MEMORANDUM OF AGREEMENT

AMONG

[PERMITTEE]

AND

THE VIRGINIA STATE HISTORIC PRESERVATION OFFICE

AND

THE NORFOLK DISTRICT, CORPS OF ENGINEERS

DATE

# 

**WHEREAS**, [Name of Permittee] (the “Permittee”) proposes to [brief description of project] to collectively be known as [project title] located in [city/county], Virginia (the Undertaking) under the Department of Historic Resources (DHR) project review number 20XX-XXXX; and

**WHEREAS**, pursuant to Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act (*if applicable*), a permit from the U.S. Army Corps of Engineers, Norfolk District (Corps) is required for permanent and temporary impacts to [list acreage of permanent and temporary impacts to waters and wetlands as defined by the Corps] to construct the Undertaking project NAO- 20XX-XXXX; and

**WHEREAS**, pursuant to 36 CFR Part 800 (regulations implementing Section 106 of the National Historic Preservation Act of 1966 (NHPA), as amended (54 U.S.C. § 306108)), and 33 CFR Part 325, Appendix C (“Processing of Department of the Army Permits: Procedures for Protection of Historic Places”), the Corps is required to take into account the effects of federally permitted undertakings on properties included in or eligible for inclusion in the National Register of Historic Places (NRHP) prior to the issuance of a permit for an undertaking and to consult with the Virginia State Historic Preservation Office (SHPO), which in Virginia is DHR; and

**WHEREAS,** the Corps, in consultation with the SHPO, has determined that the Area of Potential Effects (APE) (Corps Permit Area) for this project is [written description preferred- be sure to include both direct and indirect effects] as shown on attached Permit Area/Area of Potential Effects Map (Attachment A); and

**WHEREAS**, the Permittee has completed the identification of historic properties, and the Corps, in consultation with the SHPO, finds that both the Phase I identification survey entitled *XXXXXXXX* (author, date)and the Phase II evaluation study titled (*XXXXX* (author, date) meet 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 (2017)*; and

**WHEREAS**, the Corps, in consultation with the SHPO and other consulting parties, has determined that [list all pertinent sites/structures/districts/battlefields, including the appropriate inventory number(s)] as depicted on the attached map (Attachment B) are [listed on or eligible for inclusion] in the NRHP; and

WHEREAS, the Corps has determined that the Undertaking will have an adverse effect on [list pertinent sites/structures/districts/battlefields, including inventory numbers]; and

WHEREAS, the Corps issued a public notice on DATE, to allow public comments and no comments were received; and

**WHEREAS**, the Corps has invited the participation of the Advisory Council on Historic Preservation (ACHP) in this consultation, and the ACHP has [elected/declined] to participate; and

**WHEREAS**, the Corps has invited the [list appropriate Federally recognized Indian Tribe(s)] to participate in this consultation and to sign this Memorandum of Agreement (Agreement) as a concurring party, and the [tribe(s)] [has/have] [elected/declined] to participate; and

**WHEREAS**, the Corps has invited the Permittee to participate in this consultation and to sign this Agreement as an invited signatory and the Permittee has [elected/declined] to participate; and

**WHEREAS**, the Corps has invited the appropriate Virginia tribe(s)] to participate in this consultation, and to sign this Agreement as a concurring party and the [tribe(s)] has/have [elected/declined] to participate; and

**WHEREAS**, the Corps has invited the [list local government(s)] to participate in this consultation and to sign this Agreement as a concurring party; and

**WHEREAS**, the Corps has consulted with [CONSULTING PARTY NAMES) regarding the effects of the Project on historic properties and invited them to sign this Agreement as a concurring party.

**NOW THEREFORE**, in order to satisfy the Corps’ Section 106 responsibilities to take into account the effects of the Undertaking requiring Corps permits on historic properties, the Corps and the SHPO agree that the Corps may issue a permit to the Permittee for the Undertaking and such permit will require compliance with this Agreement as a permit condition; thereby effectively incorporating all terms, provisions and stipulations of this Agreement as conditions to the permit such that if any provision or stipulation herein is not fulfilled, such failure will constitute noncompliance with the permit, and the Corps may pursue enforcement and may seek all available remedies.

