

MEMORANDUM OF AGREEMENT  
BETWEEN THE DEPARTMENT OF VETERANS AFFAIRS AND THE VIRGINIA  
DEPARTMENT OF HISTORIC RESOURCES  
FOR THE CONSTRUCTION OF A NEW MENTAL HEALTH FACILITY ON THE  
HAMPTON, VIRGINIA VETERANS AFFAIRS MEDICAL CENTER

**WHEREAS**, the Department of Veterans Affairs (VA) proposes to construct a new mental health facility at the Hampton, Virginia Veterans Medical Center (hereafter “HVAMC”) in Hampton, Virginia (hereafter “Undertaking”; Department of Historic Resources [DHR] Project No. 2013-1205); and

**WHEREAS**, the VA has determined this to be a federal undertaking pursuant to Section 106 of the National Historic Preservation Act (16 U.S.C. 470f [NHPA]) as amended, and its implementing regulations, “Protection of Historic Properties” (36 CFR Part 800); and

**WHEREAS**, the VA in consultation with the Virginia State Historic Preservation Officer (SHPO) has established the Undertaking’s Area of Potential Effects (APE) as 1.23 acres as shown in Attachment A (Site Map); and

**WHEREAS**, the Undertaking will require the demolition of Buildings 6, 107, and 124, which are contributing resources to the Hampton Veterans Affairs Medical Center Historic District (hereafter “Historic District”; DHR Inventory No. 114-0101), a district that has been determined eligible for listing on the National Register of Historic Places (National Register); and

**WHEREAS**, the VA has consulted with the SHPO and other consulting parties in accordance with 36 CFR §800.5 of the NHPA and determined that the Undertaking will have an adverse effect on the Historic District by demolishing three contributing resources; and

**WHEREAS**, the VA has provided notification to the Advisory Council on Historic Preservation (ACHP) in accordance with 36 CFR Part 800.6 (a) (1) and the ACHP has declined to participate in consultation; and

**WHEREAS**, pursuant to 36 CFR Part 800.3 (f), the VA has invited the Catawba Indian Tribe, the Shawnee Tribe, and the Absentee-Shawnee Tribe of Indians of Oklahoma to participate in consultation and to sign as concurring parties, and they have declined to participate in consultation; and

**WHEREAS**, pursuant to 36 CFR Part 800.3 (f), the VA has invited the Fox Hill Historical Society, the Hampton Heritage Foundation, the Hampton History Museum, the Department of Architecture Hampton University, the American Legion – Hampton Branch, the Retired Armed Forces Club, Inc. – Hampton Branch, the Veterans of Foreign Wars (VFW) Post 3160 – Hampton Branch, the Retired Military Club of Tidewater, and the American Institute of Architects – Hampton Branch to participate in consultation and to sign this Memorandum of Agreement (hereafter, “Agreement”) as concurring parties; and

**WHEREAS**, none accepted the VA’s invitation to participate in consultation and sign this Agreement as consulting parties; 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 30 days no public comments were received.

**NOW THEREFORE**, the VA and the SHPO agree that the Undertaking 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 stipulations are implemented:

### **I. Building and Site Documentation**

a. The VA shall ensure that documentation and survey of Buildings 6, 107, and 124 shall be completed prior to their demolition and within twelve (12) months of execution of this Agreement according to the following requirements:

i. The VA shall document Buildings 6, 107, and 124 through the preparation of individual DHR Intensive Level Survey forms and architectural survey report according to the SHPO's *Guidelines for Conducting Historic Resources Survey in Virginia* (October 2011). The VA shall ensure that the survey documentation is entered into the SHPO's Virginia Cultural Resource Information System (V-CRIS) database.

1. The survey report and survey documentation shall be completed by an architectural historian meeting the *Secretary of the Interior's Professional Qualification Standards* (48 FR 44 738-9) and in accordance with the SHPO's *Guidelines for Conducting Historic Resources Survey in Virginia* (October 2011) or subsequent revisions to these documents.
2. The VA shall provide the SHPO with two (2) bound archival copies and one (1) electronic copy on disc of the survey report and updated V-CRIS documentation.
3. The VA shall provide one (1) copy of the survey report and updated V-CRIS documentation to the other consulting parties in a format of the consulting parties choosing.
4. The VA shall provide one (1) bound copy and one (1) electronic copy of the survey report and updated V-CRIS documentation to the City of Hampton Public Library.
5. The VA shall notify the SHPO in writing when Stipulation I.a.i.3 and 4 are complete.

ii. The VA shall provide updated documentation of the Historic District. The updated documentation shall include 1) streetscape photographs, 2) spreadsheet, and 3) mapping.

