

DRAFT
PROGRAMMATIC AGREEMENT
AMONG
THE UNITED STATES DEPARTMENT OF VETERANS AFFAIRS,
THE NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION OFFICERS,
THE [ENTITY],
AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING MAJOR LEASING ACTIONS

WHEREAS, the mission of the United States Department of Veterans Affairs (VA) is to fulfill President Lincoln’s promise to care for those who have served in our nation’s military and for their families, caregivers, and survivors.; and

WHEREAS, enrollment in VA programs has increased due changes in the Veterans population demographics and residential geographic relocation trends, as well as the expansion of health care and benefit eligibility, after the passing of the [Sergeant First Class Heath Robinson Honoring Our Promise to Address Comprehensive Toxics \(PACT\) Act of 2022](#); and

WHEREAS, VA requires flexibility to establish health care facilities to meet the needs of current and future Veterans populations and has determined that leasing is a viable alternative to address this critical issue; and

WHEREAS, 54 U.S.C. § 306108 of the National Historic Preservation Act (NHPA, 54 U.S.C. § 300101 et seq.) and its implementing regulations codified in 36 CFR Part 800 (collectively “Section 106”), require federal agencies to take into account the effects of undertakings they carry out, license, or assist on historic properties and afford the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment; and

WHEREAS, VA determined leasing actions constitute Undertakings as defined by 36 CFR § 800.16(y) with varying potential to adversely affect historic properties; and

WHEREAS, VA determined a programmatic approach to major leasing actions (Undertakings), or those with an annual rent of more than \$3.926 million, would best simplify and standardize review processes nationwide pursuant to 36 CFR § 800.14(b) following consultation between April and June 2024 with the ACHP, the National Conference of State Historic Preservation Officers (NCSHPO), and the National Association of Tribal Historic Preservation Officers (NATHPO) as agencies with specialized expertise in Section 106, and from November 2023 until January 2024 solicited opinions from State Historic Preservation Officers (SHPOs), Tribal representatives, political officials, and members of the public through an associated National Environmental Policy Act (NEPA) scoping process; and

WHEREAS, this programmatic agreement does not change, modify, or otherwise impede VA’s compliance with Federal Management Regulation (FMR) 102-83.75 which requires compliance with Executive Order 13006 to give first consideration to locating federal facilities in historic buildings and districts within central business areas; and

WHEREAS, this programmatic agreement does not invalidate nor supersede any existing VA Section 106 agreements; and

WHEREAS, VA hosted virtual consultation meetings regarding the proposed programmatic agreement; meetings were hosted on Microsoft Teams on October 2, 2024, (Indian Tribes/Alaska Native Tribes and Corporations/Native Hawaiian organizations/THPOs/NATHPO), October 1, 2024, (SHPOs/NCSHPO), October 7, 2024, (All Consulting Parties), and meetings held on [date] (SHPOs/NCSHPO), [date] (Indian

Tribes/Alaska Native Tribes and Corporations/Native Hawaiian organizations/THPOs/NATHPO), and [date] (all Consulting Parties) to discuss a draft of this programmatic agreement; and

WHEREAS, VA provided the leaders and THPOs of federally recognized Indian Tribes, Native Hawaiian organizations, and Alaska Native Tribes and corporations and the opportunity to comment on the proposed Undertaking from October 2, 2024, to November 2, 2024, and received comments from the Catawba Indian Nation; and from December 20, 2024, to January 31, 2025, on a draft of this programmatic agreement and received comments from [list]; and again from [date] to [date] and received comments from [list]; and

WHEREAS, VA provided representatives of ACHP, NCSHPO, SHPOs, and the NTHP the opportunity to comment on the proposed Undertaking from October 1, 2024, to November 1, 2024, and received comments from the ACHP and three SHPOs (Alaska, Colorado, Georgia); and from December 20, 2024, to January 31, 2025, on a draft of this programmatic agreement and received comments from [list]; and again from [date] to [date] and received comments from [list]; and

WHEREAS, VA invited representatives of [accredited Veterans Service Organizations](#) (VSOs) to consult on the proposed Undertaking via email on August 26, 2024; and hosted a consultation session on October 7, 2024, to discuss the proposed Undertaking and solicit feedback; and provided these representatives the opportunity to comment on the proposed programmatic agreement from October 7, 2024, to November 7, 2024, and received no comments; and from December 20, 2024, to January 31, 2025, on a draft of this Agreement and received comments from [list]; and again from [date] to [date] and received comments from [list]; and