The Corps, in coordination with the Permittee, shall ensure the implementation of the following stipulations:

STIPULATIONS

*REGULATORY STAFF: INSERT PROJECT\_SPECIFIC STIPULATIONS- SEE SOP FOR “SECTION 106 MOA EXAMPLE LANGUAGE FOR STIPULATIONS I AND II ARCHEOLOGICAL AND ARCHITECTURAL PROPERTIES”*

1. TREATMENT OF ARCHEOLOGICAL SITES

**II. TREATMENT OF ARCHITECTURAL PROPERTIES AND/OR HISTORIC LANDSCAPES**

**III. REPORTING REQUIREMENTS**

1. Upon the completion of all stipulations to this Agreement, the Permittee shall provide to the Corps, the SHPO and other consulting parties a signed memorandum documenting that the Permittee has fulfilled all its responsibilities under this Agreement.
2. The Corps, the SHPO, LOCALITY and other consulting parties shall provide the Permittee with concurring and/or objecting opinions within fifteen (15) days of receipt of a signed memorandum documenting that the Permittee has fulfilled all its responsibilities under this Agreement. Any objections will be addresses through the Dispute Resolution process outlined in Stipulation ROMAN NUMERAL.
3. Should any party fail to provide an opinion within fifteen (15) day comment period, the Permittee may assume that the non-objecting party has no objections and that all responsibilities under the Agreement have been fulfilled.

## IV. PROFESSIONAL QUALIFICATIONS

All archaeological and/or architectural work carried out pursuant to this Agreement will be conducted by or under the direct supervision of an individual or individuals who meets, at a minimum, the Secretary of the Interior's *Professional Qualifications Standards* (48 FR 44738-9, September 29, 1983) in the appropriate discipline.

### V. PREPARATION AND REVIEW OF DOCUMENTS

1. Except as otherwise stated elsewhere in the stipulations, the Permittee shall submit a draft of all technical reports, treatment plans and other documentation to the Corps (one (1) copy) and the SHPO (one (1) hard copy and one (1) electronic copy in Adobe® Portable Document Format (.pdf)) and to other consulting parties (one (1) Copy) for thirty (30)-day review and comment. The Permittee shall address all comments received within thirty (30) days of confirmed receipt in the revised technical report/documentation. Following written approval by the Corps, the Permittee shall provide one (1) copy of all final reports, bound and on acid-free paper, and one (1) electronic copy in Adobe® Portable Document Format (.pdf) to the SHPO and one (1) copy (.pdf or hardcopy) to the Corps, and one copy to other consulting parties in the format of their choosing.
2. All technical reports prepared pursuant to this Agreement will be consistent with the federal standards titled *Archeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines* (48 FR 44716-44742, September 29, 1983) and the SHPO’s *Guidelines for Conducting Historic Resources Survey in Virginia* (2017), or any subsequent revisions or replacements of these documents.
3. All architectural and landscape studies resulting from this agreement will be consistent with pertinent standards and guidelines of the Secretary of the Interior, including as applicable the Secretary's Standards and Guidelines for Historical Documentation (48 FR 44728-30) and for Architectural and Engineering Documentation (48 FR 44730-34).
4. The SHPO and other consulting parties agree to provide comments on all technical reports, treatment plans, and other documentation arising from this Agreement within thirty (30) calendar days of receipt. If no comments are received from the SHPO or other consulting parties within the thirty (30) day review period, the Permittee may assume the non-responding party(ies) has no comments.

**VI. CURATION**

Within thirty (30) days of approval by the Corps and the SHPO of the final technical report, the Permittee shall deposit all archaeological materials and appropriate field and research notes, maps, drawing and photographic records collected as a result of archaeological investigations arising from this Agreement (with the exception of human skeletal remains and associated funerary objects) for permanent curation with the [NAME of the repository], a repository which meets the requirements in 36 CFR 79, *Curation of Federally Owned and Administered Archeological Collections*. The Permittee shall provide the Corps with a copy of the curation agreement as evidence of its compliance with this stipulation. All such items will be made available to educational institutions and individual scholars for appropriate exhibit and/or research under the operating policies of the selected repository.

*OR*

*Curation at VDHR*:

Within thirty (30) days of approval by the Corps and the SHPO of the final technical report, the Permittee shall deposit all archaeological materials and appropriate field and research notes, maps, drawings and photographic records collected as a result of archeological investigations arising from this Agreement (with the exception of human skeletal remains and associated funerary objects) for permanent curation with the SHPO which meets the requirements in 36 CFR 79, *Curation of Federally Owned and Administered Archeological Collections*. The Permittee shall provide the Corps with a copy of the curation agreement as evidence of its compliance with this stipulation. All such items will be made available to educational institutions and individual scholars for appropriate exhibit and/or research under the operating policies of the SHPO.

