

MEMORANDUM OF AGREEMENT

AMONG THE

DEPARTMENT OF VETERANS AFFAIRS, NATIONAL CEMETERY ADMINISTRATION,
TENNESSEE STATE HISTORIC PRESERVATION OFFICER,

AND THE

ADVISORY COUNCIL ON HISTORIC PRESERVATION

REGARDING DEMOLITION OF HISTORIC RESOURCES AND CONSTRUCTION OF A
NEW ADMINISTRATION BUILDING AT MEMPHIS NATIONAL CEMETERY, SHELBY
COUNTY, MEMPHIS, TENNESSEE

WHEREAS, the Memphis 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 Superintendent's Lodge (1934) is a contributing feature therein; and,

WHEREAS, the Superintendent's Lodge is one of two extant lodges in the State of Tennessee built during the mid-1930s in the Dutch Colonial Revival style under the jurisdiction of NCA that has been threatened by benign neglect; the other is located in Nashville National Cemetery; and,

WHEREAS, the Memphis 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 Memphis National Cemetery, NCA plans the following actions (the undertaking). NCA anticipates initiation of all proposed actions contained within this agreement document in FY 2013, pending budget constraints, except where noted.

- A. Demolition and removal of the 1934 Superintendent's Lodge and archaeological features and construction of a new administrative building in the same general area.
- B. Development of Columbaria and/or Ossuary internment areas in the open area west/northwest of the 1934 Superintendent's Lodge (FY 2014 or

beyond).

- C. Demolition of 1934 "Utility Building" including public restrooms and construction of a new maintenance storage structure in same general area.
- D. Addition of new parking areas around the administrative facility.
- E. Demolition and replacement of the existing metal canopy committal shelter.
- F. Upgrade of the storm-water drain system, including demolition of the ca. 1900 "Open Brick Lined Ditch".
- G. Resurfacing of roads and curb upgrades.
- H. Replacement of the existing flagpole.
- I. Replacement of the above-ground storage tanks in the maintenance facility yard.
- J. The installation of new signage at the entrance to the cemetery.
- K. Improvements to the modern aluminum fence; and,

WHEREAS, a study was undertaken to explore the feasibility of reuse for the currently unused Superintendent's Lodge building in lieu of constructing a new administration building, but ultimately it was determined this would not meet the cemetery's operational needs (see Appendix A for the Memphis National Cemetery – Lodge Reuse Study Narrative); and,

WHEREAS, previous studies have been conducted to determine reuse possibilities for the historic buildings and identify potential adverse effects of the proposed undertakings and is made a part of this Memorandum of Agreement (hereinafter MOA) by reference as Appendix A; and,

WHEREAS, in February 2012 an archaeological survey of the existing maintenance and administrative buildings at the Memphis National Cemetery was completed, including the following proposed development areas for the proposed action associated with this undertaking:

- A. Demolition and removal of the 1934 Superintendent's Lodge and archaeological features for construction of a new administrative building in the same general area.
- B. Development of Columbaria and/or Ossuary interment areas in the open area west/northwest of the 1934 Superintendent's Lodge.

- C. Demolition of the "Utility Building" including public restrooms and construction of a new maintenance storage structure in same general area.
- D. Addition of new parking areas around the administrative facility; and,

WHEREAS, during the February 2012 archaeological survey, portions of two intact brick walls (archaeological features) were identified, which are likely associated with the former 1874 Superintendent's Lodge and, therefore, a contributing resource to the Memphis National Cemetery; and,

WHEREAS, ground disturbance activities for the other actions within this undertaking not covered during the 2012 archaeological survey are unlikely to disturb unknown archaeological resources (see Determination of Effects Report and Phase IA Archaeological Assessment in Appendix A). These actions include the following within this undertaking:

- A. Demolition and replacement of the existing metal canopy committal shelter – New committal shelter is being constructed in same footprint area as the existing committal shelter.
- B. Upgrade of the storm-water drain system - New pipe will be installed within the existing trench left from removal of the Open Brick Lined Ditch. Other storm drainage work includes relining the existing 36" storm sewer and replacement of selected sections of the storm sewer within the existing trenches under existing roadway pavement on Memphis and Morgan Drives.
- C. Resurfacing of roads and curb upgrades – the existing alignment and traffic circulation will be retained.
- D. Replacement of the existing flagpole.
- E. Replacement of the above-ground storage tanks in the maintenance facility yard.
- F. The installation of new signage at the entrance to the cemetery.
- G. The repair and improvements to the modern aluminum fence; and,

WHEREAS, the historic properties identified for demolition are the historic Superintendent's Lodge, Utility Building, Open Brick Lined Ditch, and archaeological features; and,