WHEREAS, VA solicited comments from members of the public and representatives of Tribes and Consulting Parties from November 2023 until January 2024 through an associated NEPA scoping process and included information about the proposed Undertaking and anticipated effects to historic properties and this programmatic agreement in a draft programmatic environmental assessment published in the [Federal Register on November 17, 2023](#), and in a posting to the [VA Environmental Program Office website](#); and

WHEREAS, VA provided opportunities for public review and comment by publishing information on the development of this programmatic agreement through a [dedicated project webpage](#) on the VA Office of Construction and Facilities Management website and requested public comment on the proposal by October 1, 2024, and the draft programmatic agreement by January 31, 2025; and

WHEREAS, VA provided opportunity for members of the public and representatives of Tribes and Consulting Parties to comment on the proposed Undertaking and this Agreement via a dedicated email address [historicpreservation@va.gov]; and

WHEREAS, nothing in this agreement prohibits the ACHP from providing guidance and comments regarding the coordination of Section 106 reviews to VA, notifying VA of objections or concerns from consulting parties or members of the public, and participating in the resolution of adverse effects for any leasing Undertaking; and

NOW, THEREFORE, VA, the NCSHPO, [entities], and the ACHP agree that the Section 106 review of major leasing actions shall be implemented in accordance with the following Stipulations in order to take into account the effects of these Undertakings on historic properties:

STIPULATIONS

VA shall ensure the following stipulations are implemented:

I. DEFINITIONS

- a. The definitions provided in 36 CFR § 800.16(a) through (z) inclusive shall apply and are incorporated by reference.
- b. *Lease actions*: The projects or activities necessary to plan, construct, and occupy a space leased by VA. Leases are defined as Major, Mid-Level, or Minor based on annual rent. (Major: over \$3.962M, Mid-Level: \$1M to \$3.962M, Minor: under \$1M).
 - i. *Move-in Ready*: A lease action with no significant rehabilitation, renovation, or construction needed to occupy and activate. No associated ground disturbance.
 - 1. Move-in Ready lease actions that require significant rehabilitation, renovation, or construction will be defined as Build-Out lease actions. In those cases, VA shall follow the appropriate Build-Out stipulations of this programmatic agreement.
 - ii. *Build-Out*: A lease action that requires the renovation or rehabilitation of an existing space to meet the proposed function. Ground disturbance unlikely.
 - iii. *Build-to-Suit*: A lease action that requires the construction of a new building, structure, or parking lot. Under a build-to-suit arrangement, VA leases a location and works with a developer to construct a new building or structure with associated parking and landscaping. Ground disturbance highly likely.
- c. *Design criteria*: VA established requirements and guidance, from planning to occupancy, of leased property as set in VA's [Technical Information Library](#).
- d. *Disturbed soils*: Soils unlikely to possess intact and/or distinct soil horizons with little potential to retain historic properties within their original depositional contexts.
- e. *Historic*: Listed in or determined eligible for listing in the National Register of Historic Places (36 CFR § 60.4) whether individually or as a contributing resource to a historic district.
 - i. Within this programmatic agreement, use of “historic” shall refer only to National Register eligibility, not the age of an archaeological site.
- f. *Indigenous knowledge*: Body of observations, oral and written knowledge, practices, and beliefs that promote environmental sustainability and the responsible stewardship of natural resources through relationships between humans and environmental systems.
- g. *Notify / Notification*: VA's submission of the informational form included as Attachment A. Under this programmatic agreement, notification is a submission of information, not a request for concurrence. Concurrence with this form is not required under this Agreement.
- h. *Qualified staff or personnel*: 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; 48 FR 44738- 9).
- i. *Records check*: Collection and review of information about whether historic built and/or archaeological historic properties are known to exist within the APE from SHPO, Tribal, and relevant federal agency files, records, inventories and databases, or other sources identified by the SHPO or THPO. VA may delegate responsibility for conducting Records

Checks to the owner of the leased property, however final approval of adequacy of record will be by VA SOI qualified staff.

i. A Records Check may include information about traditional cultural properties, cultural and/or sacred practices, or other traditional knowledge if such records are kept.

j. *Rehabilitation*: The act or process of making possible a compatible use for a property through repair, alterations, and additions while preserving those portions or features which convey its historical, cultural, or architectural values. Rehabilitations must meet the standards of 36 CFR § 67.7 as documented by concurrence between VA and the respective SHPO, THPO, and/or Indian Tribe depending on if the Undertaking is located on Tribal lands.

