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**PROGRAMMATIC AGREEMENT
BETWEEN
THE U.S. DEPARTMENT OF VETERANS AFFAIRS, VETERANS HEALTH
ADMINISTRATION, CENTRAL VIRGINIA VA HEALTH CARE SYSTEM
AND
THE VIRGINIA STATE HISTORIC PRESERVATION OFFICER
REGARDING
A NEW HEALTH CARE CENTER
GREATER FREDERICKSBURG, VIRGINIA**

11 **WHEREAS**, the Central Virginia Veterans Affairs Health Care System (CVHCS) of the U.S.
12 Department of Veterans Affairs (VA) proposes to have a developer build a new health care center (HCC)
13 totaling over 426,000 square feet of space and at least 2,600 parking spaces in greater Fredericksburg area
14 Virginia that VA will lease and operate (undertaking); and
15

16 **WHEREAS**, VA has determined the undertaking is subject to review under Section 106 of the National
17 Historic Preservation Act (NHPA), as amended, 54 U.S.C. 306108, and its implementing regulations, 36
18 CFR Part 800 – Protection of Historic Properties, (collectively referred to here as “Section 106”); and
19

20 **WHEREAS**, VA, in consultation with the Virginia State Historic Preservation Officer (SHPO), has
21 determined the Area of Potential Effects (APE) to include the two sites being considered for the new
22 HCC, encompassing all construction activity areas and any buildings potentially affected indirectly by the
23 undertaking, as depicted on the map in Attachment A, pursuant to 36 CFR § 800.4(a)(1); this includes the
24 Hood parcel, Spotsylvania County, Fredericksburg, bounded by I-95 to the west, Hood Drive to the north,
25 Route 1/Jefferson Davis Highway to the east, and the I-95 northbound onramp from Route 1 to the south;
26 and the Gateway parcel, 1500 Gateway Boulevard, Fredericksburg, bounded by I-95 on the west, Plank
27 Road to the south, Preserve Lane to the north, and a line a line to the east incorporating part of several
28 subdivisions built between the late 1980s and 2010; and
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30 **WHEREAS**, VA has solicited layout proposals for the new HCC on the two offered parcels (Hood and
31 Gateway) but will not finalize a design until after a site is selected and lease awarded and therefore the
32 full range of effects on historic properties cannot be fully determined at this time; and
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34 **WHEREAS**, VA will use a phased approach to identification of historic properties and assessment of
35 adverse effect, pursuant to 36 CFR § 800.4(b)(2) and 800.5(a)(3); and
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37 **WHEREAS**, VA has determined that it is appropriate to develop a programmatic agreement (PA) in
38 accordance with 36 CFR § 800.14(b), including 800.14(b)(1)(ii), which recognizes that a PA may be used
39 when effects on historic properties cannot be fully determined prior to approval of an undertaking; and
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41 **WHEREAS**, VA has consulted with the SHPO, which in Virginia is the Department of Historic
42 Resources (DHR); and
43

44 **WHEREAS**, VA, in consultation with the SHPO and other consulting parties, has identified and SHPO
45 has concurred on the following historic properties within the APE, pursuant to 36 CFR § 800.4:
46 Hood parcel– no historic properties (Phase IA Cultural Resource Survey of the Hood Drive Project Area,
47 Spotsylvania County, Virginia; Phase 1B Architectural Survey and Archaeological Management
48 Summary of the Hood Drive Project Area for a Possible Location of the Proposed VA Fredericksburg
49 Health Care Center, Spotsylvania County, Virginia; and Addendum: Phase IB Archaeological Survey of
50 the Hood Drive Project Area, Spotsylvania County, Virginia),

51 Gateway parcel– three historic properties: one National Register of Historic Places (NRHP) listed Civil
52 War Battlefields and two historic-era archaeological sites, 44SP0783 and 44SP0784, eligible under
53 Criteria A and D, and additional subsurface historic properties may be present (Management Summary,
54 Architectural and Archaeological Survey Of the Gateway Parcel Project Area for a Possible Location of
55 the Proposed VA Fredericksburg Health Care Center, Fredericksburg, Virginia); and
56

