

**MEMORANDUM OF AGREEMENT
AMONG
THE U.S. DEPARTMENT OF VETERANS AFFAIRS,
CONNECTICUT HEALTH CARE SYSTEM;
THE CONNECTICUT STATE HISTORIC PRESERVATION OFFICER; AND
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING
THE SURGICAL AND CLINICAL TOWER AT
THE WEST HAVEN VETERANS AFFAIRS MEDICAL CENTER,
950 CAMPBELL AVENUE, WEST HAVEN, NEW HAVEN COUNTY, CONNECTICUT**

WHEREAS, the U.S. Department of Veterans Affairs, Connecticut Health Care System (VA) plans to carry out the New Surgical and Clinical Tower project at the West Haven Veterans Affairs Medical Center (VAMC) at 950 Campbell Avenue, West Haven, Connecticut, that will be approximately 189,500 square feet and will address current critical deficiencies related to utility failures, infection prevention issues, patient and staff safety concerns, and space constraints at the VAMC, and will include the demolition of Buildings 6, 7, 8, 8.5, 9, and 10 (undertaking); and

WHEREAS, the VA, the Connecticut State Historic Preservation Officer (SHPO), and the Advisory Council on Historic Preservation (ACHP) executed a Programmatic Agreement (PA) on December 16, 2022, under which VA agreed to consult with the SHPO on the undertaking to seek to execute a Memorandum of Agreement (MOA), pursuant to 36 CFR § 800.6(b), to determine an appropriate level of mitigative measures for the undertaking (Stipulation III.c of the PA); and

WHEREAS, the VA, the SHPO, the ACHP, and The Fisher House Foundation executed a MOA on December 6, 2016 (Attachment A), in which the VA agreed to restore the deteriorated windows in Building 5 (Stipulation I.A), which the VA has not yet completed, and which will be completed as part of this MOA; and

WHEREAS, the VA has defined the undertaking's area of potential effect (APE) as the boundaries of the West Haven Veterans Administration Hospital/William Wirt Winchester Memorial Hospital Historic District (Attachment B); and

WHEREAS, the VA has determined that the undertaking will have an adverse effect on the West Haven Veterans Administration Hospital/William Wirt Winchester Memorial Hospital Historic District, which is listed in the National Register of Historic Places, due to the demolition of contributing resources (Buildings 6, 7, 8, 9, and 10) and has consulted with the 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, VA invited the following Federally recognized Tribes (Tribes) that might attach religious and cultural significance to historic properties in the City of West Haven or New Haven County, CT, to participate in consultation, pursuant to 36 CFR § 800.2(c)(2): the Mashantucket Western Pequot Tribal Nation, the Delaware Tribe of Indians, the Narragansett Indian Tribe, and the Mohegan Tribe of Indians of Connecticut; none of whom have elected to participate in consultation; and

WHEREAS, VA invited the following historical and preservation groups that might have a demonstrated interest in the undertaking to participate in consultation, pursuant to 36 CFR § 800.2(c)(5): Connecticut Historical Society and Museum, the New Haven Preservation Trust, the New Haven

Museum, Preservation Connecticut, the West Haven Historical Society; and the West Haven Veterans Museum; none of whom have elected 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 to participate in the consultation pursuant to 36 CFR § 800.6(a)(1)(iii); and

NOW, THEREFORE, the VA, the SHPO, and the ACHP 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 VA shall ensure that the following measures are carried out:

I. ADMINISTRATION

- A. All parties shall send and accept official notices, comments, requests for additional information and/or documentation, and all other communications required by this MOA via email.
- B. Time designations in this MOA shall be in calendar days.
- C. For the purposes of this agreement, the definitions provided in 36 CFR § 800.16(a) through (z) inclusive shall apply.
- D. VA shall ensure that Federal or contractor staff who meet the applicable Secretary of the Interior's Professional Qualification Standards (36 CFR § 61) in the appropriate discipline (e.g., architectural history, history, archaeology, architecture, or historic architecture) will participate in the review and implementation required as part of this agreement.
- E. This agreement shall be executed in counterparts with a separate page for each Signatory.

II. MITIGATION

- A. VA will complete Conditions Assessments for Buildings 3, 4, and 5.
 - a. VA will hire a qualified historical architect who meets the Secretary of the Interior's Professional Qualification Standards in Architecture and/or Historic Architecture to complete exterior Conditions Assessments of Buildings 3, 4, and 5.
 - b. The Conditions Assessments will focus on the material and structural conditions of the buildings with a focus on identifying and describing existing conditions and historic character-defining features and make recommendations for repairs that meet the Secretary of the Interior's Standards for the Treatment of Historic Properties.
 - c. The Conditions Assessments will take the form of a written report, which may be accompanied by field notes, photographs, and/or measured drawings.
 - d. A draft copy of the Conditions Assessments will be provided to signatories upon completion. The SHPO will be provided 30 calendar days to review and comment on the

Conditions Assessment reports.

