

**MEMORANDUM OF AGREEMENT
AMONG
THE U.S. DEPARTMENT OF VETERANS AFFAIRS
CLEMENT J. ZABLOCKI VETERANS AFFAIRS MEDICAL CENTER,
THE WISCONSIN STATE HISTORIC PRESERVATION OFFICER,
THE NATIONAL PARK SERVICE,
AND THE
ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING
RECONSTRUCTION OF THE EASTSIDE DRAINAGE CANAL
AT THE
CLEMENT J. ZABLOCKI VETERANS AFFAIRS MEDICAL CENTER IN MILWAUKEE,
WISCONSIN**

WHEREAS, the U.S. Department of Veterans Affairs (VA) Clement J. Zablocki VA Medical Center (VAMC) proposes to carry out renovations to the Eastside Drainage Canal (undertaking) located at the VAMC at 5000 West National Avenue, Milwaukee, Wisconsin; and

WHEREAS, the undertaking consists of widening and aligning the Eastside Drainage Canal, including removing the majority of the north canal wall, to prevent adverse upstream effects to existing buildings within the boundary of the Northwestern Branch National Home for Disabled Volunteer Soldiers National Historic Landmark District (NHLD) due to significant erosion of the canal banks and loss of substrate; and

WHEREAS, portions of the north and south walls of the Eastside Drainage Canal contain brick/limestone retaining walls, which were possibly installed as part of the New Deal/ Works Progress Administration (WPA) in the late 1930s; and

WHEREAS, in accordance with 36 CFR § 800.4(a)(1), VA has defined the undertaking's area of potential effects (APE) as the footprint of the affected portions of the Eastside Drainage Canal and the surrounding areas inclusive of staging areas and areas to be landscaped upon project completion (i.e., approximately 1000-feet of the Eastside drainage Canal located within the southeastern edge of the National Register of Historic Places district boundary; west of the community Living Center Buildings [i.e., Buildings 146, 147, 148]; north of parking lot 35; east of the parking structures; and west of Brewers Boulevard) as mapped in Attachment 1; and

WHEREAS, in accordance with 36 CFR § 800.3(a), VA has determined that the project 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 is therefore subject to review under Section 106 of the National Historic Preservation Act (NHPA), as amended, (54 USC § 306108), and its implementing regulations (36 CFR Part 800 – Protection of Historic Properties); and

WHEREAS, VA has determined that the undertaking may have an adverse effect on the Disabled Volunteer Soldiers NHLD, which is listed on the National Register of Historic Places, and has consulted with the Wisconsin State Historic Preservation Officer (SHPO) pursuant to 36 CFR Part 800, the regulations implementing Section 106 of the National Historic Preservation Act (54 U.S.C. § 306108); and

WHEREAS, Section 110(f) of the NHPA requires VA, to the maximum extent possible, to undertake such planning and actions as may be necessary to minimize harm to the integrity of the NHLD; and

WHEREAS, no subsurface archaeological sites within the APE have been identified through previous archaeological investigations nor are the chances of unanticipated discoveries high within the APE due to disturbance from the construction of the canal (Attachment 1); and

WHEREAS, pursuant to 36 CFR § 800.10(c), VA has notified the Secretary of the Interior through the National Park Service (NPS) of VA's finding that the undertaking will have an adverse effect on the NHLD and has invited the NPS to participate in consultation on February 17, 2023, and NPS has elected to participate; and

WHEREAS, VA has invited the Forest County Potawatomi Community, Prairie Bend of Potawatomi Nation, Hannahville Indian Community, Citizen Potawatomi Nation, Bad River Band of Lake Superior Chippewa Indians, Lac Courte Oreilles Band of Lake Superior Chippewa Indians, Lac du Flambeau Band of Lake Superior Chippewa Indians, The Ho-Chunk Nation, Menominee Indian Tribe of Wisconsin, Oneida Tribe of Wisconsin, Red Cliff Band of Lake Superior Chippewa, Stockbridge-Munsee Community Band of Mohican Indians, Sokaogon Chippewa Community, and the St Croix Band of Lake Superior Chippewa to participate in consultation and the Menominee Indian Tribe of Wisconsin have elected to participate; and

WHEREAS, in accordance with 36 CFR § 800.2(c)(2 through 5), VA has invited the following to be consulting parties to participate in consultation on April 18, 2023: the National Trust for Historic Preservation (NTHP), Milwaukee Preservation Alliance (MPA), and the City of Milwaukee Historic Preservation Commission (City); and the City has elected to participate; and

WHEREAS, pursuant to 36 CFR § 800.6(a)(1)(i)(B) and 800.10(b), VA has notified the Advisory Council on Historic Preservation (ACHP) of the adverse effect finding and invited the ACHP to participate in consultation on April 18, 2023, and the ACHP has elected to participate pursuant to 36 CFR § 800.6(a)(1)(iii) on April 25, 2023; and

NOW, THEREFORE, VA, SHPO, NPS, and the ACHP (signatories) 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

The VAMC will ensure that the following measures are carried out:

I. LANDSCAPE DESIGN REVIEW

Within two (2) years of this MOA's execution and prior to any landscaping being undertaken, the VAMC will submit a landscape plan to the signatories for review.