57 **WHEREAS**, VA has invited the Advisory Council on Historic Preservation (ACHP) of its intent to develop a
58 PA, pursuant to 36 CFR § 800.6(a)(1)(i)(C), and the ACHP has chosen not to participate in the consultation,
59 pursuant to 36 CFR § 800.6(a)(1)(iii); and
60

61 **WHEREAS**, VA invited the following Federally recognized tribes (Tribes) that might attach religious and
62 cultural significance to historic properties in the city of Fredericksburg and in Spotsylvania County,
63 pursuant to 36 CFR § 800.2(c)(2), to participate in consultation: the Catawba Indian Nation, the
64 Pamunkey Indian Tribe, the Monacan Indian Nation, and the Delaware Nation of Oklahoma, and the
65 Pamunkey Indian Tribe and the Monacan Indian Nation have elected to participate and are consulting
66 parties; and
67

68 **WHEREAS**, VA invited the Fredericksburg, Virginia Community Planning & Building Department and
69 the Spotsylvania County Department of Planning and Zoning to participate in consultation, pursuant to 36
70 CFR § 800.2(c)(3), and the Spotsylvania County Department of Planning and Zoning has elected to
71 participate and is a consulting party; and
72

73 **WHEREAS**, VA invited the National Park Service Fredericksburg & Spotsylvania National Military
74 Park; the American Battlefield Trust; the Fredericksburg Area Museum; the Historic Fredericksburg
75 Foundation, Inc.; the Rappahannock Valley Civil War Round Table; the Spotsylvania Historical Society;
76 the Central Virginia Battlefields Trust; and Preservation Virginia to participate in consultation, pursuant
77 to 36 CFR § 800.2(c)(5), and the American Battlefield Trust has elected to participate and is a consulting
78 party; and
79

80 **WHEREAS**, VA provided the public with information about the undertaking and sought comment and
81 input, pursuant to 36 CFR § 800.2(d), through National Environmental Policy Act (NEPA) compliance
82 efforts, including a comment period from July 12 through August 11, 2020 and a public meeting on July
83 29, 2020, and no public comments related to cultural resources were received; and
84

85 **NOW, THEREFORE**, VA and the SHPO agree that undertaking shall be implemented in accordance
86 with the following stipulations in order to take into account the effects of the undertaking on historic
87 properties.
88

89 **STIPULATIONS**

90 **I. APPLICABILITY**

- 91 a. VA is responsible for ensuring implementation of the stipulations in this PA associated
92 with the undertaking, including those actions undertaken by private developers.
- 93 b. The Anti-Deficiency Act, 31 U.S.C. 1341, prohibits federal agencies from incurring an
94 obligation of funds in advance of or in excess of available appropriations. Accordingly,
95 the parties agree that any requirement for the obligation of funds arising from the terms
96 of this PA shall be subject to the availability of appropriated funds for that purpose, and
97 that this agreement shall not be interpreted to require the obligation of funds in violation
98 of the Anti-Deficiency Act.
99

