

**MEMORANDUM OF AGREEMENT
BETWEEN THE DEPARTMENT OF VETERANS AFFAIRS AND THE VIRGINIA
DEPARTMENT OF HISTORIC RESOURCES
FOR THE CONSTRUCTION OF A NEW DIALYSIS/EYE CLINIC/FAMILY
SERVICES FACILITY ON THE
HAMPTON, VIRGINIA VETERANS AFFAIRS MEDICAL CENTER**

WHEREAS, the Department of Veterans Affairs (VA) plans to demolish a residential duplex (Building 115) and construct a new dialysis/eye/family services facility located in the Hampton Veterans Affairs Medical Center (HVAMC) located in the City of Hampton, Virginia (Department of Historic Resources (DHR) Project Review No. 2013-1206) and hereby referred to as the "**Project**;" and

WHEREAS, the VA has determined that the Project is an undertaking subject to review under Section 106 of the National Historic Preservation Act (NHPA), as amended, 54 U.S.C. §306108, and its implementing regulations, 36 C.F.R. Part 800; and

WHEREAS, the VA has determined and the Virginia State Historic Preservation Office (SHPO) concurred that Building 115 contributes to the Hampton Veterans Affairs Medical Center Historic District (DHR survey number 114-0101), a property eligible for listing in the National Register of Historic Places (NRHP); and

WHEREAS, the VA has determined and the SHPO concurred that the demolition of Building 115 will have an adverse effect the Hampton Veterans Affairs Medical Center Historic District; and

WHEREAS, the VA has explored alternatives to demolition, but has determined that Building 115 is functionally inadequate, in poor condition and cannot be economically adaptively reused; and

WHEREAS, in accordance with 36 C.F.R. § 800.6(a)(1), the VA has notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect determination providing the specified documentation and the ACHP has chosen not to participate in the consultation pursuant to 36 C.F.R. §800.6(a)(1)(iii); and

WHEREAS, the VA has invited the United Keetoowah Band of Cherokee Indians in Oklahoma, the Catawba Indian Nation, The Absentee Shawnee Tribe and the Shawnee Tribe to participate in consultation as Concurring Parties pursuant to 36 C.F.R. § 800.6(c)(3), and these tribes have declined to participate; and

WHEREAS, pursuant to 36 CFR Part 800.3(f), the VA has invited the Fox Hill Historical Society, American Legion – Hampton Branch, Hampton Heritage Foundation, Retired Armed Forces Club Inc, Hampton Historical Society, VFW Post 3160 -Hampton Branch, Hampton History Museum, Retired Military Club of Tidewater, Chair Department of Architecture Hampton University, AIA Hampton Roads, to participate. The Fox Hill Historical Society, American Legion – Hampton Branch, Hampton Heritage Foundation, Retired Armed Forces Club Inc, Hampton Historical Society, VFW Post 3160 - Hampton Branch, Hampton History Museum, Retired Military Club of Tidewater, Chair Department of Architecture Hampton University, and AIA Hampton Roads did not respond to the VA's request for consultation; and

WHEREAS, the VA has provided the public the opportunity to comment on the Undertaking by issuing a public notice in the local newspapers, over the course of thirty (30) days no public comments were received.

NOW THEREFORE, the VA and the SHPO agree that the Project shall be implemented in accordance with the following stipulations in order to take into account the effect of the proposed demolition on historic properties.

STIPULATIONS

The VA shall ensure that the following measures are carried out:

I. RECORDATION OF BUILDING 115

A. Prior to its demolition the VA shall document or cause to be documented Building 115 as follows:

1. Produce black and white photographic prints (3 1/2 x 5 or 4x6) and electronic image files of exterior and interior views.
2. Complete the SHPO Intensive Level Survey Field Form and the VA shall enter it into the SHPO's Virginia Cultural Resources Information System (V-CRIS) system, or subsequent replacement.

B. The VA shall provide these draft documents/materials to the SHPO for review and approval prior to any demolition. The SHPO shall have thirty (30) days from confirmed receipt of complete materials to approve the documentation. No response from the SHPO in thirty (30) days from the date of confirmed receipt of complete materials may be taken by the VA as approval of the documentation.

C. The VA shall not proceed with demolition or pre-demolition activities of Building 115 until the SHPO has accepted all documentation, to include electronic submission of the materials into the V-CRIS system, or until the thirty (30)-day response time has passed without comment from the SHPO.