II. APPLICABILITY

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. Accordingly, the parties agree that any requirement for the obligation of funds arising from the terms of this programmatic agreement shall be subject to the availability of appropriated funds for that purpose, and that this programmatic agreement shall not be interpreted to require the obligation of funds in violation of the Anti-Deficiency Act.

b. Pursuant to 54 U.S.C. § 306133, VA may disqualify or otherwise dismiss a lease offer if the potential lessor demolishes, damages, or otherwise modifies a historic property in anticipation of an award without regard to the stipulations of this programmatic agreement.

c. This programmatic agreement applies only when VA is the lead federal agency for Section 106 compliance for a major leasing action (Undertaking).

d. This programmatic agreement applies only when VA is leasing space from another entity (private developer, federal government agency, municipal or state agency). It does not apply to VA's Enhanced-Use Lease (EUL) nor historic out lease programs.

e. VA shall consult with Indian Tribes (Tribes) to determine applicability prior to use of this programmatic agreement on Tribal lands as required by 36 CFR § 800.2(c)(2)(i).

i. An Indian Tribe (Tribe) may authorize use of this programmatic agreement for any major leasing action (Undertaking) located on Tribal lands by submitting the Tribal Signatory Page in Appendix C signed by an authorized Tribal Official or designated representative of the Tribe authorizing such intent to the VA Federal Preservation Officer.

ii. Once a Tribe submits the Tribal Signatory Page, the Tribe will become a Signatory to the programmatic agreement and provisions of the programmatic agreement will be applicable to the proposed Undertaking that may occur on or affect historic properties on the associated Tribal lands.

iii. Once a Tribe becomes a Signatory to the programmatic agreement, the Tribe will remain a Signatory until the Tribe terminates its participation in the programmatic agreement per Stipulation IX.c. Termination by a Tribe that is a

Signatory will be limited to termination of the programmatic agreement's applicability on Tribal lands under the jurisdiction of that Tribe.

iv. At any point after a Tribe becomes a Signatory, the Tribe and a VA FPO may agree that the VA shall follow 36 CFR §§ 800.3-800.7 or another applicable program alternative for a particular Undertaking proposed to occur on or have the potential to affect historic properties on Tribal lands.

f. This programmatic agreement does not apply to properties listed or eligible for listing as National Historic Landmarks (NHLs) or when NHLs are located within the Area of Potential Effect (APE). VA shall consult in accordance with 36 CFR Part 800, specifically 36 CFR § 800.10, for undertakings involving NHLs.

g. VA shall consult in accordance with 36 CFR Part 800 when an Undertaking requires leased space of more than twenty-five (25) acres or a building greater in size than 225,000 gross square feet (GSF).

III. COMMUNICATIONS

a. All comment and review periods shall be counted in days. "Day" means one calendar day, including weekends and federal holidays. VA shall extend a deadline that would otherwise fall on a weekend or a holiday to the next business day.

b. All Signatories shall send and accept official notices, comments, requests for additional information, objections, draft and final deliverables, and all other communications required by this programmatic agreement via email. A Signatory may request to receive these items in hardcopy from the VA FPO. The Signatories may choose to meet via webinar, by phone, or in-person as necessary to implement this programmatic agreement.

c. Time periods and schedules shall be counted from the date of distribution via email.

d. Any written comments emailed by the Signatories within the established time frame shall be considered in implementation of this programmatic agreement. Failure of the Signatories to respond within established time frames shall not preclude VA from proceeding in implementation of this programmatic agreement.

IV. ROLES & RESPONSIBILITIES

a. Advisory Council on Historic Preservation (ACHP)

i. ACHP is the federal agency responsible for the administration of the requirements of the National Historic Preservation Act (NHPA) and is a Signatory to this programmatic agreement.

ii. At any time during implementation of this programmatic agreement, VA or any party, regardless of their participation as a consulting party, may request the ACHP's involvement or comment.

b. State Historic Preservation Officers (SHPOs)

i. Reflects the interests of their state and its citizens in preservation matters.

211 ii. Advise and assist VA, as a federal agency, in Section 106 matters.