- 101 II. GENERAL
- 102 a. Parties shall send and accept official notices, comments, requests for additional information
- 103 and/or documentation, and all other communications required by this PA via email, as
- 104 well as hard copies by mail to the SHPO.
- 105 b. Time designations shall be in calendar days.
- 106 c. For the purposes of this PA, the definitions provided in 36 CFR § 800.16(a) through (z)
- 107 shall apply.
- 108 d. VA shall ensure that Federal, Lessor or Contractor staff who meet the applicable Secretary
- 109 of the Interior's *Professional Qualification Standards* (36 CFR § 61), in the appropriate
- 110 discipline (e.g. architectural history, history, archaeology, architecture, or historic
- 111 architecture) participate in the review and implementation required as part of this PA.
- 112 III. SITE SELECTION
- 113 a. If VA selects the Hood parcel for the HCC, no further consultation is required.
- 114 b. If VA selects the Gateway parcel for the HCC, VA shall consult with the SHPO and
- 115 other consulting parties as described in Stipulation IV below.
- 116 IV. CONTINUATION of CONSULTATION
- 117 a. Identification of Historic Properties
- 118 VA, in consultation with the SHPO and other consulting parties, will complete the
- 119 identification of historic properties within the Gateway parcel consistent with 36 CFR §
- 120 800.4(b) and Virginia "Guidelines for Conducting Historic Resources Survey in
- 121 Virginia" (September 2017).
- 122 b. Assessment of Adverse Effects
- 123 VA, in consultation with the SHPO and other consulting parties, will apply the criteria of
- 124 effect consistent with 36 CFR § 800.5(a), to determine whether the undertaking will have an
- 125 adverse effect on historic properties.
- 126 i. If VA finds, and the SHPO does not object, that there will be no adverse effect,
- 127 no further consultation is required.
- 128 ii. If VA finds there will be an adverse effect, it will consult further with the SHPO
- 129 and other consulting parties to resolve the adverse effect.
- 130 c. Resolution of Adverse Effects
- 131 VA, in consultation with the SHPO and other consulting parties, will seek measures to
- 132 avoid and/or minimize any identified adverse effect consistent with 36 CFR § 800.6. If
- 133 avoidance of the adverse effect is not possible, VA will seek to execute a Memorandum
- 134 of Agreement (MOA), pursuant to 36 CFR § 800.6(b). For archaeological resources, the
- 135 MOA will outline steps to be taken for data recovery, consistent with the ACHP's
- 136 "Recommended Approach for Consultation on Recovery of Significant Information from
- 137 Archaeological Sites," (ACHP, 1999) and the DHR's "Guidelines for Conducting
- 138 Historic Resources Survey in Virginia" (September 2017), to include, but not limited to:
- 139 i. design of and consultation on a data recovery plan;
- 140 ii. solicitation of public input;
- 141 iii. curation of artifacts;
- 142 iv. final reporting that is responsive to professional standards, including the
- 143 Department of the Interior's *Format Standards for Final Reports of Data*
- 144 *Recovery Programs* (42 FR 5377-79) and the DHR's "Guidelines for Conducting
- 145 Historic Resources Survey in Virginia" (September 2017).
- 146 V. EXECUTION and DURATION
- 147 a. This PA shall be executed in counterparts, with a separate page for each Signatory. VA
- 148 shall file a complete copy of the executed PA, including all signatory pages and Attachments,
- 149 with the ACHP and distribute a copy to the SHPO and other consulting parties.
- 150 b. This PA shall expire if its stipulations are not carried out within five (5) years from the
- 151 date of execution, unless it is terminated prior to that date. Six (6) months prior to such

time, VA may consult with the SHPO to reconsider the terms of the PA and amend it in accordance with Stipulation IX below.

