

**MEMORANDUM OF AGREEMENT
BETWEEN THE DEPARTMENT OF VETERANS AFFAIRS AND THE VIRGINIA
DEPARTMENT OF HISTORIC RESOURCES
FOR THE CONSTRUCTION OF A NEW ADMINISTRATION BUILDING ON THE
HAMPTON, VIRGINIA VETERANS AFFAIRS MEDICAL CENTER**

WHEREAS, the Department of Veterans Affairs (VA) plans to construct a new administration 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. 2016-1046) and hereby referred to as the "**Project**;" and

WHEREAS, 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, VA has defined the Project Area of Potential Effects (APE) as the footprint of the proposed new construction and areas where the new administration building will be visible as shown in Attachment A; and

WHEREAS, the Project will require the demolition of Building 71, constructed in 1908; and

WHEREAS, VA has determined and the Virginia State Historic Preservation Office (SHPO) concurred that Building 71 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, VA has determined and the SHPO concurred that the demolition of Building 71 will adversely affect the Hampton Veterans Affairs Medical Center Historic District; and

WHEREAS, VA has explored alternatives to demolition, but has determined that Building 71 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), 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, VA has invited 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. § 800.2(c)(2), and these tribes did not respond to VA's request to participate; and

WHEREAS, pursuant to 36 CFR § 800.2(c)(5), 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. None of these parties responded to VA's request for consultation; and

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

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

STIPULATIONS

VA shall ensure that the following measures are carried out:

I. RECORDATION OF BUILDING 71

A. Prior to its demolition VA shall document or cause to be documented Building 71 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 VA shall enter it into the SHPO's Virginia Cultural Resources Information System (V-CRIS) system, or subsequent replacement.

B. 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 VA as approval of the documentation.

C. VA shall not proceed with demolition or pre-demolition activities of Building 71 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 as provided by paragraph I.B, has passed without comment from the SHPO.

D. VA shall provide (1) one set of the final original recordation materials for Building 71 to the SHPO for permanent curation, and one (1) copy to the Hampton History Museum, one (1) copy to the Hampton Historical Society.

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

II. NEW CONSTRUCTION

A. VA shall submit design plans 50%, 95%, and 100% stages for the new construction to the SHPO for its review and comment. 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 VA within thirty (30) days of confirmed receipt of the complete design submittal package, VA may assume that the SHPO has no comment. VA shall address all comments received within the thirty (30) day comment period and proceed with the Project.

III. HISTORIC PRESERVATION PLAN

A. VA shall, within two (2) years of the date of the last signature on this Agreement, develop a Heritage Preservation Plan (Plan) for the Hampton Veterans Affairs Medical Center (HVAMC) and submit the draft Plan to the SHPO for review and comment. The Plan shall adhere to the *Heritage Preservation Plan Outline* (Attachment B).

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1. The SHPO shall review the draft Plan and comment within sixty (60) calendar days. VA shall address all comments received within the sixty (60)-day comment period and shall incorporate them into the final Plan. Should additional revisions be needed, VA and the SHPO shall follow the same sixty (60)-day review timelines as stated above.
2. Within sixty (60) calendar days of VA's receipt of the SHPO's comments, VA shall submit two (2) hard copies and one (1) electronic copy of the final Plan to the SHPO.
3. VA shall ensure that the final Plan is implemented on the HVAMC campus. Within five (5) years of the date of the last signature on this Agreement, VA shall revisit the Plan to assess its relevance and use towards the larger goals of the HVAMC. VA shall consult with the SHPO on possible revisions to the Plan, if deemed necessary.

IV. 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 2011) and "Photographic Documentation for Virginia Department of Historic Resources (DHR) Basic Survey" (Updated December 2015) as appropriate, or subsequent replacements.

V. 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, 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. VA shall notify the SHPO within two (2) working days of the discovery. In the case of prehistoric or historic Native American sites, 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. 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 VA shall forward to the SHPO, appropriate state recognized tribes, 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 (5) working days of receipt of VA's assessment of NRHP eligibility of the resource and proposed action plan. 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. 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.

VI. TREATMENT OF HUMAN REMAINS

A. 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, 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, 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. 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).