212 c. Tribal Historic Preservation Officers (THPOs)

213 i. Reflects the interests of their Tribe and its citizens in preservation matters.

214 d. VA Federal Preservation Officer (VA FPO)

215 i. VA is the federal agency responsible for completing consultation under Section
216 106 of the NHPA for major leasing activities.

217 ii. VA shall retain staff who meet the Secretary of the Interior's (SOI's) *Professional*
218 *Qualifications Standards* (SOI Qualifications) in order to identify and evaluate
219 historic properties.

220 iii. Serves as the Agency Official.

221 iv. Serves as the primary Point of Contact for all Signatories regarding this
222 programmatic agreement.

223 v. Serves as the primary Point of Contact for any consultations or discussions
224 concerning identification of human remains or other material and cultural items.

225 vi. Ensures that qualified personnel participate as required by this programmatic
226 agreement.

227 vii. Ensures training is made available to VA Historic Preservation Office (HPO) and
228 Office of Real Property staff within 180 days of execution of this programmatic
229 agreement and that training materials are updated as necessary.

230 viii. Ensures distribution of the list of proposed leases described in Stipulation V and
231 the annual report documenting past/ongoing lease actions described in
232 Stipulation IX.

233 e. Director of the VA Office of Real Property (ORP)

234 i. In coordination with the VA FPO, track Major Leases as Move-In Ready, Build-Out,
235 or Build-to-Suit.

236 ii. Submit all Major Lease proposals to VA FPO for Section 106 review including new
237 leases, lease renewals, and leased space modifications.

238 iii. Attend or assign a delegate to attend the Annual meeting.

239 iv. Inform VA FPO of the status of Major Lease Undertakings prior to distribution of
240 the report described in Stipulation V of this programmatic agreement and the
241 report described in Stipulation IX of this programmatic agreement.

242
243 V. ANNUAL DISTRIBUTION OF PROPOSED LEASE ACTIONS

244 a. Following the close of the government fiscal year, and for each year this programmatic
245 agreement is in effect, VA shall email a letter detailing proposed leases to all Signatories,
246 Indian Tribes, Native Hawaiian organizations, and SHPOs. VA may, at its discretion,
247 combine this distribution with the distribution of the Annual Report described in
248 Stipulation IX of this programmatic agreement.

- i. VA shall include the location (city/county, and state) and specifications (size of building, required parking, and function) of proposed leases.
- ii. All Signatories, Indian Tribes, Native Hawaiian organizations, and SHPOs may notify the VA FPO of any questions or concerns about these locations within sixty (60) days of receiving this letter. VA shall take into consideration these comments when making decisions regarding the applicability of this programmatic agreement for an Undertaking.
- iii. VA shall produce and distribute this letter no later than January 31st following the close of the respective government fiscal year.
- iv. VA shall schedule a virtual meeting to discuss the list of proposed leasing actions (Undertakings) and contents of the Annual Report to which all parties listed above will be invited no later than thirty (30) days after distributing the list.
- b. VA's correspondence to Indian Tribes shall include an invitation to consult government-to-government on any proposed leasing action (Undertaking).
 - i. This process provides all Indian Tribes an opportunity to review the locations of proposed leasing actions to identify places of cultural and/or religious significance and/or Traditional Cultural Properties.
 - ii. VA shall arrange a time and method of consultation acceptable to both parties should an Indian Tribe request government-to-government consultation.
 - iii. VA shall keep the content of the discussion confidential unless the Indian Tribe authorizes disclosure in the Annual Report.

VI. REVIEWS

a. Records Check

- i. VA qualified staff shall conduct a records check of historic properties within the respective Area of Potential Effects (APE) for all potential leasing action locations prior to determining appropriate consultation under this programmatic agreement.
 - 1. VA may delegate this responsibility to the potential lessor so long as qualified personnel prepare the records check and any associated reporting.
- ii. VA shall consult its internal files from the consultation effort conducted under Stipulation V of this programmatic agreement in all determinations of effect as part of this stipulation.

b. Archaeological Investigations

- i. If the parcel has not been archaeologically surveyed, VA shall conduct testing to the appropriate state standards in areas that have not been previously disturbed. VA may, at its discretion, delegate this responsibility for testing to lessors. VA shall require qualified personnel to conduct testing.

