

**MEMORANDUM OF AGREEMENT  
BETWEEN  
CLARKE COUNTY  
AND  
THE VIRGINIA STATE HISTORIC PRESERVATION OFFICE (VA SHPO)  
REGARDING  
DEMOLITIONS ASSOCIATED WITH THE MILLWOOD HOUSING PROJECT**

**WHEREAS**, the County of Clarke, Virginia (County), has applied for and will receive a Community Development Block Grant (CDBG) to address critical housing needs in the village of Millwood; and

**WHEREAS**, Congress amended the Housing and Community Development Act of 1974 (HCD Act) in 1981 to give each State the opportunity to administer CDBG funds for non-entitlement areas, and

**WHEREAS**, in the Commonwealth of Virginia the Department of Housing and Community Development (DHCD) administers CDBG funds from the U.S. Department of Housing and Urban Development under the HCD Act; and

**WHEREAS**, in accordance with 24 CFR Part 58, the County has assumed responsibility for compliance with applicable State and Federal laws and requirements, including the National Historic Preservation Act (16 U.S.C. 470f) (NHPA); and

**WHEREAS**, the County will use CDBG funds to address critical housing needs in the village of Millwood through housing rehabilitation, demolition and new construction (Undertaking); and

**WHEREAS**, the County, in consultation with the Virginia Department of Historic Resources, the Virginia State Historic Preservation Office (VA SHPO), has established the Undertaking's area of potential effect (APE) as the Millwood Historic District (Historic District), Millwood, Virginia (Attachment A), a district eligible for listing in the National Register of Historic Places; and

**WHEREAS**, the County, in consultation with the VA SHPO, has determined that the demolition of 693 Bishop Meade Road and 1540 Millwood Road will result in an adverse effect on the Historic District pursuant to 36 CFR Part 800.6 of the regulations implementing Section 106 of the NHPA; and

**WHEREAS**, the County has afforded the interested public an opportunity to comment in accordance with the public participation plan approved by DHCD as part of the CDBG grant process; and

**WHEREAS**, the County has provided notification to the Advisory Council on Historic Preservation (Council) in accordance with 36 CFR Part 800.6(a)(1) and the Council elected not to participate in consultation.

**NOW, THEREFORE**, the County and the VA SHPO agree that the County shall ensure that the following stipulations are implemented in order to take into account the effects of the Undertaking on historic properties.

## **STIPULATIONS**

The County shall ensure that the following stipulations are implemented.

### **I. Documentation and Recordation**

The County, in consultation with the VA SHPO, has prepared documentation according to current VA SHPO Intensive Level documentation standards for 693 Bishop Meade Road and 1540 Millwood Road for retention in the archives of the Commonwealth of Virginia's Department of Historic Resources and, by letter of November 4, 2004, the VA SHPO has approved the Intensive Level documentation submitted by the County.

### **II. New Construction**

Design plans for new construction, compatible with the appearance and materials of the historic properties in the vicinity of the sites for the new buildings, have been submitted to the VA SHPO for review and approval. By letter of August 2, 2004, the VA SHPO provided comments on the design plans for the new construction at 693 Bishop Meade Road and 1540 Millwood Road. The County agrees to revise the plans to address the changes recommended by the VA SHPO.

### **III. Unanticipated Discoveries**

The County shall ensure that construction documents contain the following provisions for the treatment of unexpected discoveries:

In the event that a previously unidentified archeological resource is discovered during ground disturbing activities, the County shall immediately notify the VA SHPO. All construction work involving subsurface disturbance will be halted in the area of the resource and in the surrounding area where further subsurface remains can reasonably be expected to occur. The County and the VA SHPO, or an archeologist meeting *The Secretary of the Interior's Professional Qualifications Standards* (48 FR 44 738-9), immediately will inspect the work site and determine the area and the nature of the affected archeological property. Construction work may then continue in the project area outside the site area. Within two (2) working days of the original notification of discovery, the County in consultation with the VA SHPO will determine the National Register eligibility of the resource.

Potentially eligible historic properties will be evaluated using the National Register criteria in accordance with 36 CFR 800.4(c). If the County determines that the resource meets the National Register Criteria for Evaluation (36 CFR Part 60.6), the County shall ensure compliance with Section 800.13(b)(3) of the Council's Regulations. The VA SHPO shall provide comments on any treatment plan submitted within two (2) business days of receipt. If the VA SHPO fails to comment, the County may assume concurrence and implement the plan. Work in the affected area shall not proceed until either the development or implementation of an appropriate treatment plan; or the determination is made that the located resource is not eligible for inclusion on the National Register.

#### **IV. Human Remains**

A. Human remains and associated funerary objects encountered during the course of actions taken as a result of this Agreement shall be treated in the manner consistent with the 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.

B. In the event that the human remains encountered are likely to be of Native American origin, whether prehistoric or historic, the County will immediately notify the Virginia Council on Indians (VCI). The treatment of Native American human remains and associated funerary objects will be determined in consultation with the VCI. All reasonable efforts will be made to avoid disturbing Native American gravesites and associated artifacts. To the extent possible, the County will ensure that the general public is excluded from viewing any Native American gravesites and associated artifacts. No photographs of any Native American gravesites and/or associated funerary objects will be released to the press or to the general public.

C. The County may obtain a permit from the VA SHPO for the removal of human remains in accordance with the regulations stated above. In reviewing a permit involving removal of Native American human remains, the VA SHPO will notify and consult with the VCI as required by the regulations stated above.

#### **V. Administrative Stipulations**

##### **A. Dispute Resolution**

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

- a. Advise the County that the Council concurs in the County's proposed response to the objection, whereupon the agency will respond to the objection accordingly;
- b. Provide the County with recommendations, which the County shall take into account in reaching a final decision regarding its response to the objection; or
- c. Notify the County 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 County shall take the resulting comment into account in accordance with 36 CFR Part 800.7(c)(4) and Section 110(l) of the NHPA.

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

3. The County shall take into account any Council recommendation or comment provided in accordance with this stipulation with reference only to the subject of the objection; the County's responsibility to carry out all actions under this Agreement that are not the subjects of the objection shall remain unchanged.

4. 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 County 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

1. Any party to this Agreement may request that it be amended, whereupon the parties shall consult in accordance with 36 CFR Part 800.13 to consider such an amendment.

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

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

4. 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.

5. Should such consultation fail and the Agreement be terminated, the County

shall comply with 36 CFR Part 800.3 through Part 800.6 with regard to individual undertakings covered by this Agreement.

C. Duration of the Agreement

This Agreement will continue in full force and effect until five years after the date of the last signature. At any time in the sixth-month period prior to such date, the County may request the VA SHPO to consider an extension or modification of this Agreement. No extension or modification will be effective unless all parties to the Agreement have agreed with it in writing.

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

**COUNTY OF CLARKE**

By:  Date: 20 January 2005  
DAVID L. ASH, County Administrator

**VIRGINIA DEPARTMENT OF HISTORIC RESOURCES**

By:  Date: 1/26/05  
KATHLEEN S. KILPATRICK, Director and State Historic Preservation Officer