

PROGRAMMATIC AGREEMENT  
BETWEEN THE U.S. DEPARTMENT OF VETERANS AFFAIRS (VA)  
HAMPTON VA MEDICAL CENTER (HVAMC)  
AND THE VIRGINIA STATE HISTORIC PRESERVATION OFFICER  
REGARDING CONSTRUCTION OF PROSTHETICS AND REHABILITATION FACILITIES  
ON THE HVAMC, CITY OF HAMPTON, HAMPTON COUNTY, VIRGINIA

**WHEREAS**, the U.S. Department of Veterans Affairs (VA) Hampton VA Medical Center (HVAMC) proposes to construct new Prosthetics and Rehabilitation Facilities at the HVAMC, 100 Emancipation Drive, City and County of Hampton, Virginia (Department of Historic Resources [DHR] Project Review No. 2018-0740) and hereby referred to as the "Project;" and

**WHEREAS**, HVAMC has determined that the Project is an undertaking subject to review under Section 106 of the National Historic Preservation Act (NHPA), as amended, 54 USC § 306108, and its implementing regulations, 36 CFR Part 800 – Protection of Historic Properties; and

**WHEREAS**, HVAMC has consulted with the State Historic Preservation Officer (SHPO), which in Virginia is the DHR; and

**WHEREAS**, HVAMC has invited the Catawba Indian Nation to participate in consultation as a Consulting Party pursuant to 36 CFR § 800.2(c)(2), and the Catawba Indian Nation, in a letter dated October 22, 2019, has chosen not to participate in the consultation; and

**WHEREAS**, HVAMC has invited the Delaware Nation, Delaware Tribe of Indians, Eastern Band of Cherokee Indians, The Absentee-Shawnee Tribes of Indians of Oklahoma, Eastern Shawnee Tribe of Oklahoma, Muscogee Nation, and the Pamunkey Indian Tribe to participate in consultation as Consulting Parties pursuant to 36 CFR § 800.2(c)(2), and these tribes did not respond to HVAMC's request to participate; and

**WHEREAS**, pursuant to 36 CFR § 800.2(c)(5), HVAMC has invited the American Legion – Hampton Branch, Buckroe Historical Society, Fox Hill Historical Society, Hampton Heritage Foundation, Hampton Historical Society, Hampton History Museum, Chair Department of Architecture Hampton University, AIA Hampton Roads, Retired Armed Forces Club Inc, VFW Post 3160 - Hampton Branch, and Retired Military Club of Tidewater to participate in consultation as Consulting Parties, and none of these parties responded to HVAMC's request for consultation; and

**WHEREAS**, HVAMC has provided the public the opportunity to comment on the Project by issuing a public notice in the local newspapers on November 29, 2019, and no public comments were received; and

**WHEREAS**, HVAMC, in consultation with SHPO, has defined the Project Area of Potential Effects (APE) as the footprint of the proposed new construction and areas where the new Prosthetics and Rehabilitation buildings will be visible as shown in Attachment A; and

**WHEREAS**, the Project will require the demolition of Buildings 50 and 52, both constructed in 1912; and

**WHEREAS**, HVAMC has determined, and the SHPO concurred, that Buildings 50 and 52 contribute to the HVAMC Historic District (DHR survey number 114-0101), a property eligible for listing in the National Register of Historic Places (NRHP); and

**WHEREAS**, HVAMC has determined, and the SHPO concurred, that the demolition of Buildings 50 and 52 will adversely affect the HVAMC Historic District; and consulted to resolve the adverse effect per 36 CFR § 800.6; and

**WHEREAS**, HVAMC has explored alternatives to demolition, but has determined that Buildings 50 and 52 are functionally inadequate, in poor condition, and cannot be economically adaptively reused. Other factors that deem the buildings inadequate were the layout and construction to meet clinical requirements, the buildings site has accessibility to patients from the main hospital, and they are in close proximity to the handicap accessible parking which are integral with the mission goals for Prosthetics and Rehabilitation facilities; and

**WHEREAS**, in accordance with 36 CFR § 800.6(a)(1), HVAMC has notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect finding, providing the specified documentation, and the ACHP in a letter dated November 19, 2019 has chosen not to participate in the consultation pursuant to 36 CFR § 800.6(a)(1)(iii)

**NOW THEREFORE**, HVAMC and the SHPO agree that the adverse effect shall be resolved through execution of this Programmatic Agreement (Agreement) pursuant to 36 CFR § 800.6(b)(1), and that the Project shall be implemented in accordance with the following stipulations to take into account the effect of the proposed undertaking on historic properties.