1. The VA shall complete photographic documentation of the streetscapes within the Historic District. Digital photographs shall be provided according to the SHPO's "Photographic Documentation for Virginia Department of Historic Resources (DHR) Survey" (Updated July 2009).
  2. The VA shall update a spreadsheet of all resources within the Historic District. At a minimum, the spreadsheet shall include the following:
    - a. HVAMC building identifier.
    - b. DHR Inventory Number (if applicable).
    - c. Date of construction.
    - d. Any changes to the building (e.g., replacement of windows, additions, demolition, etc.) that have occurred since the building was last documented.
  3. The VA shall create a large, printed map that shows the boundaries of the National Register-eligible Historic District and individual parcel lines. On each parcel the DHR Inventory Number and HVAMC building identifier shall be shown.
  4. The 1) streetscape photographs, 2) spreadsheet, and 3) mapping shall be completed by an architectural historian meeting the *Secretary of the Interior's Professional Qualification Standards* (48 FR 44 738-9) and in accordance with the SHPO's *Guidelines for Conducting Historic Resources Survey in Virginia* (October 2011) or subsequent revisions to these documents.
  5. The VA shall provide the streetscape photographs and a draft of spreadsheet and mapping to the SHPO for review and acceptance, and other consulting parties for review and comment, within six (6) months of the execution of this Agreement. The SHPO and other consulting parties shall have thirty (30) days upon receipt of the draft documentation materials to review and respond. If no response is received within thirty (30) days of confirmed receipt of the draft documentation materials, the VA may assume the non-responding party has no comments. The VA shall address all comments received within the thirty (30) day comment period and proceed.
- iii. The information collected pursuant to Stipulation I. (ii) shall be utilized by the VA to update the Historic District (DHR Inventory Number 114-0101) record in the SHPO's V-CRIS system. The VA shall provide information regarding any demolitions, new construction, and major changes to the landscape of the Historic District.
1. The Historic District V-CRIS record shall be completed by an architectural historian meeting the *Secretary of the Interior's Professional Qualification Standards* (48 FR 44 738-9) and in accordance with the SHPO's *Guidelines for Conducting Historic Resources Survey in Virginia* (October 2011) or subsequent revisions to these documents.

2. The VA shall provide the Historic District V-CRIS record to the SHPO for review and acceptance, and other consulting parties for review and comment, within six (6) months of the execution of this Agreement. The SHPO and other consulting parties shall have thirty (30) days upon receipt of the Historic District V-CRIS record to review and respond. If no response is received within thirty (30) days of confirmed receipt, the VA may assume the non-responding party has no comments. The VA shall address all comments received within the thirty (30) day comment period and proceed.

## **II. Report Documentation**

- a. The VA shall submit two (2) bound archival copies and one (1) electronic copy on disc of all technical report in draft form to the SHPO, and one (1) copy in a mutually acceptable format to the other consulting parties for review and comment unless otherwise stated above. The VA shall ensure that all comments received within thirty (30) days of report receipt shall be addressed in the final technical reports.
- b.. All archaeological studies, including data recovery plan(s), resulting from this Agreement shall be consistent of *The Secretary of the Interior's Standards and Guidelines for Archaeological Documentation* (48 FR 4434-37) and the SHPO's *Guidelines for Conducting Historic Resources Survey In Virginia* (October 2011) and shall take into account the ACHP's publications *Consulting About Archaeology Under Section 106* (1990) and *Recommended Approach for Consultation on Recovery of Significant Information from Archaeological Sites* (1999).
- c. . All archaeological work will be conducted under the direct supervision of a qualified archaeologist who meets, at a minimum, the qualifications set forth in the *Secretary of the Interior's Professional Qualifications Standards* (48 FR 44738-39).