VII. DISPUTE RESOLUTION

A. Objection by a Signatory Party

I. Should any party to this Agreement object in writing to VA regarding any plans provided for review pursuant to this Agreement, or should any party to this Agreement object in writing to VA regarding the manner in which measures stipulated in this Agreement are being implemented, VA shall first consult with the objecting party to resolve the objection. If VA determines that the objection cannot be resolved through such consultation, VA shall then consult with all consulting parties to this Agreement to resolve the objection. If VA then determines that the objection cannot be resolved through consultation, VA shall forward all documentation relevant to the objection to the ACHP, including 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:

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- (a) Advise VA that the ACHP concurs in VA's proposed response to the objection, whereupon VA shall respond to the objection accordingly;
 - (b) Provide VA with recommendations, which VA shall take into account in reaching a final decision regarding its response to the objection; or
 - (c) Notify 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 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 forty-five (45) calendar days after receipt of all pertinent documentation, VA may assume the ACHP's concurrence in its proposed response to the objection.
3. 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; 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 VA regarding the manner in which the measures stipulated in this Agreement are being implemented, 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 VA notify the other consulting parties to this Agreement about the objection as well.

VIII. 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 VA determines that it cannot implement the terms of this Agreement, or if the SHPO determines that the Agreement is not being properly implemented, 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, VA shall either consult in accordance with 36 CFR § 800.6, to develop a new Agreement or request the comments of the ACHP under 36 CFR § 800.7 (a).
- E. Should such consultation fail and the Agreement be terminated, VA and the SHPO shall develop a new agreement and seek comments of the other consulting parties.

IX. 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 the Project, 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


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the comments of the ACHP under 36 C.F.R. § 800.7. Prior to such time, VA may consult with the other signatories to reconsider the terms of the Agreement and amend it in accordance with Stipulation VII above. VA shall notify the signatories as to the course of action it will pursue.

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

SIGNATORIES

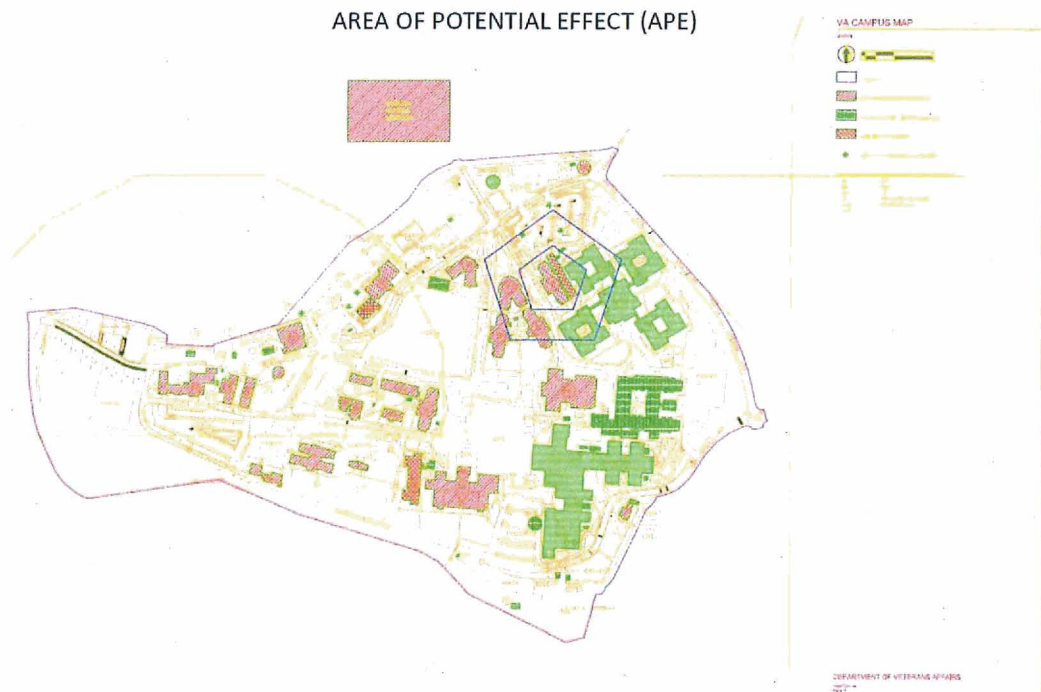
DEPARTMENT OF VETERANS AFFAIRS

By:  Date: SEP 15 2017
J. RONALD JOHNSON, FACHE
Director, Hampton VA Medical Center