- 288 ii. VA also shall test the path of any new utility corridors required for development
289 of the parcel. VA shall test the path of the proposed ground disturbance with a
290 buffer of not less than twenty-four (24) inches in all directions, including depth.

291 c. Move-In Ready Lease Actions

- 292 i. VA shall delineate the APE for Move-In Ready major lease actions as the interior
293 footprint of the lease space.
- 294 ii. VA shall exempt Move-In Ready from further review because these lease actions
295 have no potential to cause effects to historic properties pursuant to 36 CFR §
296 800.3(a)(1).

297 d. Build-Out Lease Actions

298 i. Delineation of the APE

- 299 1. VA shall delineate the APE for Build-Out major lease actions to be the
300 footprint of the leased space if modification is limited to the building
301 interior and there is no proposed ground disturbance.

- 302 2. If VA requires external modification of the building and/or utility
303 installations/improvements, VA shall define the APE as described at 36
304 CFR § 800.16(d). For the purposes of this programmatic agreement, VA
305 shall delineate such an APE to include, at minimum, the footprint of the
306 building and associated parking; the viewshed or direct line-of-sight of
307 character-defining features proposed for modification; the path of any
308 proposed ground disturbance with a buffer of not less than twenty-four
309 (24) inches in all directions, including depth; and adjacent construction
310 lay-down yards set on grass or other pervious surfaces as specific to the
311 lease undertaking.

- 312 ii. If VA selects a building for Build-Out Lease Action and that building is historic, VA
313 shall consult with the respective SHPO or THPO to determine if proposed plans
314 conform to the *Secretary of the Interior's Standards for Rehabilitation*.

- 315 1. If VA determines the plans meet the rehabilitation standards and the
316 respective SHPO or THPO concurs, VA shall proceed with design plans.
- 317 2. If VA determines rehabilitation is not achievable while still meeting the
318 goals of the specific leasing undertaking, VA shall consult pursuant to 36
319 CFR § 800.6 to resolve adverse effects.

- 320 iii. VA shall exempt Build-Out Lease Actions from further review when all the
321 following criteria are met because the lease actions have no potential to cause
322 effects to historic properties pursuant to 36 CFR § 800.3(a)(1):

- 323 1. Construction is limited to the interior of the building with no ground
324 disturbance,
- 325 2. Building is less than forty (40) years of age or was determined ineligible
326 for listing in the National Register of Historic Places by the respective
327 SHPO and/or THPO, and
- 328 3. No Traditional Cultural Properties are located, celebrated, or practiced
329 within the APE.

- iv. VA shall notify the respective SHPO or THPO, and CLG, if applicable, or if the leased property is located on Tribal lands, that a Build-Out Lease Actions are exempt from further review because no historic properties would be affected pursuant to 36 CFR § 800.4(d)(1) when all the following criteria are met:
1. Interior and exterior modification required,
 2. No ground disturbance,
 3. No additions to a building façade that might cause visual effects to historic properties,
 4. Building is less than forty (40) years of age or was determined ineligible for listing in the National Register of Historic Places by the respective SHPO and/or THPO, and
 5. No Traditional Cultural Properties are located, celebrated, or practiced within the APE.
- v. VA shall notify the respective SHPO or THPO, and CLG, if applicable or if the leased property is located on Tribal lands, that Build-Out Lease Actions are exempt from further review because the Undertaking would have no adverse effect to historic properties pursuant to 36 CFR § 800.5(d):
1. Interior and exterior modification required,
 2. No ground disturbance, or ground disturbance is required but there are no archaeological sites present, or construction would avoid soils within ten (10) meters of known archaeological deposits and known deposits would be fenced off, and
 3. Building is less than forty (40) years of age or was determined ineligible for listing in the National Register of Historic Places by the respective SHPO and/or THPO,
 4. Historic buildings are located within the APE, but modifications would not affect existing viewsheds or association as determined by qualified professionals; and
 5. No Traditional Cultural Properties are located, celebrated, or practiced within the APE pursuant to consultation outlined in Stipulation V.b.
- vi. If the building proposed for a Build-Out Lease Action is more than forty (40) years old and has not been evaluated for National Register eligibility or was determined ineligible strictly due to its age (i.e., it was not 50 years of age when evaluated but held significance under Criteria a-d), VA shall either:
1. Assume the building is historic and proceed in accordance with Stipulation VI.d.ii of this programmatic agreement.
 2. Consult with the respective SHPO or THPO or Indian Tribe, if the property is located on Tribal lands, to determine eligibility, and, if determined historic, proceed in accordance with Stipulation VI.d.ii of this programmatic agreement.