WHEREAS, pursuant to 36 C.F.R. 800.3 through .6, of the regulation implementing Section 106 of the National Historic Preservation Act (16.U.S.C. § 470f), the NCA consulted with the Tennessee Historical Commission (State Historic Preservation Office

[hereinafter SHPO]), appropriate federally-recognized Native American tribes, and other Consulting Parties concerning the federal undertaking planned for the Memphis National Cemetery (see Appendix B for a full list of parties consulted); and,

WHEREAS, in accordance with 36 C.F.R. § 800.6(a)(1), NCA notified the Advisory Council on Historic Preservation (hereinafter ACHP) of an adverse effect determination and the ACHP decided to participate in the consultation; and,

WHEREAS, NCA considered comments received from the SHPO; federally-recognized Native American tribes; and other Consulting Parties concerning the federal undertaking planned for the Memphis National Cemetery; and,

WHEREAS, to date, NCA received responses from the United Keetoowah Band of Cherokee Indians in Oklahoma who had no comments at the time, but asked to be contacted if any human remains are discovered; the Choctaw Nation responded that they deferred the project to the Chickasaw Nation; the Eastern Shawnee Tribe agreed with the potential for disturbing historic archaeological resources; and the Cherokee Nation had no concerns; and,

WHEREAS, to date, NCA received responses from the Marine Corps League who indicated that they prefer Option A-1 for the Admin/PIC/Complex and B for the Committal Shelter; and Memphis Heritage, Inc. who responded that they have concerns with the circuitous driveway entrance and provided comments on the 4 options; and,

WHEREAS, NCA determined that the undertaking will have an adverse effect on contributing buildings and other historic structures and features at the Memphis National Cemetery.

NOW, THEREFORE, NCA, SHPO, and ACHP 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:

1. The Superintendent's Lodge (1932) in Nashville National Cemetery, the only Dutch Colonial Revival style example to survive in the State of Tennessee under NCA's jurisdiction, will be preserved indefinitely and be rehabilitated to serve as the Administration Building, and NCA has committed FY2013 funds to pursue this undertaking, which will be submitted to the SHPO for comment per Section 106 consultation requirements.
 - A. NCA will retain historic and viable, character-defining architectural components (i.e., interior doors, door knobs, and wood flooring) of the Memphis National Cemetery Superintendent's Lodge for potential reuse as

part of rehabilitating the Nashville National Cemetery Superintendent's Lodge, as determined by the NCA History Program and NCA Design and Construction Service.

2. NCA will undertake recordation of historic resources that meet the *Secretary of the Interior's Standards for Historical Documentation* as amended (http://www.nps.gov/history/local-law/arch_stnds_5.htm), including the Superintendent's Lodge, Utility Building, Open Brick Lined Ditch, and the archaeological features (brick walls from the 1874 lodge). The recordation of these four resources according to Historic American Landscapes Survey (hereinafter "HALS") standards will include the following:

A. Photographic Documentation:

- i. Large format, black and white photographs will be made of historic resources to be affected by the undertaking at Memphis National Cemetery and their context. Photograph negatives shall be 4 x 5 or 5 x 7 inches and be printed on acid free paper. Views required for each resource will at a minimum follow the standards outlined in the *Heritage Documentation Programs HABS/HAER/HALS Photography Guidelines* from November 2011.
- ii. Approximately 3-5 color images will be made of historic resources (exterior and interior as appropriate) to be affected by the undertaking at Memphis National Cemetery and their context using a digital format, with a resolution of 300 dpi or greater. The images will be saved in .TIFF format on a CD.
- iii. Documentation will meet the *Secretary of the Interior's Standards and Guidelines for Architectural and Engineering Documentation* established by the National Park Service. Images will become part of the existing collection identified as Memphis National Cemetery, HALS TN-3.
- iv. The NCA History Program staff will review draft shoot lists prior to commencing the photography documentation, and will review the final deliverables including three sets of labeled prints and three sets of the digital images on CD prior to approval. The three sets of images shall be submitted to the NCA History Program, the SHPO, and the National Park Service HALS program.
- v. The final photographic deliverables shall be submitted to and accepted by the NCA and SHPO prior to the initiation of any demolition.

B. Written Documentation:

- i. The historic resources and the evaluation process NCA followed to determine if they would be reused or removed shall be

documented. This shall include a narrative delineating the operational or developmental imperative that initiated the proposed demolition of the historic property, and a discussion of considered alternatives including a list of sources used.

