- e. VA'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.

VI. 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.

VII. TERMINATION

This MOA may be concluded (meaning, it will expire) by successful completion of Stipulations II and IV. If VA determines these stipulations have been completed, VA shall distribute written notice of fulfillment of the terms to all Signatories and the MOA shall expire.

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 VI, 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.

In the event that the MOA is terminated, and prior to work continuing on the undertaking, VA 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. VA shall notify the Signatories as to the course of action it will pursue.

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SIGNATORY:

United States Department of Veterans Affairs



Date 10/17/2023

Tracye B. Davis, FACHE, Medical Center Director, VA Maine Healthcare System

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SIGNATORY:

Maine State Historic Preservation Office

Kirk F. Mohnney Date *11/8/2023*
Kirk F. Mohnney, Maine State Historic Preservation Officer