## **III. New Construction**

- a. The VA shall consult with the SHPO and other consulting parties throughout the planning and design for the construction of the mental health facility to avoid, reduce, or minimize any potential impacts to historic properties within the Historic District. Specifically, the VA shall submit plans to the SHPO and the other consulting parties for review at 30%, 60%, and 90% design development.
- b. The SHPO and other consulting parties 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 within thirty (30) days of confirmed receipt of the complete design submittal package, the VA may assume the non-responding party has no comment. The VA shall address all comments received within the thirty (30) day comment period and proceed with the Undertaking.

#### IV. Post Review Discoveries

The VA shall include the following provisions in all construction contracts.

- a.. If previously unidentified historic properties or unanticipated effects to historic properties are discovered during construction, the construction contractor shall immediately halt all activity within a one hundred (100)-foot radius of the discovery, notify the VA of the discovery, and implement interim measures to protect the discovery from looting and vandalism.
- b.. Immediately upon receipt of the notification required in Stipulation IV.a., above, the VA shall:
  - i. Inspect the construction site to determine the extent of the discovery and ensure that construction activities have halted;
  - ii. Clearly mark the area of discovery;
  - iii. Implement additional measures, as appropriate, to protect the discovery from looting and vandalism;
  - iv. Have a professional archaeologist inspect the construction site to determine the extent of the discovery and provide recommendations regarding its National Register eligibility and treatment; and
  - v. Notify the SHPO and other consulting parties of the discovery describing the measures that have been implemented.
- c.. Within forty-eight (48) hours of receipt of the notification described in Stipulation IV.b.v., above, the VA shall provide the SHPO and other consulting parties with its assessment of the National Register eligibility of the discovery and the measures it proposes to take to resolve the adverse effect. In making its official evaluation, the VA, in consultation with the SHPO, may assume the discovery to be National Register eligible for the purposes of Section 106 pursuant to 36 CFR Part 800.13 (c). The SHPO and other consulting parties shall respond within forty-eight (48) hours of receipt of the notification.
- d.. The VA, which shall take into account consulting parties' recommendations on eligibility and treatment of the discovery, shall ensure that it carries out appropriate actions, and provides the SHPO and other consulting parties with a report on these actions when they have been implemented.
- e.. Construction activities may proceed in the area of discovery when the VA has determined that implementation of the actions undertaken to address the discovery pursuant to Stipulation I are complete.

#### V. Human Remains

- a. The VA shall treat all human remains and associated funerary objects encountered during the course of actions taken as a result of this Agreement in a manner consistent with the ACHP *Policy Statement Regarding Treatment of Burial Sites, Human Remains and Funerary Objects* (February 23, 2007, available online at <http://www.achp.gov/docs/hrpolicy0207.pdf>). All reasonable efforts will be made to avoid disturbing gravesites, including those containing Native American human remains and associated artifacts. To the extent possible, the VA shall ensure that the general public is excluded from viewing any gravesites and associated artifacts. All consulting parties agree to release no photographs of any gravesites and/or funerary

- objects to the press or to the general public.
- b. If the human remains encountered appear to be of Native American origin, whether prehistoric or historic, the VA shall immediately notify the appropriate tribes, which may have cultural interests in ancestral homelands in Virginia.
  - c. If the VA agrees that avoidance of the human remains is not prudent and feasible, the VA shall apply for a permit from the SHPO for the archaeological removal of human remains in accordance with provisions of the *Virginia Antiquities Act*, Section 10.1-2305 of the *Code of Virginia*, and with the final regulations adopted by the Virginia Board of Historic Resources and published in the Virginia Register of July 15, 1991.
  - d. In considering issuance of a permit involving removal of Native American human remains, the SHPO notify and consult with the appropriate tribes as required by the regulations stated above. The treatment of Native American human remains and associated funerary objects will be determined in consultation with the appropriate tribal leaders.