- e. Conditions Assessment reports will be completed within one (1) year from the execution of this agreement. Once conditions assessment reports are completed, VA will provide a copy of the conditions assessments reports to all signatories.
 - f. Based on the finalized conditions assessment, VA will schedule a meeting with signatories to discuss the capital improvements to Building 5.
 - g. Based on the recommendations in the conditions assessment, the VA will complete capital improvements to the exterior of Building 5 that are focused on code, life safety, and critical envelope repairs (see also Stipulation III.A, which discusses window repairs at Building 5). A project schedule for completion of these repairs will be provided to signatories as the design process progresses and the construction schedule is finalized.
- B. The Campbell Avenue Gate will be relocated to the interior courtyard (see Attachment A), and an interpretive element that acknowledges the original gate location will be included in the landscape design.
- a. The interpretive element that acknowledges the original gate location will be designed in collaboration with a qualified historical architect who meets the Secretary of the Interior's Professional Qualification Standards in Architecture and Historic Architecture and in such a way as to not compromise site safety and security requirements.
 - b. A copy of the draft design for the interpretive element that acknowledges the original gate location will be provided to signatories upon completion. The SHPO will be provided 30 calendar days to review and comment on the design.
- C. Additional research to augment the social history/Criterion A argument in the existing National Register of Historic Places (NRHP) nomination form for the West Haven Veterans Administration Hospital/William Wirt Winchester Memorial Hospital Historic District will be completed.
- a. VA will hire a qualified historian who meets the Secretary of the Interior's Professional Qualification Standards in History to augment the social history/Criterion A argument in the existing NRHP nomination for the for William Wirt Winchester Memorial Hospital Historic District.
 - b. Research will focus on the history of the hospital as a tuberculous facility for veterans and the early impact of the hospital on the VA health system and patient care.
 - c. The additional documentation will take the form of a written report.
 - d. SHPO will be given 30 days to review and provide feedback on the written report. The consultant will make edits to the report based on SHPO feedback and a final copy of the report will be provided to signatories.
 - e. The additional Criterion A research will be completed within one (1) year of the date of execution of the agreement.

- f. The findings of the additional research will be made available to the public through an interpretive component, such as a webpage or interpretive panel. Once the research is complete and the appropriate interpretive medium is identified, the VA will consult on the interpretive element with the signatories in writing.

III. COMPLETION OF OUTSTANDING MITIGATION FROM THE FISHER HOUSE MOA (2016)

In the Memorandum Of Agreement Among The US. Department Of Veterans Affairs Connecticut Healthcare System; The Connecticut State Historic Preservation Officer; The Advisory Council On Historic Preservation; And The Fisher House Foundation Regarding Construction Of A Fisher House In West Haven, CT (executed December 6, 2016; Attachment A), the VA agreed to enrolling a staff member in a window restoration course; preparation of a window restoration plan for Buildings 5 and 9; repair to the windows of Buildings 5 and 9; a lead based paint assessment of the Campbell Avenue gate; repainting of the Campbell Avenue Gate; and a plan for the eventual relocation of the Campbell Avenue gate (Stipulations I.A and I.C of the 2016 MOA). VA has not yet completed the window restoration plan or window repairs or the relocation of the Campbell Avenue Gate.

- A. The Conditions Assessment for Building 5 (Stipulation II.A of this MOA) will include a window restoration plan, and the exterior capital improvements at Building 5 (Stipulation II.A.g of this MOA) will include window repairs. This will satisfy Stipulation I.A of the 2016 MOA.
- B. To avoid further damage from vehicular crashes, the Campbell Avenue Gate will be relocated to an interior courtyard as part of the undertaking (Stipulation II.B of this MOA). The original location of the gate will be acknowledged through an interpretive element in the landscape. The Campbell Avenue Gate relocation and interpretation will satisfy Stipulation I.C of the 2016 MOA.

IV. DISPUTE RESOLUTION

Should any signatory to this agreement object at any time in writing to the VA to any action carried out or proposed with respect to the undertaking, or the manner in which the terms of this agreement are implemented, the VA shall consult with such party to resolve the objection. If the VA determines that such objection cannot be resolved, VA will:

- A. Forward all documentation relevant to the dispute, including the VA's proposed resolution, to the ACHP.
- B. The ACHP shall provide VA with its advice on the resolution of the objection within 30 calendar days of receiving adequate documentation.
- C. 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 and signatories and provide them with a copy of this written response. VA will then proceed according to its final decision.
- D. If the ACHP does not provide its advice regarding the dispute within the 30 calendar 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 to the MOA, and provide them and the ACHP with a copy of such written response.

