

MEMORANDUM OF AGREEMENT
BETWEEN
THE VIRGINIA STATE HISTORIC PRESERVATION OFFICE
AND
THE NORFOLK DISTRICT, CORPS OF ENGINEERS

REGARDING THE ROOFING ON BUILDING 1 AT FORT NORFOLK IN THE
CITY OF NORFOLK

WHEREAS, the Norfolk District, U.S. Army Corps of Engineers (Corps) has replaced roofing on Building 1 at Fort Norfolk (Department of Historic Resources (DHR) Inventory No. 122-0007), known as Building 1 Roof Replacement (Undertaking) located in Norfolk, Virginia, Fort Norfolk (DHR Project Review Number 2009-1807); and

WHEREAS, pursuant to 36 CFR Part 800, regulations implementing Section 106 of the National Historic Preservation Act of 1966 (NHPA), as amended and 16 U.S.C. 470f, the US Army Corps of Engineers (Corps) is required to take into account the effects of federally funded or permitted undertakings on properties included in or eligible for inclusion in the National Register of Historic Places (NRHP) prior to the issuance of permits for the undertaking and to consult with the Virginia State Historic Preservation Office (SHPO); and

WHEREAS, the Corps, in consultation with the SHPO, has determined that the Area of Potential Effects (APE) for this Undertaking is the roof of Building 1 and surrounding viewshed of Fort Norfolk, as shown on attached map (Attachment A); and

WHEREAS, the Corps has completed the identification of historic properties; and the Corps, in consultation with the SHPO, finds that Fort Norfolk is a historic district listed on the NRHP, to which Building 1 is a contributing property; and

WHEREAS, the Corps in consultation with the SHPO has determined that the Undertaking has had an adverse effect on the historic character of Building 1 and the viewshed of the Fort Norfolk Historic District; and

WHEREAS, the Corps authorized, funded, and proceeded with the Undertaking without satisfying the requirements of Section 106 and appropriately resolving the adverse effect; and

WHEREAS, the Corps has invited the participation of the Advisory Council on Historic Preservation (ACHP) in this consultation, and the ACHP has elected to participate; and

WHEREAS, the Undertaking involves no ground disturbance or significant visual effects on surrounding landscapes that could be significant to Federally recognized Indian Tribes, Indian Tribes have not been invited to participate in this consultation; and

WHEREAS, the Corps has invited the City of Norfolk to participate in this consultation and to sign this Agreement as a concurring party, and the City of Norfolk has not responded; and

WHEREAS, the Corps has invited the Norfolk Historical Society to participate in this consultation and to sign this Agreement as a concurring party, and the Norfolk Historical Society has not responded;

NOW THEREFORE, in order to satisfy the Corps' Section 106 responsibilities to take into account the effects of the undertaking on historic properties, the Corps and the SHPO agree that the Corps shall comply with the following Stipulations.

STIPULATIONS

The Corps shall ensure that the following stipulations are carried out.

I. MITIGATION OF ADVERSE EFFECT TO FORT NORFOLK (DHR Inventory No. 122-0007)

a. INTERPRETIVE SIGNAGE:

1. The Corps shall develop interpretive signage addressing the historic significance of Building 1 to Fort Norfolk, and rehabilitation projects completed, indicating differences in style and materials from previous elements and original elements.
2. Within six (6) months of the date of the last signatory party signature on this Agreement, the Corps shall submit a draft of the Signage text, images and other materials to the SHPO for review and approval, and to the other consulting parties review and comment. The Corps shall take into account any comments received from the SHPO and the consulting parties, revising the draft panel display as appropriate. Within ninety (90) days of receiving final approval of the signage in writing from the SHPO, the Corps shall pay for the fabrication and installation of the interpretive signs.
3. The Corps shall notify the SHPO and other consulting parties of the installation in writing within thirty (30) days of its completion.

b. **DOCUMENTATION: Failure of Corps' Timely Completion of Section 106 Requirements and Implementation of Standard Operating Procedures to Avoid Future Failure**

1. Within six (6) months of execution of this Agreement the Corps shall provide SHPO and interested parties with an account of how and why the undertaking, replacement of existing asphalt shingles with simulated slate shingles, which had been identified as adverse effects, was initiated prior to the completion of the NHPA Section 106 process.
2. Within twelve (12) months of execution of this Agreement the Corps shall, in consultation with the SHPO and other consulting parties, draft standard operating procedures for all its undertakings ensuring that the Section 106 process has been completed prior to authorizing or funding undertakings. The Corps shall implement these procedures within three (3) months after the completion of consultation with the SHPO and the other consulting parties.
3. The Corps shall conduct annual Section 106 training for project managers, facilities staff, and other appropriate personnel who conduct or supervise routine maintenance, repair and rehabilitation projects, new construction, and/or other undertakings at Fort Norfolk. The training will be conducted by Corps cultural resources staff and focus on ensuring that undertakings that have not been properly consulted on with the SHPO shall not occur again in the future. The Corps shall notify the SHPO of the annual training at least one (month) prior to the training taking place and invite the SHPO's participation. The SHPO may participate in the annual training at its discretion.