STATE HISTORIC PRESERVATION OFFICER

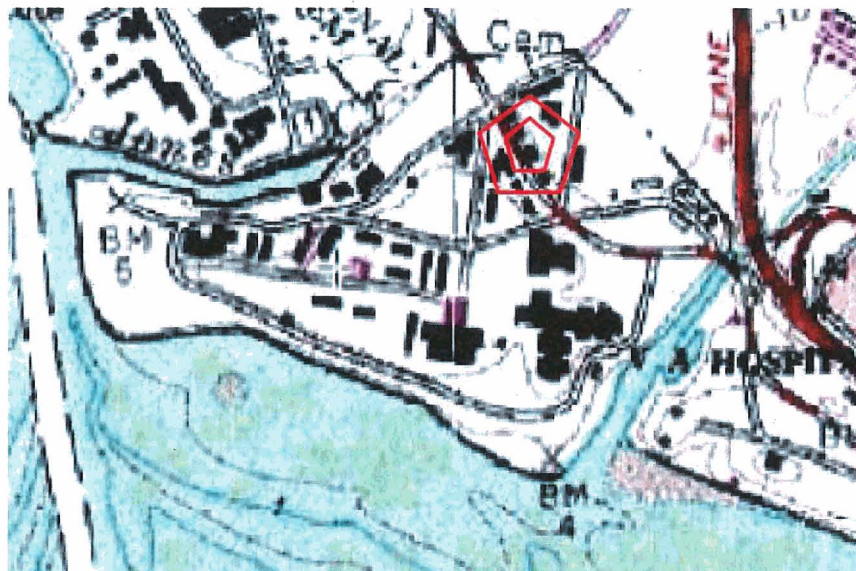
By:  Date: 9/26/2017
JULIE V. LANGAN
Director, Department of Historic Resources

ATTACHMENT A – *Project Area of Potential Effects*



VDHR Site 114-0101

Hampton quad



Center: 37° 0' 56.32" N 76° 20' 5.78" W
Elevation at center: 16 feet (5 meters)
Quad: USGS Hampton
Drg Name: o37076a3
Drg Source Scale: 1:24,000

Not to scale
September 2016

ATTACHMENT B – *Heritage Preservation Plan Outline*

I. INTRODUCTION

- a. Overview of scope, objectives and purpose of project.
- b. Map of locations of surveyed structures with “heritage buildings” labeled and colored.
- c. Evaluation methodology (i.e. intact, substantially intact, compromised or destroyed).
- d. Table listing all buildings in order of preservation priority.
- e. *Illustrations (such as location, study area and campus maps)*

II. HISTORIC CONTEXT AND CAMPUS HISTORY

- a. Historic context for HVAMC and historical background
 - i. Identify key themes (i.e. land grant and history) as it relates to campus development and associated periods of significance.
 - ii. Note National Register of Historic Places (NRHP) themes associated with the development of campus.
- b. Describe key periods of physical change on campus in relation to historic context themes and periods of significance.
 - i. Include period of change plans (also called historic period plans) that illustrate conditions present during each phase.
 - ii. *Illustrate narratives with historic maps, photographs and drawings.*

III. HERITAGE RESOURCE INVENTORY (This will make up 50% or more of the Plan.)

- a. Describe historic buildings on campus.
 - i. List historic buildings and mark if listed on Virginia Landmarks Register (VLR)/NRHP, not listed but eligible or potentially eligible, contributing or non-contributing to a listed or potentially eligible historic district, and whether it is of national, state or local significance.
 - ii. Document general conditions of historic buildings, pertinent characteristics and character-defining features.
 - iii. Include reconnaissance-level chronological info.
 - iv. Provide initial evaluation of integrity.
 - v. Identify potential threats, conflicts or enhancements planned.
 - vi. *Include supporting graphics (ex. Historic and current building and campus photos.)*

IV. HERITAGE MANAGEMENT FRAMEWORK

- a. Define a vision for the future treatment of heritage resources that integrates and addresses the master plan.
- b. Outline general goals for protection and use of heritage resources at HVAMC.
- c. Provide guidance for campus heritage resources and a guidance framework for managing future protection, enhancement and/or development of resources.
 - i. Identify appropriate treatment approaches (preservation, rehabilitation, restoration, intervention and transformations) that integrate the Secretary of Interior’s Standards for preservation, rehabilitation, restoration, and reconstruction.
 - ii. Indicate what additional research, analysis or action is needed to advance planning for heritage resources.
 - iii. Include a summary table of heritage resources outlining the existing condition, significance and treatment approaches.