- ii. A brief HALS historical report (Level III or Short Format) will be completed for each feature removed as part of the undertaking, to standards outlined in the HABS/HALS History Guidelines. The report will include statements on the historical and architectural significance of the built features and the context in which it was built.
- iii. NCA has been undertaking HALS documentation of its historic lodges since 2011, including the one at Memphis, and this draft Short Format narrative was completed in January 2013 (see Appendix A). Therefore, this does not need to be replicated for the lodge; other affected features, including archaeological elements, will be recorded in a similar fashion.
- iv. The written HALS documentation shall be submitted to the NCA and SHPO for concurrence within 12 months of the signing of this MOA.

C. Drawings:

- i. According to Level III HABS/HAER/HALS documentation requirements, the only drawing required is a sketch map. A hand drawn, not to scale, sketch map will be prepared for each historic resource to be effected by the undertaking at Memphis National Cemetery. These maps will accompany the written documentation.
 - ii. Original drawings of the lodge exist, including elevations, interiors, and floor plans. Representative drawings for each building, if they exist, will be photographed with large-format negatives.
3. The proposed design for the new administration building at Memphis 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. The potential archaeological impact for the proposed undertakings has been evaluated (see Determination of Effect Report in Appendix A). The potential impact is addressed through a combination of design avoidance and archaeological monitoring.
 - A. Figures 12, 13, 17, 21, 22, and 24 contained in the Phase IA Archaeological Assessment (see Appendix A), depicts areas of potential archaeological deposits within the boundaries of the Memphis National Cemetery. These figures will aid NCA in planning the undertaking detailed

above.

- B. In February 2012, an archaeological survey was completed of all areas with the potential to impact unknown archaeological resources (surrounding the existing Superintendent's Lodge and Utility Building). The archaeological features identified during the survey will be documented per Stipulation 2.
- C. An archaeologist meeting the *Secretary of the Interior's Professional Qualifications Standards* under contract with NCA will monitor demolition and construction in this area to the maximum extent of ground disturbance to ensure that no significant archaeological resources are impacted.
- i. Archaeological resources that would be considered significant include:
 - a. Intact features such as historic walls associated with non-extant structures.
 - b. Large caches of artifacts, particularly domestic material (ceramics, glass, etc.), associated with, or pre-dating, the cemetery's date of establishment (1867).
 - c. 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.
 - ii. 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.
 - iii. 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.
 - iv. 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 Tennessee Division of Archaeology and subsequently included with the monitoring summary report.

5. Final copies of all documentation as detailed in Stipulations 1 through 4 above will be provided to the NCA and SHPO for their files.
6. 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.

7. 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 Memphis City 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.

8. The NCA History Program shall retain a copy of the documentation compiled as mitigation of adverse effects. SHPO, ACHP, and other interested parties, upon request, may review documentation on the completed recordation to ensure compliance with this MOA. NCA will address any inconsistencies identified during these reviews.
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 10, 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.

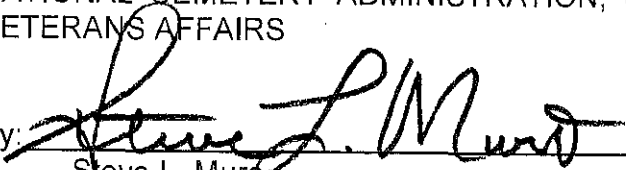
Once the MOA is terminated, and prior to work continuing on the undertaking, NCA must either (a) execute an MOA pursuant to 36 CFR § 800.6 or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. NCA shall notify the signatories as to the course of action it will 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.


15. Execution and implementation of this MOA and its terms evidence that the NCA has taken historic properties into account and has satisfied its Section 106 responsibilities for all individual undertakings of the program addressed herein.

SIGNATORIES

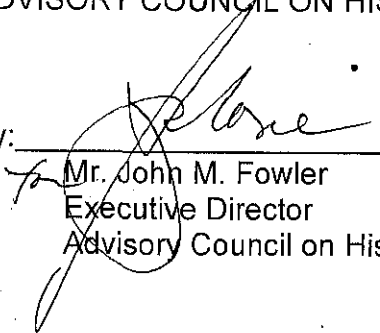
NATIONAL CEMETERY ADMINISTRATION, U.S. DEPARTMENT OF
VETERANS AFFAIRS

By:  Date: 4.14-2013
Steve L. Muro
Under Secretary for Memorial Affairs
National Cemetery Administration
Department of Veterans Affairs

TENNESSEE STATE HISTORIC PRESERVATION OFFICER

By:  Date: April 22, 2013
Mr. E. Patrick McIntyre, Jr.
Executive Director
Tennessee Historical Commission

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By:  Date: 5/2/2013
Mr. John M. Fowler
Executive Director
Advisory Council on Historic Preservation