D. The VA shall provide (1) one set of the final original recordation materials for these facilities to the SHPO for permanent curation, and one (1) copy to the Hampton History Museum, one (1) copy to the Hampton Historical Society, and one (1) copy to the Office of the Command Historian

E. The VA shall notify the SHPO in writing when the above mitigation measures are complete.

II. NEW CONSTRUCTION

A. The VA shall submit design plans at the 35%, 60%, and 90% stages for the new construction to the SHPO for its review and comment. The VA shall ensure that the design for the new construction is compatible with the historic character and materials of the historic properties within the Hampton Veterans Affairs Medical Center Historic District (DHR survey number 114-0101),

B. The SHPO shall have thirty (30) days upon receipt of the complete design submittal package to review and comment on the design of the new construction. If no response is received by the VA within thirty (30) days of confirmed receipt of the complete design submittal package, the VA may assume that the SHPO has no comment. The VA shall address all comments received within the thirty (30) day comment period and proceed with the Project.

III. PROFESSIONAL QUALIFICATIONS

A. All work carried out pursuant to this Memorandum of Agreement (Agreement) shall be conducted by or under the direct supervision of an individual or individuals who meet at a minimum the Secretary of the Interior's Professional Qualifications (48 FR 44738-9, Sep 29, 83) for an Architectural Historian or Historian.

B. All documentation of Facility 938 shall be done in compliance with the SHPO's *Guidelines/or Conducting Historic Resources Survey in Virginia* (Oct 11) and "Photographic Documentation for Virginia Department of Historic Resources (DHR) Basic Survey" (Updated July 2009) as appropriate.

IV. POST-REVIEW DISCOVERIES

A. In the event that a previously unidentified archaeological resource is discovered during ground disturbing activities associated with the demolition of the Project, the VA shall require the demolition contractor to halt immediately all demolition work involving subsurface disturbance in the area of the resource and in the surrounding areas where additional subsurface remains can reasonably be expected to occur. Work in all other areas of the Project may continue.

B. The VA shall notify the SHPO within two (2) working days of the discovery. In the case of prehistoric or historic Native American sites, the VA shall also notify the appropriate state-recognized tribe and any federally recognized tribes with an interest in the area within two (2) working days of the discovery.

C. The VA shall ensure that an archaeologist meeting the Secretary of the Interior's Professional Qualification Standards (48 FR 44739) investigates the work site and the resource then the VA shall forward to the SHPO, appropriate state recognized tribe and any federally recognized tribes with an interest in the area, an assessment of the NRHP eligibility of the resource (36 CFR Part 60.4) and proposed treatment actions to resolve any adverse effects on historic properties. The SHPO shall respond within five working days of receipt of the VA's assessment of NRHP eligibility of the resource and proposed action plan. The VA shall take into account the recommendations of the SHPO, appropriate state recognized tribes and the federally recognized tribes regarding NRHP eligibility of the resource and the proposed action plan then carry out the appropriate actions.

D. The VA shall ensure that demolition work within the affected area does not proceed until the appropriate Section 106 consultation and any other applicable processes are completed.

V. TREATMENT OF HUMAN REMAINS

A. The VA shall make all reasonable efforts to avoid disturbing gravesites, including those containing Native American human remains and associated funerary artifacts. In the unlikely event that human remains and/or associated funerary objects are encountered during the implementation of this Agreement, the VA shall immediately halt all work in the area and contact the appropriate authorities. If the remains appear to be Native American in origin any such remains and/or funerary objects shall be treated in accordance with the Native American Graves Protection and Repatriation Act (25 USC 3001; "NAGPRA") and its implementing regulations, 43 CFR § 10.

B. If the remains are determined not to be of Native American origin, the VA shall consult with the SHPO and other appropriate consulting parties. Prior to the archaeological excavation of any remains, the

following information shall be submitted to the SHPO and other appropriate consulting parties for consultation:

1. The name of the property or archaeological site and the specific location from which the recovery is proposed. If the recovery is from a known archaeological site, a state-issued site number must be included.
2. Indication of whether a waiver of public notice is requested and Why. If a waiver is not requested, a copy of the public notice (to be published in a newspaper having general circulation in the area for a minimum of four weeks prior to recovery) must be submitted.
3. A copy of the curriculum vita of the skeletal biologist who will perform the analysis of the remains.
4. A statement that the treatment of human skeletal remains and associated artifacts will be respectful.
5. An expected timetable for excavation, osteological analysis, preparation of final report and final disposition of remains.
6. A statement of the goals and objectives of the removal (to include both excavation and osteological analysis).
7. If a disposition other than reburial is proposed, a statement of justification.

