

MEMORANDUM OF AGREEMENT

AMONG THE

DEPARTMENT OF VETERANS AFFAIRS, NATIONAL CEMETERY ADMINISTRATION,

GEORGIA STATE HISTORIC PRESERVATION OFFICER,

AND THE

ADVISORY COUNCIL ON HISTORIC PRESERVATION

REGARDING DEMOLITION OF A HISTORIC RESOURCE AND CONSTRUCTION OF A NEW RESTROOM FACILITY AT MARIETTA NATIONAL CEMETERY, COBB COUNTY, MARIETTA, GEORGIA (HP #140916-003)

WHEREAS, the Marietta National Cemetery is a Historic Property under the jurisdiction of the National Cemetery Administration, United States Department of Veterans Affairs (hereinafter NCA), listed in the National Register of Historic Places (hereinafter NRHP), and the Public Comfort Station (1934) is a contributing feature therein; and,

WHEREAS, the Marietta National Cemetery and all features within it are considered exceptionally significant due to their Congressional designation as nationally significant places of burial and commemoration; therefore, they meet the special requirements set forth in the National Register Criterion Considerations for cemeteries, graves, commemorative properties, and resources less than 50 years of age and all facilities and sections developed within the past 50 years are considered eligible for listing in the NRHP (Veterans Affairs 2011); and,

WHEREAS, in order to carry out its operations at the Marietta National Cemetery, NCA anticipates initiation of all proposed actions (hereinafter referred to as the "undertaking") contained within this agreement document in FY2016 pending budget constraints, except where noted.

- A. Demolition and removal of the 1934 Public Comfort Station and construction of a new restroom facility in the same general area.
- B. Replacement of the Committal Service Shelter

WHEREAS, previous consideration was given to the potential feasibility of reuse for the currently unused Public Comfort Station in lieu of constructing a new restroom facility, but ultimately it was determined this would not meet the cemetery's operational needs; and,

WHEREAS, the historic property identified for demolition is limited to the Public Comfort Station; and,

WHEREAS, the NCA has determined that the undertaking may have an adverse effect on the Marietta National Cemetery, which is listed in the National Register of Historic Places, and has consulted with the Georgia State Historic Preservation Officer (SHPO) pursuant to 36 C.F.R. part 800, of the regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. § 470f); and,

WHEREAS, the NCA has consulted with the Alabama Coushatta Tribe of Texas, the Muscogee Creek National Council, Thlopthlocco Tribal Town, Eastern Band of Cherokee Indians, Poarch Band of Creek Indians, United Keetoowah Band of Cherokee Indians, Muscogee Creek Nation, and Seminole Tribe of Florida pursuant to 36 C.F.R. part 800, of the regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. § 470f) and all of these parties determined that no further coordination or participation was necessary; and,

WHEREAS, the NCA has consulted with the Cobb County Community Development Agency pursuant to 36 C.F.R. part 800, of the regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. § 470f) and said agency determined that no further coordination or participation was necessary; and,

WHEREAS, in accordance with 36 C.F.R. Part 800.6(a)(1), NCA notified the Advisory Council on Historic Preservation (hereinafter ACHP) of an adverse effect determination and the ACHP declined to participate in the consultation by a letter dated October 13, 2015; and,

NOW, THEREFORE, NCA and the SHPO agree that the undertaking will be implemented in accordance with the following stipulations in order to mitigate the adverse effect of the undertaking on historic properties.

#### STIPULATIONS

The NCA shall ensure that the following measures are carried out by a professional meeting the applicable Secretary of the Interior's Professional Qualifications Standards:

1. A Master Landscape Plan will be developed for the Marietta National Cemetery that provides an overall framework for landscape organization and treatment, design concepts for enhancements to the existing landscape, and guidelines for landscape systems such as exterior furnishings and tree planting and replacement. The Master Landscape Plan will include documentation and a narrative regarding the historical development of the landscape to use as a basis for the plan. Additionally, a draft of the plan will be provided to the SHPO for review and comment. A copy of the Master Landscape Plan will be provided to the Georgia SHPO for retention.

2. Interpretive signage that summarizes the development and design of the Marietta National Cemetery and the key individuals involved in its establishment will be developed and installed inside the cemetery. One interpretive sign will be sufficient for this historical summary. The SHPO will be given the opportunity to review and comment on the design and content of the signage prior to its installation.
3. The proposed design for the new restroom facility at Marietta National Cemetery shall be reviewed by all signatories of this MOA. Signatories will be allotted a thirty (30) day review and comment period. NCA will consider any comments received when finalizing the design.
4. Design plans for the new restroom facility will be provided to the Georgia SHPO for review at a stage of 50% completion and again at 100% completion. The Georgia SHPO will be allotted a thirty (30) day review and comment period. NCA will consider any comments received by the SHPO during the review process.
5. An archaeologist meeting the *Secretary of the Interior's Professional Qualifications Standards* under contract with NCA will monitor demolition of the Public Comfort Station and construction of the new restroom facility to the maximum extent of ground disturbance to ensure that no significant archaeological resources are impacted.
  - A. Archaeological resources that would be considered significant include:
    1. Intact features such as historic walls associated with non-extant structures.
    2. Large caches of artifacts, particularly domestic material (ceramics, glass, etc.), associated with, or pre-dating, the cemetery's date of establishment.
    3. Diagnostic artifacts from an intact archaeological context that are more than 50 years of age that might contribute to the knowledge of the site's significance.
  - B. If significant archaeological, historical, and/or cultural resources are identified during monitoring, the construction contractor and/or the archaeologist will immediately notify the Resident Engineer(RE)/Contracting Officer's Representative (COR) verbally, and then with a written follow up. Work in the immediate vicinity (20 feet) of the find will stop to avoid further impact to the potential site and allow the archaeologist to determine the nature and potential significance of the site. Work within the rest of the area can proceed.
  - C. If the find appears to have sufficient integrity and significance to potentially be a contributing part of the NRHP-listed site, the NCA will consult with the SHPO to resolve any adverse effects. Work within the find area will not resume until the potential adverse effect has been resolved.