## **STIPULATIONS**

HVAMC shall ensure that the following measures are carried out:

### **I. PROFESSIONAL QUALIFICATIONS**

A. All architectural documentation and survey work carried out pursuant to this 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 the facility shall be consistent with the SHPO's *Guidelines for Conducting Historic Resources Survey in Virginia* (September 2017) and "Photographic Documentation for Virginia Department of Historic Resources (DHR) Basic Survey" (Updated December 2015) as appropriate, or subsequent replacements.

### **II. RECORDATION OF BUILDINGS 50 AND 52**



A. Prior to their demolition, HVAMC shall document or cause to be documented Buildings 50 and 52 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 enter it into the SHPO's Virginia Cultural Resources Information System (V-CRIS) system, or subsequent replacement.

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

C. HVAMC shall not proceed with demolition of Buildings 50 and 52 until the SHPO has been provided all documentation, to include electronic submission of the materials into the V-CRIS system and HVAMC has responded to any comments, or until the thirty (30)-day response time as provided by paragraph II.B, has passed without comment from the SHPO.

D. HVAMC shall provide (1) one hard set of the final original recordation materials for Buildings 50 and 52 to the SHPO for permanent curation, one (1) copy to the Hampton History Museum, and one (1) copy to the Hampton Historical Society.

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

F. HVAMC shall provide within (6) six months of the execution of this Agreement, the initial consultation documentation for Building 52.

### **III. NEW CONSTRUCTION**

A. HVAMC shall submit design plans at the 30%, 60%, and 90% design development for the new construction to the SHPO for its review and comment on both projects. HVAMC shall ensure that the designs for the new construction are compatible with the historic character and materials of the historic properties within the HVAMC 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 HVAMC within thirty (30) days of confirmed receipt of the complete design submittal package, HVAMC may assume that the SHPO has no comment. HVAMC shall address all comments received within the thirty (30) day comment period in a response back to the SHPO prior to proceeding with the Project.

### **IV. FUTURE PROJECT PLANNING**

A. HVAMC shall include in its annual Strategic Capital Investment Planning (SCIP) submissions requests for funding to restore, rehabilitate and/or preserve Buildings 27, 43, 48, and 66, which have a priority and significance rating of 1 per the Heritage Preservation Plan completed by Hanbury Preservation Consulting and William and Mary Center for Archeological Research on September 10, 2018 during the duration of this agreement.

B. HVAMC shall continue its efforts to start the designs and obtain construction funding for the following projects approved by the VA for design on historical buildings: Structural repair/upgrade Bldg. 27; Tuck point, caulk, and seal various buildings (27, 28, 31, 43, 48, 114, 116, 135, 137, 146, and 148); Repair Boiler Plant (Bldg. 15) Structure; and Repair Moisture Integrity of Building Envelope 110, 110A.

## V. ARCHAEOLOGY

A. For land disturbing activities in areas where no previous survey has occurred, HVAMC shall consult with the SHPO and determine whether further archaeological survey is warranted based on prior ground disturbance, results from previous archaeological surveys, and other relevant factors. If after consultation with the SHPO, HVAMC determines that further efforts are needed to identify archaeological sites, HVAMC shall ensure that an archaeological testing program is developed in consultation with the SHPO and implemented. The testing program shall be sufficient to identify any potentially eligible sites present within the APE and determine conclusively their eligibility for listing in the NRHP.

B. If HVAMC determines that it is not feasible to preserve or avoid a NRHP eligible or listed archaeological property, HVAMC shall consult with the SHPO to develop a data recovery plan. The data recovery plan shall be consistent with the *Secretary of the Interior's Standards and Guidelines for Archaeological Documentation* (48 FR 44734-37, September 29, 1983) and the SHPO's *Guidelines for Conducting Historic Resources Survey in Virginia* (rev 2017), and shall take into account the ACHP's *Recommended Approach/or Consultation on Recovery of Significant Information from Archeological Sites* (1999; rev. 2003) and Section 106 Archaeology Guidance (June 2007) or subsequent revisions or replacements to these documents. Any data recovery plan shall specify at a minimum, the following:

1. The property, properties, or portions of properties where site specific data recovery plans shall be carried out;
2. The portion(s) of the site(s) to be preserved in place, if any, as well as the measures to be taken to ensure continued preservation;
3. Any property, properties, or portions of properties that will be destroyed or altered without data recovery;
4. The research questions to be addressed through data recovery, with an explanation of their relevance and importance;
5. The methods to be used with an explanation of their relevance to the research questions;
6. The methods to be used in analysis, data management, and dissemination of data, including a schedule;
7. The proposed disposition of recovered materials and records;



8. The proposed methods of disseminating the results of the work to the interested public and/or organizations who have expressed an interest in the data recovery subject to revision based on the results of the data recovery proceeds; and
9. A schedule for the submission of progress reports to HVAMC, the SHPO and other consulting parties.