- 370 3. Consult with the respective SHPO or THPO or Indian Tribe, if the property
371 is located on Tribal lands, to determine eligibility, and, if determined not
372 historic, proceed in accordance with Stipulation IV.d.v of this
373 programmatic agreement.

374 e. Build-to-Suit Lease Actions

- 375 i. For Build-to-Suit major leasing action, VA shall define the APE as described at 36
376 CFR § 800.16(d). For the purposes of this programmatic agreement, VA shall
377 delineate such an APE to include, at minimum, the entirety of the leased
378 property; the viewshed or direct line-of-sight of the property; the path of any
379 proposed utilities involving ground disturbance with a buffer of not less than
380 twenty-four (24) inches in all directions, including depth; and adjacent
381 construction lay-down yards set on grass or other pervious surfaces as specific to
382 the lease undertaking.
- 383 ii. VA shall notify the respective SHPO or THPO or Indian Tribe, if the leased property
384 is located on Tribal lands, and CLG, if applicable, that Build-to-Suit lease actions
385 are exempt from further review when all the following criteria are met because
386 no historic properties would be affected pursuant to 36 CFR § 800.4(d)(1):
- 387 1. Archaeological investigations have determined that no historic deposits
388 are located within the footprint or that disturbed soils compose the
389 footprint,
- 390 2. No historic buildings eligible for or listed on the National Register of
391 Historic Places are located within the APE, and
- 392 3. No Traditional Cultural Properties are located, celebrated, or practiced
393 within the APE pursuant to consultation outlined in Stipulation V.b.
- 394 iii. VA shall notify the respective SHPO or THPO, if the leased property is located on
395 Tribal lands, and CLG, if applicable, that Build-to-Suit Lease Actions are exempt
396 from further review when all the following criteria are met because the lease
397 actions would not affect historic properties pursuant to 36 CFR § 800.5(d):
- 398 1. Historic built resources are not present within the APE or built resources
399 are present within the APE, but construction and operation will not affect
400 integrity of feeling, association, and/or design; and
- 401 2. Traditional Cultural Properties are not present within the APE or are
402 present with the APE, but construction and operation will not affect the
403 cultural practice, and
- 404 3. No archaeological sites are located within the footprint of ground
405 disturbance or sites have been identified but will be avoided.
- 406 iv. VA shall consult in accordance with 36 CFR § 800.6 when it determines a Build-
407 to-Suit lease undertaking would adversely affect historic properties.
- 408 f. VA shall consult in accordance with 36 CFR §§ 800.5 – 800.6 in all other Major Leasing
409 Undertakings when the stated criteria are not met.
- 410

VII. POST-REVIEW DISCOVERIES INCLUDING IDENTIFICATION OF HUMAN REMAINS AND/OR FUNERARY OBJECTS

- a. Excluding the discovery of human remains and/or funerary objects, if potential historic properties or if unanticipated effects on historic properties are found during the implementation of a Major Lease Undertaking, lessors will notify the VA FPO. Subsequently, VA and the lessor shall follow the steps at 36 CFR § 800.13(b) (Post-review Discoveries).
- b. If lessors notify VA of the identification of human remains and/or funerary objects, VA shall direct lessors and their construction project managers to immediately halt all activity within a 100 foot radius of the remains, clearly mark the area, and implement measures as appropriate to protect the discovery from damage, looting, and vandalism.
 - i. The lessor shall report any discovery of human remains to local law enforcement in accordance with applicable state and/or Tribal laws and ordinances.
 - ii. VA shall have a professional in the appropriate discipline meeting the *Secretary of the Interior's Professional Qualifications Standards*, inspect the area of the discovery to determine the extent of the discovery, provide recommendations regarding National Register of Historic Places eligibility of the discovery, and proposed measures to avoid, minimize, or mitigate adverse effects if the discovery is determined to be National Register-eligible.
 - iii. Within 72 hours of the discovery, VA shall notify the Signatories and pertinent SHPO/THPOs, Indian Tribe(s), Native Hawaiian organizations, and Alaska Native Tribes and corporations of the discovery in writing describing the measures that have been implemented to comply with this stipulation and the preliminary assessment of the National Register of Historic Places eligibility of the discovery and the measures proposed to avoid, minimize, or mitigate adverse effects, if eligible. In making its evaluation, VA may assume the discovery to be National Register of Historic Places eligible for the purposes of Section 106 pursuant to 36 CFR § 800.13(c).
 1. VA shall take into account any Tribe's, Native Hawaiian organization's, and/or Alaska Native Tribe and corporation's recommendations regarding National Register eligibility of the discovery and the proposed measures to avoid, minimize, or mitigate adverse effects, if determined or assumed to be National Register-eligible.
 - iv. VA, SHPO/THPO, the applicant, and any participating Tribes Native Hawaiian organizations, and Alaska Native Tribes and corporations will consult on final measures to avoid, minimize, or mitigate adverse effects within fifteen (15) calendar days of the initial discovery and eligibility determination. Upon agreement regarding such measures, VA and the applicant will implement them.
 - v. If an agreement cannot be reached on final measures to avoid, minimize, or mitigate adverse effects, VA shall utilize the dispute resolution process in Stipulation X.