C. The VA shall treat all human remains in a manner consistent with the ACHP "Policy Statement Regarding Treatment of Burial Sites, Human Remains and Funerary Objects" (23 Feb 07).

VI. DISPUTE RESOLUTION

A. Objection by a Signatory Party

I. Should any party to this Agreement object in writing to the VA regarding any plans provided for review pursuant to this Agreement, or should any party to this Agreement object in writing to the VA regarding the manner in which measures stipulated in this Agreement are being implemented, the VA shall first consult with the objecting party to resolve the objection. If the VA determines that the objection cannot be resolved through such consultation, the VA shall then consult with all consulting parties to this Agreement to resolve the objection. If the VA then determines that the objection cannot be resolved through consultation, the VA shall forward all documentation relevant to the objection to the ACHP, including the VA's proposed response to the objection. Within forty-five (45) calendar days after receipt of all pertinent documentation, the ACHP shall exercise one of the following options:

- (a) Advise the VA that the ACHP concurs in the VA's proposed response to the objection, whereupon the VA shall respond to the objection accordingly;
- (b) Provide the VA with recommendations, which the VA shall take into account in reaching a final decision regarding its response to the objection; or
- (c) Notify the VA 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 VA shall take the resulting comment into account in accordance with 36 CFR § 800.7(c) (4).

2. Should the ACHP not exercise one of the above options within 45 calendar days after receipt of all pertinent documentation, the VA may assume the ACHP's concurrence in its proposed response to the objection.

3. The VA 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 VA's responsibility to carry out all actions under this Agreement that are not the subjects of the objection shall remain unchanged.

B. Objection from Public

At any time during implementation of the measures stipulated in this Agreement, should a member of the public object in writing to the VA regarding the manner in which the measures stipulated in this Agreement are being implemented, the VA shall notify the signatories to this Agreement and consider the views of the member(s) of the public who made such objection in accordance with 36 CFR § 800.2(d). The signatories may request that the VA notify the other consulting parties to this Agreement about the objection as well.

VII. AMENDMENTS AND TERMINATION

A. Any Signatory Party to this Agreement may propose that the Agreement be amended, whereupon the parties shall consult with the other parties to consider such an amendment.

B. If the VA determines that it cannot implement the terms of this Agreement, or if the SHPO determines that the Agreement is not being properly implemented, the VA or the SHPO may propose to the other parties to this Agreement that it be terminated.

C. The Signatory Party proposing to terminate this Agreement shall so notify the other parties to this Agreement explaining the reasons for termination and affording them at least thirty (30) days to consult and seek alternatives to termination.

D. Should such consultation fail and the Agreement be terminated, the VA shall either consult in accordance with 36 CFR § 800.6, to develop a new Agreement or request the comments of the Council under 36 CFR § 800.7 (a).

E. Should such consultation fail and the Agreement be terminated, the VA and the SHPO shall develop a new agreement and seek comments of the other consulting parties.

VIII. DURATION


This Agreement shall expire if its stipulations are not carried out within five (5) years from the date of its execution. At such time, and prior to work continuing on the Project, the VA shall either (a) execute a Memorandum of Agreement pursuant to 36 C.F.R. § 800.6, or (b) request, take into account and respond to the comments of the ACHP under 36 C.F.R. § 800.7. Prior to such time, the VA may consult with the other signatories to reconsider the terms of the Agreement and amend it in accordance with Stipulation VII above. The VA shall notify the signatories as to the course of action it will pursue.

EXECUTION of this Agreement by the VA and SHPO and implementation of its terms evidence that the VA has taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment.

Agreement Among Dept. VA and VA Dept. of Historic Resources, Demolition Bldg. 115

SIGNATORIES

DEPARTMENT OF VETERANS AFFAIRS

By:  Date: MAR 02 2015
MICHAEL H. DUNFEE, MHA
Director, Hampton VA Medical Center

STATE HISTORIC PRESERVATION OFFICER

By:  Date: 3/17/15
JULIE V. LANGAN
Director, Department of Historic Resources