



CITY OF POQUOSON

FINANCE DEPARTMENT

500 CITY HALL AVENUE, POQUOSON, VIRGINIA 23662-1996

March 28, 2016

TO: City Council

THROUGH: Randy Wheeler, City Manager

FROM: Theresa Owens, Director of Finance

SUBJECT: Memorandum of Agreement-Enhancement Grant Tom Hunt Store

In 2005 the City applied for and received on behalf of the Poquoson Museum a Federal Enhancement Grant through the Virginia Department of Transportation to move the donated Tom Hunt Store to the Museum Property.

There have been many setbacks on the project including the original consultant abandoning the project and numerous personnel changes at the Virginia Department of Transportation (VDOT).

Over the last year the City and the Museum have made progress towards the ultimate goal of moving the store to the Museum property for it to be refurbished and open to the public for viewing.

The Tom Hunt Store is considered eligible for the National Historic Registry. As such, the grant requires certain regulations to be adhered to in order for the City to be in compliance with the grant. One of those is to come up with a mitigation plan if the result of the review by the State Historic Preservation Department determines that the project will have an adverse effect on the historic building. They have determined that moving the building will have an adverse effect.

Therefore the Museum, City, VDOT, the Federal Highway Administration and Virginia State Historic Preservation Officer must enter into a Memorandum of Agreement outlining the mitigation plan.

The mitigation requirements are for the City and Museum to implement the relocation and stabilization of the Tom Hunt Store in accordance with plans designed to the Secretary of the Interior Standards for Rehabilitation and that the City and Museum prepare a DHR Preliminary Inventory Form and submit it to State Historic Preservation Officer for review and approval within twelve months of the completion of the relocation of the Store. The agreement has been reviewed by all agencies and approved by the Museum. It also requires the City's approval.

Attached for consideration is a resolution approving the Memorandum of Agreement for the mitigation of the adverse effects to historic properties on the Tom Hunt Store.

RESOLUTION NO. _____

**A RESOLUTION APPROVING THE MEMORANDUM OF AGREEMENT
AMONG THE FEDERAL HIGHWAY ADMINISTRATION,
THE VIRGINIA STATE HISTORIC PRESERVATION OFFICER,
THE CITY OF POQUOSON,
THE POQUOSON HISTORIC AND CULTURAL MUSEUM FOUNDATION, AND
THE VIRGINIA DEPARTMENT OF TRANSPORTATION REGARDING THE
RELOCATION AND STABILIZATION OF
THE TOM HUNT'S STORE,
CITY OF POQUOSON, VIRGINIA**

WHEREAS, the Poquoson Historic and Cultural Museum Foundation (Museum) proposes to relocate and stabilize the Tom Hunt's Store (Virginia Department of Historic Resources (DHR) Inventory No. 147-5001), located in the City of Poquoson (Virginia Department of Transportation (VDOT) Project No. EN04-147-122, P101, C501, UPC 75267; DHR File No. 2007-1581; hereinafter referred to as the Project); and

WHEREAS, the Museum anticipates receiving federal financial assistance for the Project from the Federal Highway Administration (FHWA) through the FHWA's Transportation Enhancement program, administered in the Commonwealth of Virginia by the VDOT; and

WHEREAS, the Project is being administered by the City of Poquoson (City), on behalf of the Museum, pursuant to a Project Administration Agreement executed between the City and the VDOT's Commissioner of Highways; and

WHEREAS, FHWA, with assistance from the City, has consulted with the Virginia State Historic Preservation Officer (SHPO) on the Project, pursuant to Section 106 of the National Historic Preservation Act (54 U.S.C. 306108), including the initiation of the Section 106 process, identification of historic properties, and assessment of adverse effects; and

WHEREAS, FHWA, with assistance from the City and in consultation with the SHPO, has defined the Project's Area of Potential Effects (APE) in accordance with 36 CFR 800.4(a)(1); and

WHEREAS, FHWA, with assistance from the City and in consultation with the SHPO, has determined that the Project will have an adverse effect on the Tom Hunt's Store; and

WHEREAS, FHWA, with assistance from the City, has consulted with the SHPO to resolve the adverse effects of the Project on historic properties, in accordance with Section 106 of the National Historic Preservation Act, 54 U.S.C § 306108, and its implementing regulations, 36 CFR Part 800.6(b)(1); and

WHEREAS, the City, the Museum and, as administrator of the FHWA's Transportation Enhancement program in the Commonwealth of Virginia, VDOT have participated in the

consultation process pursuant to 36 CFR 800.2(c)(4) and has responsibility for implementing stipulations under this Memorandum of Agreement (Agreement) and the FHWA has invited the City, the Museum and VDOT to be a signatory to the Agreement pursuant to 36 CFR 800.6(c)(2)(iii); and,