**VII. POST-REVIEW DISCOVERIES**

a. The Permittee shall ensure that the following provision is included in all construction contracts: “If previously unidentified historic properties or unanticipated effects to historic properties are discovered during construction, the construction contractor will immediately halt all activity within a one hundred (100) foot radius of the discovery, notify the [NAME of Permittee] of the discovery and implement interim measures to protect the discovery from looting and vandalism.”

b. Immediately upon receipt of a notification required by the contract provision described in *Stipulation VII.a. (update the referenced Stipulation Number if necessary),* the Permittee shall:

1. inspect the construction site to determine the extent of the discovery and ensure that construction activities have halted;
2. clearly mark the area of the discovery;
3. implement additional measures, as appropriate, to minimize risk to the discovery from looting and vandalism;
4. have a professional archeologist inspect the construction site to determine the extent of the discovery and provide recommendations regarding its NRHP eligibility and treatment; and
5. notify the Corps, the SHPO and other consulting parties of the discovery and describe the measures that have been implemented to comply with this Stipulation.

c. Upon receipt of the information required in *Stipulation VII.b.5*., (*update as needed*), the Corps shall provide the Permittee, the SHPO and other consulting parties with its assessment of the NRHP eligibility of the discovery and effect recommendation. In making its evaluation, the Corps, in consultation with the SHPO, may assume the discovery to be NRHP eligible for the purposes of Section 106 pursuant to 36 CFR § 800.13(c). The Permittee, the SHPO and other consulting parties shall respond to the Corps’ assessment within forty-eight (48) hours of receipt***.***

d. The Corps shall take into account the SHPO’s and other consulting parties’ on the discovery’s NRHP eligibility and the assessment of effect and determine which actions, if any, are appropriate for the Permittee to take with regard to the discovery. The Corps shall notify and provide documentation to the Permittee regarding any such appropriate actions that are required. The Permittee must comply with the required actions and provide the Corps and consulting parties with a report on the actions when implemented.

e. Once the Corps has determined that implementation of the actions undertaken to address the discovery pursuant to *Stipulation VI* *d*. (*update the referenced Stipulation Number if necessary*) are complete, construction activities may proceed in the area of discovery.

## VIII. HUMAN REMAINS

## The Permittee shall make all reasonable efforts to avoid disturbing gravesites, including those containing Native American human remains and associated funerary artifacts. The Permittee shall treat all human remains in a manner consistent with the ACHP’s *Policy Statement Regarding Treatment of Burial Sites, Human Remains and Funerary Objects* (March 1, 2023; <https://www.achp.gov/treatment-burial-sites>).

## If removal is proposed, the Permittee shall apply for a permit from the SHPO for the removal of human remains in accordance with the regulations noted below. The Permittee shall ensure that any removed human skeletal remains and associated funerary objects encountered during the course of actions taken as a result of this Agreement will be treated in accordance with the Regulations Governing Permits for the Archaeological Removal of Human Remains (Virginia Register 390-01-02) found in the *Code of Virginia* (10.1-2305, et seq., Virginia Antiquities Act).

1. The Permittee shall make a good faith effort to ensure that the general public is excluded from viewing any Native American burial site or associated funerary artifacts. The consulting parties to this Agreement shall release no photographs of any Native American burial site or associated funerary artifacts to the press or general public. The Corps shall notify the appropriate Federally-recognized Tribe(s), and/or appropriate tribal leaders when Native American burials, human skeletal remains, or funerary artifacts are encountered on the project, prior to any analysis or recovery. The Permittee shall deliver any removed Native American human skeletal remains and associated funerary artifacts recovered pursuant to this Agreement to the appropriate tribe to be reinterred. The disposition of any other human skeletal remains and associated funerary artifacts will be governed as specified in any permit issued by the SHPO or any order of the local court authorizing their removal. The Permittee will be responsible for all reasonable costs associated with treatment of human remains and associated funerary objects.

## IX. DISPUTE RESOLUTION

1. Should any party to this Agreement object in writing to the Corps regarding any action carried out or proposed with respect to any undertakings covered by this Agreement or to implementation of this Agreement, the Corps will consult with the objecting party to resolve the objection.
2. If after initiating such consultation, the Corps determines that the objection cannot be resolved through consultation, the Corps shall forward all documentation relevant to the objection to the ACHP, including the proposed response to the objection.
3. Within thirty (30) days after receipt of all pertinent documentation, the ACHP shall exercise one (1) of the following options:

1. Advise the Corps that the ACHP concurs with the Corps’ proposed response to the objection, whereupon the Corps will respond to the objection accordingly; or

2. Provide the Corps with recommendations, which the Corps shall take into account in reaching a final decision regarding its response to the objection; or

* 1. Notify the Corps 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 Corps shall take the resulting comment into account in accordance with 36 CFR 800.7(c)(4) and Section 110(l) of the NHPA.