1. Trees, shrubs, and bushes selected will be from historic plantings and no birch trees will be used. However, low level plantings necessary to control storm water in areas directly adjacent to the project area are not required to be historic plantings.

2. The VAMC will provide the signatories the opportunity to review and comment on the draft landscape plan prior to its finalization for a thirty (30) calendar day review period.
3. The VAMC will consider any timely written comments submitted by the signatories in finalizing the plan. Should the signatories not submit comments within thirty (30) calendar days, the VAMC may proceed with finalizing and implementing the landscape plan.

II. INTERPRETATION

The VAMC will design and install a bench and plaque detailing the contributions the WPA had on the Clement J. Zablocki VAMC and the City of Milwaukee.

1. Within one (1) year of this MOA's execution, the VAMC will provide the signatories the opportunity to review and comment on the draft design and content for the bench and plaque prior to their finalization for a thirty (30) calendar day review period.
2. The VAMC will consider any timely written comments submitted by the signatories in finalizing the design and content. Should the signatories not submit comments within thirty (30) calendar days, the VAMC may proceed with finalizing the design and content and installing the bench and plaque.
3. The VAMC will place the bench and plaque just west of the project area within one (1) year of the project's completion or prior to the expiration of this MOA, whichever comes first.

III. DURATION

This MOA will expire upon completion of its terms or if its terms are not carried out within five (5) years from the date of its execution. Prior to conclusion of this five-year timeframe, the VAMC may consult with the other signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation VI below.

IV. MONITORING AND REPORTING

The VAMC will provide updates of the project status at the bi-annual meetings agreed upon in the 2016 Programmatic Agreement, following the execution of this MOA until it expires or is terminated. At the meetings, VAMC will provide all parties to this MOA a summary report detailing work undertaken pursuant to its terms. Such report will include any scheduling changes proposed, any problems encountered, and any disputes and/or objections received in the VAMC's efforts to carry out the terms of this MOA.

V. 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, VA shall consult with such party to resolve the objection. If VA determines that such objection cannot be resolved, VA will:

- A. Forward all relevant documentation, 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. Prior to reaching a final decision on

the dispute, VA 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. VA will then proceed according to its final decision.

- B. If the ACHP does not provide advice within the thirty (30) day time period, VA may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, VA 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. 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 signatories is filed with the ACHP.

VII. 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 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.

Once 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.

VIII ANTI-DEFICIENCY CLAUSE

The VA'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. The VA 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 the VA's ability to implement the stipulations of this agreement, the VA shall consult in accordance with the amendment and termination procedures found at Stipulations VI and VII of this agreement.

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

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AMONG
THE U.S. DEPARTMENT OF VETERANS AFFAIRS
CLEMENT J. ZABLOCKI VETERANS AFFAIRS MEDICAL CENTER,
THE WISCONSIN STATE HISTORIC PRESERVATION OFFICER,
THE NATIONAL PARK SERVICE,
AND THE
ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING
RECONSTRUCTION OF THE EASTSIDE DRAINAGE CANAL
AT THE
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WISCONSIN**

SIGNATORY:

U.S. Department of Veterans Affairs, Clement J. Zablocki VA Medical Center

JAMES D MCLAIN 124813 Digitally signed by JAMES D MCLAIN 124813
Date: 2023.07.31 16:20:47 -05'00'

**James D. McLain, MHA, FACHE
Medical Center Director**

Date

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SIGNATORY:

Wisconsin State Historic Preservation Office



**Daina Penkiunas, Ph.D.
State Historic Preservation Officer**



Date

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WISCONSIN**

SIGNATORY:

Advisory Council on Historic Preservation



September 19, 2023

**Reid J. Nelson
Executive Director**

Date

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among the
Clement J. Zablocki Veterans Affairs Medical Center,
Wisconsin State Historic Preservation Office,
Advisory Council on Historic Preservation, and the
National Park Service
regarding
Reconstruction of the Eastside Drainage Canal
at the
Clement J. Zablocki Veterans Affairs Medical Center in Milwaukee, Wisconsin

INVITED SIGNATORY:

National Park Service

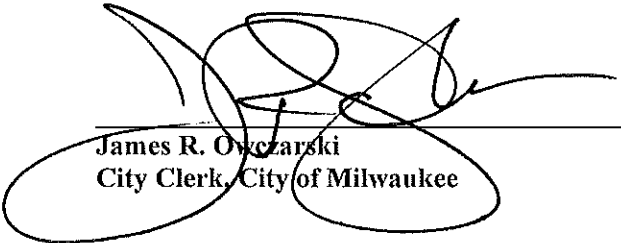
Herbert (Bert) C. Frost, Ph.D.
Midwest Regional Director

Date

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WISCONSIN

CONCURRING PARTY:

City of Milwaukee


James R. Ovczarski
City Clerk, City of Milwaukee

8/1/23
Date

Attachment 1- Area of Potential Effects