VI. POST-REVIEW DISCOVERIES

- a. In the event that a previously unidentified archaeological resource is discovered during ground disturbing activities associated with the undertaking, VA shall work with the Lessor 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 undertaking may continue.
- b. VA shall notify the SHPO and other consulting parties 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 work with the Lessor to ensure that an archaeologist meeting the Secretary of the Interior's *Professional Qualification Standards* (48 FR 44739) investigates the work site and the resource. VA shall then forward to the SHPO other consulting parties, and appropriate state recognized tribes, and any federally recognized tribes with an interest in the area if a prehistoric or historic Native American site, 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, other consulting parties, and appropriate state recognized tribes, and any federally recognized tribes with an interest in the area 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, other consulting parties, and appropriate state recognized tribes and federally recognized tribes regarding NRHP eligibility of the resource and the proposed action plan when carrying out the actions.
- d. VA shall work with the Lessor to 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. VA shall work with the Lessor to 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 PA, VA shall work with the Lessor to 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 Virginia Antiquities Act (§ 10.1-2300 Code of Virginia). VA will work with the Lessor to obtain a Permit Required for the Archaeological Excavation of Human Remains (§ 10.1-2305) from the DHR Director for archaeological recovery of all human skeletal remains and associated artifacts from any unmarked grave, regardless of the age of the burial or archaeological site or ownership of the property.
- b. If the remains are determined not to be of Native American origin, also in keeping with the Virginia Antiquities Act (Code of Virginia Chapter 23 § 10.1-2305), VA will work with the Lessor to obtain a permit for the archaeological excavation of human remains, as well as require the Lessor to retain the services of a preservation architect and archaeologist who meets or exceeds the Secretary of the Interior's Professional Qualifications Standards for Historic Architecture as well as the Secretary of the Interior's Professional Qualifications Standards for Archaeology respectively. VA shall work with the Lessor to consult with the SHPO and other consulting parties. Prior to the archaeological excavation of any remains, the following information shall be submitted to the SHPO and other consulting parties for consultation:

- i. 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.
- ii. 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 (4) weeks prior to recovery) must be submitted.
- iii. A copy of the curriculum vita of the skeletal biologist who will perform the analysis of the remains.
- iv. A statement that the treatment of human skeletal remains and associated artifacts will be respectful.
- v. An expected timetable for excavation, osteological analysis, preparation of final report and final disposition of remains.
- vi. A statement of the goals and objectives of the removal (to include both excavation and osteological analysis).
- vii. If a disposition other than reburial is proposed, a statement of justification.
- c. VA shall work with the Lessor to treat all human remains in a manner consistent with ACHP's "Policy Statement Regarding Treatment of Burial Sites, Human Remains and Funerary Objects" (February 2007).

VIII. DISPUTE RESOLUTION

- a. Should any party to this PA object in writing to the implementation of any stipulation(s) of this PA, VA shall notify the SHPO of the objection and consult with that party or parties to resolve the objection. If VA determines that the objection cannot be resolved, VA shall:
 - i. Forward all documentation relevant to the dispute, including VA's proposed resolution, to the ACHP. The ACHP shall provide VA 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, VA 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 response. VA will then proceed according to its final decision.
 - ii. If the ACHP does not provide its advice regarding the dispute within thirty (30) days, VA may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, VA shall prepare a written response which 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 with its final decision.
- b. VA's responsibility to carry out all actions under this PA that are not the subject of the dispute shall remain unchanged.
- c. Should a member of the public object in writing to VA regarding the manner in which the measures stipulated in this PA are being implemented, VA shall notify the SHPO, ACHP, and other consulting parties, and consider the views of the member(s) of the public making such objection in accordance with 36 CFR § 800.2(d).

IX. AMENDMENTS

- a. Either Signatory to this PA may propose that it be amended, whereupon the Signatories 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 with all signatures is filed with the ACHP.

X. TERMINATION

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

- 252 b. The party proposing termination shall so notify the other Signatory to this PA explaining
253 the reasons for termination and affording at least thirty (30) days to consult and seek an
254 alternative to termination.
255 c. Should such consultation fail, and the PA is terminated, VA shall either consult to
256 develop a new agreement, in accordance 36 CFR § 800.6, or request the comments of the
257 ACHP, under 36 CFR § 800.7(a).

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259 **EXECUTION AND IMPLEMENTATION** of this PA and implementation of its terms evidence that
260 VA has taken into account the effects of this undertaking on historic properties and afforded the ACHP an
261 opportunity to comment.

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REGARDING
A NEW HEALTH CARE CENTER
GREATER FREDERICKSBURG, VIRGINIA**

SIGNATORY:
U.S. Department of Veterans Affairs Central Virginia Health Care System

J. Ronald Johnson, FACHE
Director

Date

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SIGNATORY:
Virginia State Historic Preservation Officer



Julie V. Langan
Director, Department of Historic Resources



Date