II. UNANTICIPATED DISCOVERIES

In the event that previously unidentified resources are discovered the Corps shall comply with the provisions of 36 CFR §800.13 and ensure that these resources are properly documented and held in a repository that is publicly accessible.

III. PREPARATION AND REVIEW OF DOCUMENTS

- a. Except as otherwise stated elsewhere in the stipulations, the Corps shall submit a draft of documentation set forth as mitigation in Stipulation I to the SHPO and to other consulting parties for thirty (30)-day review and

comment. The Corps shall address all comments received within thirty (30) days of confirmed receipt in the revised technical report/documentation. Following written approval by the SHPO, the Corps shall provide two (2) copies of all final reports, bound and on acid-free paper, and one (1) electronic copy in Adobe® Portable Document Format (.pdf) to the SHPO and one (1) copy to other consulting parties in a format of their choosing.

- b. The SHPO and other consulting parties agree to provide comments on all technical reports, treatment plans, and other documentation arising from this Agreement within thirty (30) calendar days of receipt. If no comments are received from the SHPO or other consulting parties within the thirty (30) day review period, the Corps may assume the non-responding party has no comments.

IV. DISPUTE RESOLUTION

- a. Should any party to this Agreement object in writing to the Corps regarding any action carried out or proposed with respect to any undertakings covered by this Agreement or to implementation of this Agreement, the Corps shall consult with the objecting party to resolve the objection.
- b. If after initiating such consultation, the Corps determines that the objection cannot be resolved through consultation, the Corps shall forward all documentation relevant to the objection to the ACHP, including the proposed response to the objection.
- c. Within thirty (30) days after receipt of all pertinent documentation, the ACHP shall exercise one of the following options:
 - 1. Advise the Corps that the ACHP concurs with the Corps' proposed response to the objection, whereupon the Corps will respond to the objection accordingly; or
 - 2. Provide the Corps with recommendations, which the Corps shall take into account in reaching a final decision regarding its response to the objection; or
 - 3. Notify the Corps that the objection will be referred for comment pursuant to 36 CFR 800.7(a)(4), and proceed to refer the objection and comment. The Corps shall take the resulting comment into account in accordance with 36 CFR 800.7(c)(4) and Section 110(l) of the NHPA.
- d. Should the ACHP not exercise one of the above options within thirty (30) days after receipt of all pertinent documentation, the Corps may assume the ACHP's concurrence in its proposed response to the objection.
- e. The Corps shall take into account any ACHP recommendation or comment provided in accordance with this stipulation with reference only to the

subject of the objection; the Corps' responsibility to carry out all the actions under this Agreement that are not the subjects of the objections shall remain unchanged.

- f. At any time during implementation of the measures stipulated in this Agreement, should an objection pertaining to this Agreement be raised by a member of the public, the Corps shall notify the parties to this Agreement and take the objection into account, consulting with the objector and, should the objector so request, with any of the parties to this Agreement to resolve the objection.