1. Should the ACHP not exercise one of the above options within thirty (30) days after receipt of all pertinent documentation, the Corps may assume the ACHP’s concurrence in its proposed response to the objection.
2. The Corps 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 Corps’ responsibility to carry out the actions under this Agreement, for which it is otherwise responsible, and that are not the subjects of the objections, will remain unchanged.
3. At any time during implementation of the measures stipulated in this Agreement, should an objection pertaining to this Agreement be raised by a member of the public, the Corps 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 consider the objection.

**X. AMENDMENTS AND TERMINATION**

a. Any signatory party to this Agreement may propose to the Corps that the Agreement be amended, whereupon the Corps will consult with the other parties to this Agreement to consider such an amendment. All signatories to the Agreement must agree to the proposed amendment in accordance with 800.6(c)(7).

1. If the Permittee decides it will not proceed with the Undertaking, it shall so notify the Corps, the SHPO, and the other consulting parties and this Agreement will become null and void.
2. If the Permittee determines that it cannot implement the terms of this Agreement, or if the Corps or SHPO determines that the Agreement is not being properly implemented, the Permittee, the Corps, or the SHPO may propose to the other parties to this Agreement that it be amended or terminated.
3. This Agreement may be terminated by any signatory to the Agreement in accordance with the procedures described in 36 CFR §800.6(c)(8). Termination will include the submission of a technical report or other documentation by the Permittee on any work done up to and including the date of termination. If the Corps is unable to execute another Agreement following termination, the Corps may choose to modify, suspend, or revoke the Department of the Army permit as provided by 33 §CFR 325.7.

**XI. COORDINATION WITH OTHER FEDERAL REVIEWS**

In the event that the [Name of Permittee] or other agency applies for additional federal funding or approvals for the [undertaking] and the undertaking remains unchanged, such funding or approving agency may comply with Section 106 by agreeing in writing to the terms of this [MOA or PA] and notifying and consulting with SHPO and ACHP. Any necessary modifications will be considered in accordance with Stipulation X (*update the referenced Stipulation Number if necessary*), Amendments.

**XII. DURATION OF AGREEMENT**

This Agreement will continue in full force and effect until five (5) years after the date of the last signatory party signature. The Permittee shall fulfill the requirements of this Agreement prior to and in conjunction with the work authorized by the Department of the Army permit. All obligations under this Agreement must be complete before expiration of this Agreement. At any time in the six-month period prior to expiration of this Agreement, the Corps may request the signatory parties to consider an extension or modification of this Agreement. No extension or modification will be effective unless all parties to the Agreement have agreed to it in writing.

**XIII.** **MISCELLANEOUS PROVISIONS**

1. This Agreement will be effective on the date it has been signed by all signatory parties.
2. This Agreement may be executed in counterparts, with a separate page for each signatory. The Corps will ensure that each signatory party is provided with a copy of the fully executed Agreement.
3. Execution of this Agreement by the Corps and the SHPO and its submission to the ACHP in accordance with 36 CFR 800.6(b)(1)(iv), will, pursuant to 36 CFR 800.6(c), be considered to be an agreement pursuant to the regulations issued by the ACHP for the purposes of Section 110(l) of the NHPA.
4. Execution and submission of this Agreement, and implementation of its terms, evidence that the Corps has afforded the ACHP an opportunity to comment on the Undertaking and its effect on historic properties and that the Corps has taken into account the effect of the Undertaking on historic properties.
5. Compliance with the terms and provisions of this Agreement will be required as a condition to the permit which the Corps may issue to the Permittee for the Project. Failure by the Permittee to comply with such terms and provisions will constitute a violation of the permit, and the Corps may seek all available remedies for such violations, including enforcement. Failure by the Corps to pursue any such violation is NOT a waiver of the Corps’ right or authority to do so in the future.

.

**SIGNATURES**

SIGNATORY:

PERMITTEE

By**:**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

NAME OF PERMITTEE

SIGNATORY:

NORFOLK DISTRICT, U. S. ARMY CORPS OF ENGINEERS

By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

William T. Walker

Chief, Regulatory Branch

SIGNATORY:

VIRGINIA STATE HISTORIC PRESERVATION OFFICER

By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Julie V. Langan

Director, Department of

Historic Resources

*If participating:*

SIGNATORY:

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

???????????????????

INVITED SIGNATORY:

?????????????

By**:**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

???????????????????????

CONCURRING PARTY:

By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

CONSULTING PARTY