C. HVAMC shall submit the data recovery plan to the SHPO and the other consulting parties as appropriate for review and comment. The SHPO and other consulting parties as appropriate agree to provide comments with thirty (30) days of confirmed receipt of the plan. HVAMC shall take any comments received into account and implement the data recovery plan.

D. If the SHPO or other consulting party objects to the proposed data recovery plan or its manner of implementation, HVAMC shall request the comments of the ACHP in accordance with 36 CFR § 800.6(b)(1)(v).

## **VI. POST-REVIEW DISCOVERIES**

A. In the event that a previously unidentified archaeological resource is discovered during ground disturbing activities associated with the Project, HVAMC shall require the contractor to halt immediately all 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. HVAMC shall notify the SHPO within two (2) working days of the discovery. In the case of prehistoric or historic Native American sites, HVAMC 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. HVAMC 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. HVAMC shall then 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 or avoid any adverse effects on historic properties. The SHPO shall respond within five (5) working days of receipt of HVAMC's assessment of NRHP eligibility of the resource and proposed action plan. HVAMC 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. HVAMC shall ensure that ground disturbing work within the affected area does not proceed until the appropriate consultation and any other applicable processes are completed.

## **VII. TREATMENT OF HUMAN REMAINS**

A. HVAMC 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, HVAMC 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, HVAMC 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. HVAMC 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).

#### **IIIV. DURATION**

This Agreement shall expire if its stipulations are not carried out within five (5) years from the date of its execution. Prior to such time, HVAMC may consult with the SHPO to reconsider the terms of the Agreement and amend it in accordance with Stipulation X below.

#### **IX. DISPUTE RESOLUTION**



#### A. Objection by a Signatory Party

1. Should either party to this Agreement object in writing regarding any plans provided for review pursuant to this Agreement or should either party to this Agreement object in writing regarding the manner in which measures stipulated in this Agreement are being implemented, HVAMC shall consult with the SHPO to resolve the objection. If HVAMC determines that the objection cannot be resolved through such consultation, HVAMC shall:

- i. Forward all documentation relevant to the dispute, including HVAMC's proposed resolution, to the ACHP. The ACHP shall provide the HVAMC 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, HVAMC shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP and SHPO and provide them with a copy of this written response. HVAMC will then proceed according to its final decision.
- ii. If the ACHP does not provide its advice regarding the dispute within the thirty (30)-day time period, HVAMC may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, HVAMC shall prepare a written response that takes into account any timely comments regarding the dispute from the SHPO and provide it and the ACHP with a copy of such written response.
- iii. HVAMC's responsibility to carry out all actions under this Agreement that are not the subject 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 HVAMC regarding the manner in which the measures stipulated in this Agreement are being implemented, HVAMC shall notify the SHPO and consider the views of the member(s) of the public who made such objection in accordance with 36 CFR§ 800.2(d).

### X. AMENDMENTS

- A. Either Signatory to this Agreement may propose that the Agreement be amended, whereupon both parties shall consult to consider such an amendment.
- B. Any amendment will be agreed to in writing by both Signatories and will be effective on the date a copy signed by both parties is filed with the ACHP.

### XI. TERMINATION

A. If HVAMC determines that it cannot implement the terms of this Agreement, or if the SHPO determines that the Agreement is not being properly implemented, either party may propose to the other party that the Agreement be terminated.

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

D. Should such consultation fail, and the Agreement be terminated, HVAMC 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).

## **XII. ANTI-DEFICIENCY ACT**

HVAMC's obligations under this Agreement are subject to the availability of appropriated funds, and the stipulations of this Agreement are subject to the provisions of the Anti-Deficiency Act, 31 USC § 1341. HVAMC shall make reasonable and good faith efforts to secure the necessary funds to implement its obligations under this Agreement. If compliance with the Anti-Deficiency Act alters or impairs the HVAMC's ability to implement its obligations under this Agreement, it shall consult with SHPO in accordance with the amendment and termination procedures in Stipulations X and XI, above.

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

## **SIGNATORIES**

U.S. DEPARTMENT OF VETERANS AFFAIRS HAMPTON VA MEDICAL CENTER

By:  Date: 4/5/2020  
DAVID C. COLLINS  
Executive Director

STATE HISTORIC PRESERVATION OFFICER

By:  Date: 6-18-2020  
JULIE V. LANGAN  
Director, Department of Historic Resources