## VI. Administrative Stipulations

### a. Dispute Resolution

i. Should any party to this Agreement object in writing to the VA regarding any action carried out or proposed with respect to the Undertaking or implementation of this Agreement, the VA shall consult with the objecting party to resolve the objection. If after initiating such consultation, the VA 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 thirty (30) days after receipt of all pertinent documentation, the ACHP shall exercise one of the following options:

1. Advise the VA that the ACHP concurs in the VA's proposed response to the objection, whereupon the agency will respond to the objection accordingly; or
2. Provide the VA with recommendations, which the VA shall take into account in reaching a final decision regarding its response to the objection; or
3. Notify the VA that the objection will be referred for comment pursuant to 36 CFR Part 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 Part 800.7(c) (4) and Section 110(1) of the NHPA.

ii. Should the ACHP not exercise one of the above options within thirty (30) days after receipt of all pertinent documentation, the VA may assume the ACHP's concurrence in its proposed response to the objection.

iii. 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.

iv. At any time during implementation of the measures stipulated in this Agreement, should an objection pertaining to this Agreement or the effect of any individual undertaking on historic properties be raised by a member of the public, the VA 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.

b. Amendment and Termination

i. Any signatory to this Agreement may request that it be amended, whereupon the parties shall consult in accordance with 36 CFR §§800.6(c)(7) to consider such an amendment. The amendment shall be effective on the date a copy signed by all the signatories is filed with the ACHP.

ii. 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 party that it be terminated in accordance with the provisions of 36 CFR Part 800.6(c)(8).

iii. Termination shall include the submission of any outstanding documentation on any work done up to and including the date of termination.

iv. A party proposing to terminate this Agreement shall so notify all parties to the Agreement, explaining the reasons for termination and affording them at least thirty (30) days to consult and seek alternatives to termination. The parties shall then consult.

v. Should this Agreement be terminated, the VA shall either:

1. Consult on this Undertaking in accordance with 36 CFR §800.6 to develop a new Memorandum of Agreement; or

2. Request the comments of the ACHP pursuant to 36 CFR §800.7.

c. Additional Agencies

In the event that there is additional federal involvement in the Undertaking that is not otherwise referenced in this Agreement, that federal agency shall have the option to accept the terms of this Agreement, without acquiring an amendment, if the federal agency signs as an invited signatory. The VA must notify the Signatories in advance of the federal agency committing to the terms of this Agreement.

d. Duration of the Agreement

This Agreement shall continue in full force and effect until five (5) years after the date of the last Signatory party's signature. At any time in the six (6)-month period prior to such date, the VA may request the SHPO to consider an extension or modification of this Agreement. No extension or modification shall be effective unless all parties to the Agreement have agreed with it in writing.

e. Counterpart Execution

The Parties agree that for ease of execution, each Party may separately execute *five (5)* counterparts of this Agreement and exchange executed pages with each other. Each counterpart of this Agreement so executed and reassembled so each counterpart is executed by all parties shall be deemed to constitute a completed and fully executed Agreement.

f. Transmission to the ACHP and Consulting Parties

i. Once all parties have signed this Agreement, the VA shall submit a copy of this Agreement, along with the documentation specified in 36 CFR Part 800.11(f) to the

ACHP.

ii. The submission of documentation and filing of this fully executed Agreement with the ACHP pursuant to 36 CFR Part 800.6 (b) (1) (iv) constitutes evidence that the VA has taken into account any adverse effects of this Undertaking on the historic properties and afforded the ACHP an opportunity to comment.


iii. In accordance with 36 CFR Part 800.6 (c) (9), the VA shall provide any consulting party (as defined in 36 CFR Part 800.3) with a copy of this Agreement.

Execution of this Agreement by VA and the SHPO, and its submission to the ACHP in accordance with 36 CFR Part 800.6 (b) (1) (iv), pursuant to 36 CFR Part 800.6 (c), shall be considered to be an agreement with the ACHP for the purposes of Section 110(1) of the NHPA. Execution and submission of the Agreement and implementation of its terms is evidence that the VA has afforded the ACHP an opportunity to comment on the Undertaking, and its effects on historic properties, and that the VA has taken into account the effects of the Undertaking on historic properties.



Agreement Among Dept VA and VA Dept of Historic Resources, Demolition of Historic Buildings

**SIGNATORIES:**

By:  \_\_\_\_\_ Date: NOV 10 2014  
Michael H. Dunfee, MHA  
Director, Hampton VA Medical Center

Agreement Among Dept VA and VA Dept of Historic Resources, Demolition of Historic Buildings

**SIGNATORIES:**

By: Julie Langan Date: 12/22/17  
Julie Langan, Director  
Department of Historic Resources  
and Virginia State Historic Preservation Officer