WHEREAS, the FHWA, the SHPO, the City, the Museum, and the VDOT agree that the Project shall be implemented in accordance with the following stipulations in order to take into account the effects of the Project on historic properties:

The City and the Museum shall implement the relocation and stabilization of the Tom Hunt's Store in accordance with plans designed to meet the *Secretary of the Interior's Standards for Rehabilitation* (36 CFR Part 67) (*Standards*). Pursuant to the requirements of Stipulation V.B of this Agreement, the City and the Museum shall submit preliminary and final plans to the SHPO for review and concurrence that the plans are consistent with the *Standards*. The City and the Museum shall provide the FHWA and the VDOT documentation of all communications with the SHPO related to the completion of this stipulation prior to the initiation of the relocation and stabilization.

The City and the Museum shall prepare a DHR Preliminary Inventory Form (PIF) for the Tom Hunt's Store and shall submit the PIF to the SHPO for review and approval for completeness within twelve (12) months of the completion of the relocation of the Tom Hunt's Store.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Poquoson, Virginia:

Section 1: That the City Manager is hereby authorized to do all things necessary to enter into a Memorandum of Agreement with The Federal Highway Administration, The Virginia State Historic Preservation Officer, The Poquoson Historic And Cultural Museum Foundation, and the Virginia Department Of Transportation regarding the relocation and stabilization of The Tom Hunt's Store.

Section 2: That this resolution shall become effective immediately upon adoption.

ADOPTED: _____

TESTE: _____

City Clerk

**MEMORANDUM OF AGREEMENT
AMONG THE FEDERAL HIGHWAY ADMINISTRATION,
THE VIRGINIA STATE HISTORIC PRESERVATION OFFICER,
THE CITY OF POQUOSON,
THE POQUOSON HISTORICAL AND CULTURAL MUSEUM FOUNDATION, AND
THE VIRGINIA DEPARTMENT OF TRANSPORTATION REGARDING THE
RELOCATION AND STABILIZATION OF
THE TOM HUNT'S STORE,
CITY OF POQUOSON, VIRGINIA**

WHEREAS, the Poquoson Historical and Cultural Museum Foundation (Museum) proposes to relocate and stabilize the Tom Hunt's Store (DHR Inventory No. 147-5001), located in the City of Poquoson (VDOT Project No. EN04-147-122, P101, C501, UPC 75267; DHR File No. 2007-1581; hereinafter referred to as the Project) (Attachment A – Location Map); and

WHEREAS, the Museum anticipates receiving federal financial assistance for the Project from the Federal Highway Administration (FHWA) through the FHWA's Transportation Enhancement program, administered in the Commonwealth of Virginia by the Virginia Department of Transportation (VDOT); and

WHEREAS, the FHWA has determined that the provision of financial assistance for the Project is an undertaking as defined in 36 CFR 800.16(y); and

WHEREAS, the Project is being administered by the City of Poquoson (City), on behalf of the Museum, pursuant to a Project Administration Agreement executed between the City and the VDOT's Commissioner of Highways; and

WHEREAS, the FHWA has authorized the VDOT to conduct consultation with the Virginia State Historic Preservation Officer (SHPO) for the Project on its behalf pursuant to Section 106 of the National Historic Preservation Act (16 U.S.C. 470), including the initiation of the Section 106 process, identification of historic properties, and assessment of adverse effects; and

WHEREAS, VDOT, with assistance from the City, has consulted with the Virginia State Historic Preservation Officer (SHPO) on the Project, pursuant to Section 106 of the National Historic Preservation Act (54 U.S.C. 306108), including the initiation of the Section 106 process, identification of historic properties, and assessment of adverse effects; and

WHEREAS, VDOT, with assistance from the City and in consultation with the SHPO, has defined the Project's Area of Potential Effects (APE) in accordance with 36 CFR 800.4(a)(1), as the area depicted on the map in Appendix A; and

WHEREAS, VDOT, with assistance from the City and in consultation with the SHPO, has completed an archaeological survey and a cultural resources survey to identify historic properties within the APE and conveyed to the SHPO its findings in an archaeological report titled "Dryden Farm, Poquoson Archaeological Testing at the Proposed Site for Relocation of the Tom Hunt

Store” (October 2005) and a cultural resources report titled “ Phase I Cultural Resources Survey of +/- 0.27 Acre Parcel, Tom Hunt’s Store (147-5001) Relocation Project, Poquoson, Virginia” (November 2008) and has determined that the Tom Hunt’s Store (147-5001) is eligible for the National Register of Historic Places (NRHP) under Criteria A and C; and