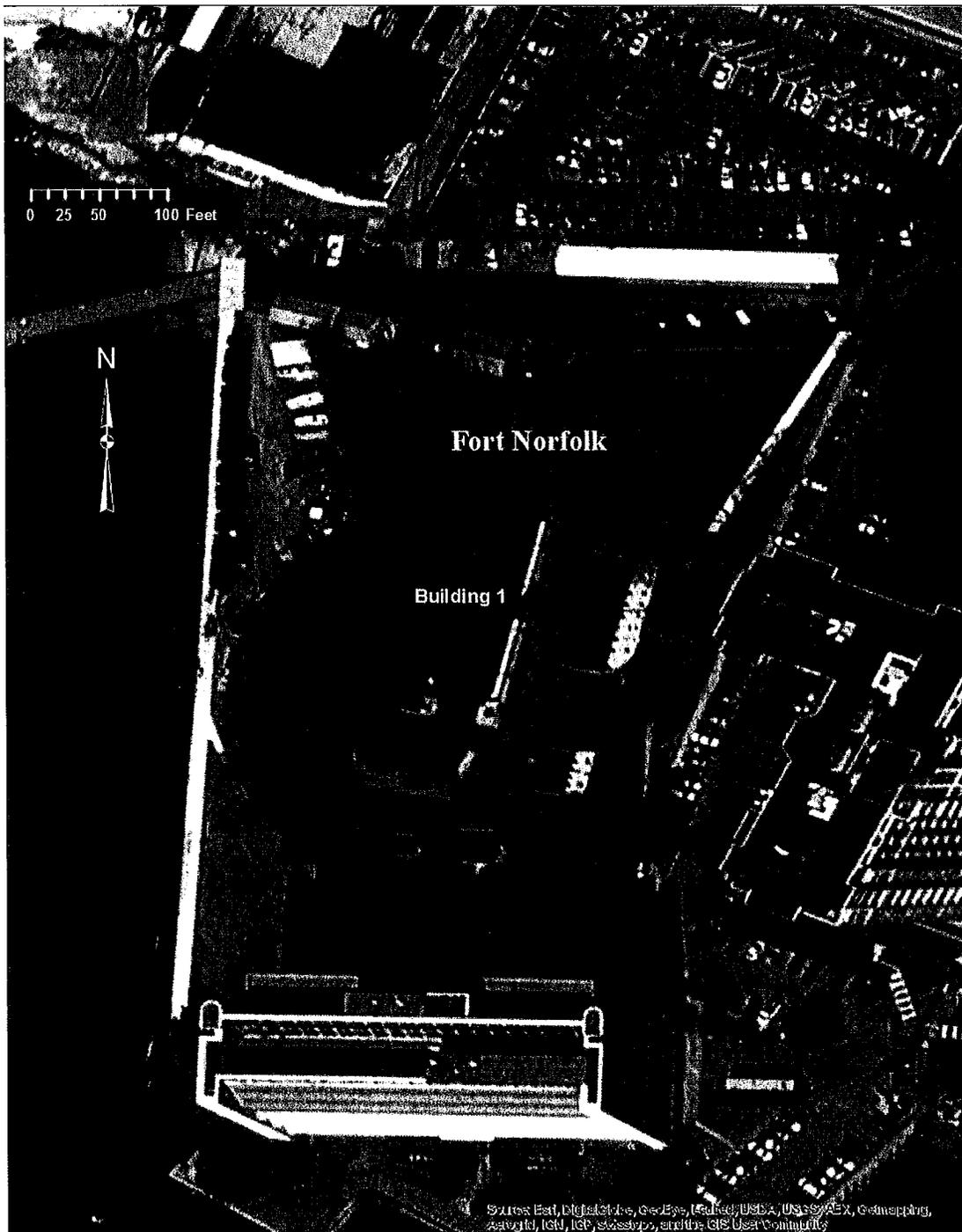
V. AMENDMENTS AND TERMINATION

- a. Any signatory party to this Agreement may propose to the Corps that the Agreement be amended, whereupon the Corps will consult with the other parties to this Agreement to consider such an amendment. All signatories to the Agreement must agree to the proposed amendment in accordance with 36 CFR §800.6(c)(7).
- b. If the Corps or SHPO determines that the Agreement is not being properly implemented, the Corps, or the SHPO may propose to the other parties to this Agreement that it be amended or terminated.
- c. This Agreement may be terminated by any signatory to the Agreement in accordance with the procedures described in 36 CFR §800.6(c)(8). Termination shall include the submission of a technical report or other documentation by the Corps on any work done up to and including the date of termination.

VI. DURATION OF AGREEMENT

This Agreement shall continue in full force and effect until five (5) years after the date of the last signatory party signature. All obligations under this Agreement must be complete before expiration of this Agreement. If any obligation is not complete, the party responsible for such obligation is in violation of this Agreement. At any time in the six (6)-month period prior to such date, the Corps may request the signatory parties to consider an extension or modification of this Agreement. No extension or modification will be effective unless all parties to the Agreement have agreed with it in writing.

Attachment A



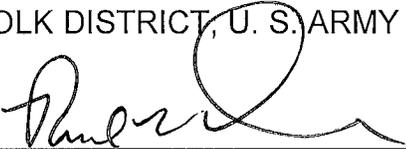
VII. EXECUTION OF AGREEMENT

This Agreement may be executed in counterparts, with a separate page for each signatory. The Corps will ensure that each party is provided with a copy of the fully executed Agreement.

Execution of this Memorandum of Agreement by the Corps and the SHPO and its submission to the ACHP in accordance with 36 CFR 800.6(b)(1)(iv), shall, pursuant to 36 CFR 800.6(c), be considered to be an agreement pursuant to the regulations issued by the ACHP for the purposes of Section 110(l) of the NHPA. Execution and submission of this Agreement, and implementation of its terms, evidence that the Corps has afforded the ACHP an opportunity to comment on the proposed undertaking and its effect on historic properties, and that the Corps has taken into account the effect of the undertaking on historic properties.

SIGNATORIES:

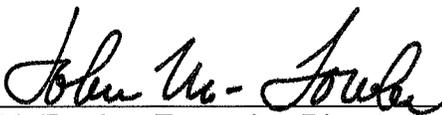
NORFOLK DISTRICT, U. S. ARMY CORPS OF ENGINEERS

By:  Date: DEC 23, 2014
Paul B. Olsen, P.E., Colonel, U.S. Army, Commanding

VIRGINIA STATE HISTORIC PRESERVATION OFFICER

By:  Date: 11.7.15
Julie V. Langan
Director, Virginia Department of Historic Resources

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By:  Date: 2/2/15
John M. Fowler, Executive Director