- D. Following conclusion of the monitoring, a brief summary of the monitoring activities and any archaeological materials identified will be prepared for submittal to the NCA and the SHPO for review and approval. The document will include appropriate graphics showing the locations of monitoring and/or identified archaeological sites, if any. If new sites are identified during the monitoring, an archaeological site form will be prepared and submitted to the Georgia SHPO and subsequently included with the monitoring summary report.
6. Final copies of all documentation as detailed in Stipulations 1 through 4 above will be provided to the NCA and SHPO for their files and will include both a hard copy and electronic copy of the documentation.
7. UNANTICIPATED DISCOVERIES: In the event of discovery of significant archeological resources during construction (see Stipulations 3.C.i for a partial list of potential significant resources). NCA will direct the construction contractor to cease ground disturbance within 20 feet of the area of discovery. NCA will contact SHPO, ACHP, and other appropriate consulting parties for guidance on determining the eligibility of the discovery. The Phase III Data Recovery Plan is understood to be a last resort and no practical alternative to leaving artifacts in place is possible. In order to minimize potential work stoppages, consultation and approval may be accomplished via electronic mail. All significant historic artifacts will be identified and conserved using NCA Construction project funds, and transferred to the NCA History Program to be accessioned as part of the NCA Collection within one (1) year of their recovery. See Stipulation 3.C.i for a list of potential significant archaeological resources/artifacts.
8. TREATMENT OF HUMAN REMAINS AND ITEMS OF RELIGIOUS AND CULTURAL IMPORTANCE:
- A. In the event human skeletal remains are exposed by construction or some other activity, then NCA will direct the construction contractor to stop all work within 20 feet of the discovery. NCA will call the Cobb County Medical Examiner or Coroner, local law enforcement, and the State Archaeologist (T.C.A. 11-6-107d). NCA will notify the VA Federal Preservation Office, SHPO, and ACHP.
- B. NCA will treat suspected Native American remains in accordance with existing NAGPRA regulations, 43 CFR Part 10. NCA will make all decisions regarding the treatment of human remains in consultation with the SHPO, ACHP, and the affected Native American tribes.
- C. If items of religious and cultural importance to Native American tribes are encountered or collected, NCA will implement appropriate procedures in accordance with existing NAGPRA regulations, 43 CFR Part 10. NCA will make all decisions regarding the treatment of items of religious and cultural importance in consultation with the affected Native American tribes, SHPO, and ACHP.

- D. NCA will include a specific plan for the Inadvertent Discovery of Human Remains, Funerary Objects, Sacred Objects, and Items of Cultural Patrimony in the Phase II Archaeological Survey Plan to comply with applicable provisions or Federal and State laws.
9. **DURATION/RENEWAL:** This MOA is in effect for five (5) years from the date of its execution or when all undertakings described are accomplished. If before the end of the fifth (5th) year, the MOA has not been fully executed, NCA, SHPO, and ACHP will review it for possible modifications, termination, or extension. At the request of any signatory party, this MOA may be reviewed for possible modifications, termination, or extension at any time.
10. **MONITORING AND REPORTING:** Each year following the execution of this MOA (the date the agreement is signed and is in force) until it expires or is terminated, NCA's Design and Construction Service shall provide all parties to this MOA a summary report detailing work undertaken pursuant to its terms. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes and objections received in NCA's efforts to carry out the terms of this MOA.
11. **DISPUTE RESOLUTION:** Should any signatory to this MOA object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, NCA shall consult with such parties to resolve the objection. If NCA determines that such objection cannot be resolved, NCA will:
- A. Forward all documentation relevant to the dispute, including the NCA's proposed resolution, to the ACHP. The ACHP shall provide NCA 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, NCA 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. NCA will then proceed according to its final decision.
  - B. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period; NCA may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, NCA 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. NCA'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.
12. **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.

13. **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 12, 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, NCA 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. NCA shall notify the signatories as to the course of action it will pursue.

14. **COMPLIANCE WITH THE ANTIDEFICIENCY ACT:** In the event that NCA is unable to carry out the terms of this MOA due to the provisions of the Anti-deficiency Act (31 U.S.C. 1341), the NCA will advise the SHPO and ACHP and will comply with all requirements of 36 CFR Part 800.

Execution of this MOA by the NCA and SHPO, its submission to the ACHP in accordance with 36 CFR 800.6(b)(1)(iv), and implementation of its terms evidence that the Department of Veterans Affairs has taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment.

**SIGNATORIES**

**NATIONAL CEMETERY ADMINISTRATION, U.S. DEPARTMENT OF VETERANS AFFAIRS**

By: Anita R. Hanson Date: 4/5/2016  
Anita R. Hanson  
Deputy Under Secretary for Management  
National Cemetery Administration  
Department of Veterans Affairs

**GEORGIA STATE HISTORIC PRESERVATION OFFICER**

By: David Crass Date: 28 APRIL 16  
Dr. David Crass  
Division Director & Deputy State Historic Preservation Officer  
Georgia Department of Natural Resources  
Historic Preservation Division