WHEREAS, VDOT, on behalf of FHWA, with assistance from the City, and in consultation with the SHPO, has determined that the Project will have an adverse effect on the Tom Hunt’s Store; and

WHEREAS, FHWA, with assistance from the City, has consulted with the SHPO to resolve the adverse effects of the Project on historic properties, in accordance with Section 106 of the National Historic Preservation Act, 54 U.S.C § 306108, and its implementing regulations, 36 CFR Part 800.6(b)(1); and

WHEREAS, FHWA has notified the Advisory Council on Historic Preservation (ACHP) by letter dated December 3, 2015, of the adverse effect of the Project pursuant to 36 CFR Part 800.6(a)(1) and the ACHP has chosen not to participate in consultation by letter dated December 9, 2015; and

WHEREAS, of the 18 federally recognized tribes that FHWA has previously determined may have an interest in historic resource issues associated with transportation projects in Virginia, only three – the Eastern Shawnee Tribe, the United Keetoowah Band of Cherokee Indians in Oklahoma, and the Delaware Nation – responded to FHWA’s invitation in 2008 and 2012 to participate in consultation with FHWA on the administration of transportation projects in Virginia subject to Section 106. The location of the Project is not within the geographic areas of interest to the Eastern Shawnee Tribe and the United Keetoowah Band of Cherokee Indians in Oklahoma; and

WHEREAS, the City has participated in the consultation process pursuant to 36 CFR 800.2(c)(4) and has responsibility for implementing stipulations under this Memorandum of Agreement (Agreement) and the FHWA has invited the City to be a signatory to this Agreement pursuant to 36 CFR 800.6(c)(2)(iii); and

WHEREAS, the Museum has participated in the consultation process pursuant to 36 CFR 800.2(c)(4) and has responsibility for implementing stipulations under this Agreement, and the FHWA has invited the Museum to be a signatory to this Agreement pursuant to 36 CFR 800.6(c)(2)(iii); and

WHEREAS, as administrator of the FHWA’s Transportation Enhancement program in the Commonwealth of Virginia, the VDOT has participated in this consultation, pursuant to 36 CFR Part 800.2(c)(4) and the FHWA has invited the VDOT to be a signatory to this Agreement pursuant to 36 CFR Part 800.6(c)(2)(iii); and

WHEREAS, VDOT, with the assistance of the City, invited Charles and Georgia McDaniel, by letter dated September 18, 2015, to participate as consulting parties on the Project, pursuant to 36

CFR 800.2(c)(5), and to sign this Agreement as concurring parties, and Charles and Georgia McDaniel have declined the opportunity to participate by letter received on October 6, 2015.

NOW, THEREFORE, the FHWA, the SHPO, the City, the Museum, and the VDOT agree that the Project shall be implemented in accordance with the following stipulations in order to take into account the effects of the Project on historic properties.

STIPULATIONS

The FHWA shall ensure that the following stipulations are implemented:

I. Treatment of the Tom Hunt's Store (DHR Inventory No. 147-5001)

- A. The City and the Museum shall implement the relocation and stabilization of the Tom Hunt's Store in accordance with plans designed to meet the *Secretary of the Interior's Standards for Rehabilitation* (36 CFR Part 67) (*Standards*). Pursuant to the requirements of Stipulation V.B of this Agreement, the City and the Museum shall submit preliminary and final plans to the SHPO for review and concurrence that the plans are consistent with the *Standards*. The City and the Museum shall provide the FHWA and the VDOT documentation of all communications with the SHPO related to the completion of this stipulation prior to the initiation of the relocation and stabilization of the Tom Hunt's Store.
- B. The City and the Museum shall prepare a DHR Preliminary Inventory Form (PIF) for the Tom Hunt's Store and shall submit the PIF to the SHPO for review and approval within twelve (12) months of the completion of the relocation of the Tom Hunt's Store. The City and the Museum shall comply with requests for additional information either from the Virginia Department of Historic Resources (DHR) or DHR's Board. Once the PIF has been formally evaluated by the DHR National Register Evaluation Committee and/or DHR's Board, the City and the Museum may decide whether to pursue a National Register Nomination.

II. Post-Review Discoveries

A. In the event that a previously unidentified archaeological resource is discovered during ground-disturbing activities associated with construction of the Project, the City and the Museum shall require the construction contractor to halt all construction work involving subsurface disturbance in the area of the resource and in surrounding areas where additional subsurface remains can reasonably be expected to occur. Work in all other areas of the Project may continue.