VIII. EMERGENCY PROCEDURES

- a. Pursuant to 36 CFR § 800.12(d), VA shall conduct or direct its lessor to conduct any and all immediate rescue and salvage operations necessary to preserve life or property in an emergency.
- b. VA shall proceed in accordance with 36 CFR § 800.12 to address the effects of emergency situations on historic properties when in the process of construction, whether for a Build-Out or Build-to-Suit lease action. Once a leased space is operational, VA shall proceed pursuant to Stipulation VI of this programmatic agreement when responding to potential adverse effects to historic properties as a result of emergency situations.
 - i. VA shall utilize these procedures whether the emergency situation was formally declared by the appropriate legal authority or is site-specific, such as a wall collapse or vehicular crash.

IX. ANNUAL REPORTING OF PAST/ONGOING LEASE ACTIONS

- a. Each year this programmatic agreement is in effect, unless otherwise amended, VA FPO shall produce an annual report of all undertakings carried out in that government fiscal year (October 1 – September 30) pursuant to this programmatic agreement. VA may, at its discretion, combine this distribution with the Annual Distribution of proposed leasing actions described in Stipulation V of this programmatic agreement.
 - i. VA shall include the street address of each leased facility, the specific lease action, the presence of historic properties within the APE, and VA's consultation actions pursuant to this programmatic agreement.
 - ii. VA shall produce and distribute this annual report not later than January 31st following close of the respective government fiscal year.
 - iii. VA shall email a copy of the annual report to all Signatories, all SHPOs, and representatives of Indian Tribes and Native Hawaiian organizations. VA FPO may send this email, ask the VA Office of Tribal Government Relations (VA OTGR) to send this email, and/or utilize a service such as GovDelivery to send this email.
 - 1. VA's invitation to Tribes and their representatives shall include an invitation to consult Nation-to-Nation (i.e., privately) on any past leasing Undertaking.
 - a. VA shall arrange a time and method of consultation acceptable to both parties.
 - b. VA shall keep the content of the discussion confidential unless the Tribe or NHO authorizes disclosure to other agencies and parties.
- b. VA shall host a virtual consultation meeting with all Signatories sometime between October 15, 2026, and December 31, 2026, to review implementation of this programmatic agreement and to discuss any programmatic or policy issues encountered in the implementation of its stipulations. VA FPO and a representative of VA ORP will attend this meeting.
 - i. VA shall notify all Signatories of the date of the meeting no less than thirty (30) days before the event.

- ii. The format of this meeting, whether in-person or virtual, shall be at VA's discretion.
- iii. VA shall invite NATHPO to participate in the meeting as a party with specialized Section 106 expertise. It is understood that NATHPO does not represent nor speak for all Indian Tribes.
- iv. VA shall invite NTHP to participate in the meeting as a party with specialized Section 106 expertise.
- v. The Signatories shall meet every two (2) years for the duration of this programmatic agreement unless all Signatories agree to cancel. Cancellation of a meeting shall not prohibit the Signatories from meeting again in the future.