- 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.

V. DURATION

This MOA will expire if its stipulations are not carried out within seven (7) years from the date of execution unless it is terminated prior to that date. Six (6) months prior to the expiration date, VA may consult with the other signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation VII.

VI. MONITORING AND REPORTING

Annually, following the execution of this MOA until it expires or is terminated, the VA shall provide all parties to this MOA a summary report detailing work undertaken pursuant to its terms.

- A. The report shall include anticipated construction actions in the upcoming 12-months, any problems encountered in the past 12-months, any disputes or objections received in the VA's efforts to carry out the terms of this agreement and the resolutions thereof (see Stipulation IV), information concerning upcoming consultation efforts, and the statuses of stipulated items.
- B. The report will be circulated to all signatories within 15 calendar days of the anniversary of execution of this agreement.

VII. 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.

VIII. 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 parties to attempt to develop an amendment per Stipulation VII, above.

- A. If within 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 signatories.
- B. Once the MOA is terminated, and prior to work continuing on the undertaking, the VA will either (a) execute a new 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. The VA shall notify the signatories as to the course of action it will pursue.

IX. TREATMENT OF HUMAN REMAINS AND ITEMS OF RELIGIOUS AND CULTURAL IMPORTANCE

If potential human remains and/or potential funerary objects are identified, the VA shall stop construction

work within 50-feet of the discovery and:

- A. Contact the West Haven Police Department to determine whether the human remains may be involved in a legal investigation or not, consistent with local and state laws.
- B. Inform the VA Federal Preservation Officer and signatories to this agreement of the discovery.
- C. If local law enforcement determines the remains are human and not subject to legal investigation, the VA shall:
 - a. Treat non-Native American remains and objects with respect and within the directions given by the police department and state guidelines.
 - b. Treat discoveries related to Native Americans and Native America lifeways with respect and in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA) (Public Law 101-601, 25 USC 3001 et seq., 104 Stat. 3048) including notifying and consulting with Tribes regarding the treatment of human remains and funerary objects.
 - c. If the VA has questions or requires assistance, the VA shall consult with the CT SHPO and the VA Federal Preservation Officer.

X. POST REVIEW DISCOVERIES

If historic resources are discovered, or unanticipated effects on historic properties occur during execution of the undertaking, the VA shall notify the VA Federal Preservation Officer as well as signatories to this agreement and consult in accordance with 36 CFR § 800.6 to resolve adverse effects.

- A. The person in charge of the work site, including a contractor or VA staff member, shall immediately halt activities within 20-feet of the discovery and shall immediately inform VA of the discovery.
- B. The VA may request expedited consultation to resolve adverse effects within its construction schedule.
- C. The VA shall alert the Signatories to this agreement of the discovery and request an expedited review via email with the subject line “POST-REVIEW DISCOVERY: EXPEDITED REVIEW REQUEST.” In this email, the VA shall describe the discovered resource or unanticipated effect with text and photos, assess any effects, and propose measures to avoid, minimize, and/or mitigate the effects to the historic property.
- D. For 15 calendar days following distribution of the notification email, the VA Point of Contact identified in the email shall answer questions from the signatories to this agreement about the discovery. The signatories may submit questions via email or by phone.
- E. The signatories shall respond to the expedited review within 15 calendar days of receipt of the notification email either with their concurrence with VA’s proposed assessment and actions or their nonconcurrence.
 - a. If the signatories to this agreement concur or do not respond, the VA may proceed with implementation of the proposed measures to avoid, minimize, and/or mitigate the effects to

the historic property.

- b. If a signatory does not concur, the VA shall host a webinar to discuss the discovery and proposed measures to avoid, minimize, and/or mitigate the effects. The SHPO shall participate in this webinar. The VA shall distribute a summary of the meeting, including all decisions made in consultation, via email within seven (7) calendar days.
- c. If the VA and the SHPO cannot reach consensus on measures to avoid, minimize, and/or mitigate effects following this meeting, the VA shall proceed in accordance with Stipulation IV.

XI. ANTI-DEFICIENCY ACT

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 VII and VIII of this agreement.

XII. EXECUTION

Execution of this MOA by the VA, SHPO, 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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SIGNATORY:

U.S. Department of Veterans Affairs Connecticut Healthcare System

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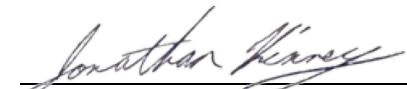
Date: _____

Becky D. Rhoads, Au.D.
Executive Director
VA Connecticut Healthcare System

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SIGNATORY:

Connecticut State Historic Preservation Officer



Jonathan Kinney, SHPO

Date: 2/6/24

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SIGNATORY:

Advisory Council on Historic Preservation



Reid J. Nelson, Executive Director

Date: February 22, 2024