B. The City and the Museum shall notify the FHWA and the VDOT of the archaeological discovery within one (1) working day of its discovery, and shall notify the SHPO within two (2) working days of the discovery. In the case of prehistoric or historic Native American sites, the FHWA shall notify appropriate federally recognized Indian tribes with interest in the area within two (2) working days. The VDOT shall also notify appropriate Indian tribes recognized by the

Commonwealth of Virginia (hereinafter "Virginia Indian tribes") within two (2) working days of the discovery.

C. The City and the Museum 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, and the City and the Museum shall then forward to the FHWA, the VDOT, the SHPO, appropriate federal Indian tribes, and appropriate Virginia Indian tribes an assessment of the eligibility of the resource for listing on the NRHP, in reference to the criteria described at 36 CFR 60.4, and proposed treatment actions to resolve any adverse effects on the resource. The SHPO, appropriate federal Indian tribes, and appropriate Virginia Indian tribes shall respond within five (5) working days of receipt of the City and the Museum's assessment of NRHP eligibility of the resource and proposed action plan. The City and the Museum, in consultation with the FHWA and the VDOT, shall take into account the recommendations of the SHPO, appropriate federal Indian tribes, and appropriate Virginia Indian tribes regarding NRHP eligibility of the resource and proposed action plan, and then carry out the appropriate actions.

D. The City and the Museum shall ensure that construction work within the affected area does not proceed until the appropriate treatment measures are developed and implemented or the determination is made that the located resource is not eligible for inclusion on the NRHP. Prior to authorizing construction work to proceed in the affected area, the City and the Museum shall provide written documentation to the SHPO, FHWA, and the VDOT in writing that one or the other of these requirements have been met.

III. Treatment of Human Remains

A. The City and the Museum shall treat all human remains in a manner consistent with the ACHP "Policy Statement Regarding Treatment of Burial Sites, Human Remains and Funerary Objects" (February 23, 2007: <http://www.achp.gov/docs/hrpolicy0207.pdf>).

B. Human remains and associated funerary objects encountered during the course of actions taken as a result of this Agreement shall be treated in a manner consistent with the provisions of the Virginia Antiquities Act, Section 10.1-2305 of the *Code of Virginia* and its implementing regulations, 17 VACS-20, adopted by the Virginia Board of Historic Resources and published in the Virginia Register on July 15, 1991, and the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001) and its implementing regulations, 36 CFR Part 10. In accordance with the regulations stated above, the City and the Museum may obtain a permit from the SHPO for the archaeological removal of human remains should removal be necessary.

C. In the event that the human remains encountered are likely to be of Native American origin, whether prehistoric or historic, the FHWA shall immediately notify the appropriate federal Indian tribes and appropriate leaders of Virginia Indian tribes. The FHWA shall determine the treatment of Native American human remains and associated funerary objects in consultation with the appropriate federal tribes and leaders of Virginia Indian tribes.

D. The City and the Museum shall make all reasonable efforts to ensure that the general public is excluded from viewing any Native American gravesites and associated funerary objects. The

signatories to this Agreement shall release no photographs of any Native American gravesites or associated funerary objects to the press or to the general public.

IV. Professional Qualifications

All archaeological and architectural studies or treatment actions 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 Standards* (48 FR 44738-9, September 29, 1983) in the appropriate discipline.

V. Preparation and Review of Documents

A. All archaeological studies, technical reports, and treatment plans prepared pursuant to this Agreement shall be consistent with the federal standards entitled *Archaeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines* (48 FR 44716-44742, September 19, 1983), the SHPO's *Guidelines for Conducting Historic Resources Survey in Virginia* (October 2011), and the ACHP's *Recommended Approach for Consultation on Recovery of Significant Information from Archaeological Sites* (1999) or subsequent revisions or replacements to these documents.

B. The Signatories and consulting parties to this Agreement agree to provide comments to the City and the Museum on all plans, technical materials, findings, and other documentation arising from this Agreement within thirty (30) calendar days of receipt. If no comments are received from a Signatory or consulting party to this Agreement within the thirty (30)-calendar-days review period, the City and the Museum may assume that the Signatory has no comment. The City and the Museum shall ensure that all comments received in writing within thirty (30) calendar days of receipt are addressed in the final documentation.

C. The City and the Museum shall provide the SHPO three copies (two hard copies and one in Adobe Acrobat format (PDF) on compact disk) and the VDOT two copies (one hard copy and one in Adobe Acrobat format (PDF) on compact disk) of all final reports prepared pursuant to this Agreement. The City and the Museum shall also provide any other Signatory to the Agreement a copy of any final report (in hard copy or Adobe Acrobat format, as requested) if so requested by that party. Such requests must be received by the City and the Museum in writing prior to the completion of construction of the Project.