X. DISPUTE RESOLUTION

- a. Should any Signatory, Indian Tribe, Native Hawaiian organization, THPO, SHPO, or other consulting party to a specific Major Leasing Undertaking object in writing to the VA FPO regarding an Undertaking reviewed under this programmatic agreement, VA shall consult with the objecting party to resolve the objection for not more than sixty (60) days. A summary of this consultation will be included in the annual report pursuant to Stipulation IX. VA's responsibilities that are not the subject of the dispute remain unchanged.
 - i. If VA and the objecting party consult and achieve consensus, VA shall implement the decisions of that consultation effort and proceed.
 - ii. If VA determines the objection cannot be resolved through consultation:
 - 1. VA shall forward documentation relevant to the objection to all Signatories, including VA's proposed resolution to the objection. The Signatories shall provide VA with their response within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, VA shall consider advice or comments received from all Signatories regarding the dispute. VA shall then proceed according to its final decision and notify the Signatories and the objecting party.
 - 2. If the Signatories do not provide their advice regarding the dispute within the thirty (30) day period, VA may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, VA shall consider timely comments from any Signatory regarding the dispute. VA shall then proceed according to its final decision and notify the Signatories and the objecting party.

XI. AMENDMENT

- a. This programmatic agreement may be amended when such an amendment is agreed to in writing by all Signatories, including current Indian Tribes that are Signatories to the programmatic agreement at the time of the amendment's execution. Signatories will consider any comments or proposals from Indian Tribes, Native Hawaiian organizations, SHPOs/THPOs, and other consulting parties for amending this programmatic agreement.

The amendment will be effective on the date a copy signed by all Signatories is filed with the ACHP and published on the [VA HPO webpage](#).

- b. An appendix to this programmatic agreement may be modified without amendment to the programmatic agreement upon written agreement of the Signatories, including current Indian Tribes that are Signatories at the time of the amendment's execution. Otherwise, the appendices will be amended pursuant to Stipulation XI.a. Modified appendices shall replace the outdated appendices and be distributed to the Signatories and published on the VA HPO webpage.

XII. TERMINATION

- a. Any Signatory to this agreement may terminate it by providing ninety (90) days notice to the other Signatories, and that Signatory shall consult among all Signatories during the period prior to termination to seek agreement on amendments or other actions that would avoid termination per Stipulation XI.
- b. In the event of termination of this programmatic agreement, all proposed and ongoing Undertakings to which this programmatic agreement was applicable will be required to do traditional Section 106 review in accordance with 36 CFR Part 800, until a new programmatic agreement is developed and executed pursuant to 36 CFR § 800.14(3).
- c. When an Indian Tribe signs the programmatic agreement as a Signatory, termination of the programmatic agreement by that Indian Tribe only terminates the applicability of the programmatic agreement on those Tribal lands. The Indian Tribe will remain a Signatory to the programmatic agreement until the Indian Tribe terminates its participation in writing to the Signatories. Termination by a Tribe that is a Signatory to the programmatic agreement will not terminate the programmatic agreement in any jurisdiction other than its own Tribal land.

XIII. ADMINISTRATION

- a. This programmatic agreement shall take effect when signed by the Signatories and filed with the ACHP. This programmatic agreement may be executed in counterparts, and each Signatory will have a separate signature page.
- b. This programmatic agreement shall take effect on Tribal lands on the date an executed signature page signed by an authorized or designated representative of the Indian Tribe is filed with the ACHP in accordance with Stipulation II.e of this programmatic agreement.
- c. VA is responsible for maintaining the record of consultation, and the record of Section 106 review for each Undertaking. Upon request, the Agency Official may make consultation records available to any consulting party, though reserves the right to withhold or redact sensitive information pursuant to VA policies and federal laws, including Section 304 of NHPA (54 U.S.C. 307103); Section 9 of the Archaeological Resources Protection Act (16 U.S.C. 470hh); Section 8106 of the Food, Conservation, and Energy Act of 2008 (25 U.S.C. 3056); and Section 552(b) of the Freedom of Information Act (5 U.S.C. 552) .

579 XIV. DURATION

580 a. This programmatic agreement shall remain in effect until September 30, 2035, unless
581 otherwise amended per Stipulation XI to extend the duration of the programmatic
582 agreement or terminated per Stipulation XII prior to that date.

583

584 Execution of this programmatic agreement by VA, NCSHPO, **others**, and the ACHP and implementation of
585 its terms evidence that VA has taken into account the effects of this Undertaking on historic properties
586 and afforded the ACHP an opportunity to comment.

587

588 **Attachment A – Notification Form**

589

590 **Attachment B – Consultation Flow Chart**

591

592 **Attachment C – Tribal Signatory Page**

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