VI. Curation Standards

A. The City and the Museum shall ensure that all original archaeological records (research notes, field records, maps, drawings, and photographic images) produced as a result of implementing the Stipulations in this Agreement and any archaeological collections recovered from City of Museum property as a result of implementing the Stipulations of this Agreement are provided to the SHPO for permanent curation. In exchange for its standard collections management fee as published in the *Virginia Department of Historic Resources State Collections Management Standards* (June 26, 2009), or subsequent revisions or replacements to that document, the SHPO

agrees to maintain such records and collections in accordance with 36 CFR 79, *Curation of Federally Owned and Administered Archaeological Collections*.

B. The City and the Museum shall return to individual property owners any archaeological artifact collections recovered from their property as a result of implementing the Stipulations in this Agreement, unless the City and the Museum and the private property owner(s) have reached agreement on an alternative arrangement. If the private property owner(s) donates the artifact collections to the DHR by executing a donation agreement for the collection with the DHR within ninety (90) days of receipt of written notification from the City and the Museum of their intent to return the collections to the private property owners, the City and the Museum shall assume responsibility for payment of DHR's standard collections curation fee for the donated artifact collection. This collections curation fee shall be considered a Project expense eligible for reimbursement through the FHWA's Transportation Enhancement program.

VII. Dispute Resolution

A. Objections by Signatory Party

Should any signatory party to this Agreement object in writing to the FHWA regarding any plans provided for review pursuant to this Agreement, or should any signatory party to this Agreement object in writing to the FHWA regarding the manner in which measures stipulated in this Agreement are being implemented, the FHWA shall first consult with the objecting party to resolve the objection. If the FHWA determines that the objection cannot be resolved through such consultation, the FHWA shall then consult with all of the signatories to this Agreement to resolve the objection. If the FHWA then determines that the objection cannot be resolved through consultation, the FHWA shall forward all documentation relevant to the objection to the ACHP, including the FHWA's proposed response to the objection. Within thirty (30) calendar days after receipt of all pertinent documentation, the ACHP shall exercise one of the following options:

- (1) Advise the FHWA that the ACHP concurs in the FHWA's proposed response to the objection, whereupon the FHWA will respond to the objection accordingly; or
- (2) Provide the FHWA with recommendations, which the FHWA shall take into account in reaching a final decision regarding its response to the objection; or
- (3) Notify the FHWA 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 FHWA shall take the resulting comment into account in accordance with 36 CFR 800.7(c)(4).

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

The FHWA 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 FHWA'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 to the FHWA, the City, the Museum, or the VDOT regarding the manner in which the measures stipulated in this Agreement are being implemented, the FHWA shall notify the signatories to this Agreement and consult with the objector to resolve the objection.

VIII. Amendments and Termination

A. Any signatory to this Agreement may propose to the FHWA that the Agreement be amended, whereupon the FHWA shall consult with the other signatories to consider such an amendment. 36 CFR 800.6(c)(7) shall govern the execution of any such amendment. Any signatory to this Agreement may terminate it in accordance with the provisions of 36 CFR 800.6(c)(8).

B. If the FHWA, the VDOT, the City, and the Museum decide that they will not proceed with the Project, they may so notify the signatories to this Agreement and then this Agreement shall become null and void.

C. In the event this Agreement is terminated or rendered null and void, the City and the Museum shall submit to the SHPO a technical report on the results of any archaeological investigations conducted prior to and including the date of termination, and shall ensure that any associated collections and records recovered are curated in accordance with Stipulation VI of this Agreement unless an alternate arrangement is made.

D. In the event of termination, the FHWA shall either execute a memorandum of agreement with signatories under 36 CFR 800.6(c)(1) or request the comments of the ACHP under 36 CFR 800.7(a).

XI. Duration

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

X. Execution

This Agreement may be executed in counterparts, with a separate page for each signatory. The FHWA shall ensure that each signatory is provided with a copy of the fully executed Agreement.

Execution of this Agreement by the FHWA, the VDOT, the City, the Museum, and the SHPO and its submission to the ACHP in accordance with 36 CFR 800.6(b)(1)(iv), shall, pursuant to 36 CFR 800.6(c), be considered to be an Agreement with the ACHP for the purposes of Section 110(1) of the NHPA. Execution and submission of this Agreement, and implementation of its terms, evidence that the FHWA has afforded the ACHP an opportunity to comment on the proposed undertaking and its effect on historic properties, and that the FHWA has taken into account the effect of the undertaking on historic properties.