

DRAFT

**MEMORANDUM OF AGREEMENT
AMONG
DOMINION VIRGINIA POWER,
THE VIRGINIA STATE HISTORIC PRESERVATION OFFICE,
U.S. ARMY CORPS OF ENGINEERS NORFOLK DISTRICT, AND
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION**

**SUBJECT: ISSUANCE OF U.S. ARMY CORPS OF ENGINEERS' PERMITS
FOR THE PROPOSED SURRY-SKIFFES CREEK-WHEALTON
TRANSMISSION LINE PROJECT, SURRY COUNTY, JAMES CITY COUNTY,
YORK COUNTY, CITIES OF NEWPORT NEWS AND HAMPTON, VIRGINIA**

MONTH, YEAR

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 US Army Corps of Engineers Norfolk District (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 permits for the undertaking and to consult with the Virginia State Historic Preservation Office (SHPO); and with the Advisory Council on Historic Preservation (ACHP) where historic properties are adversely affected; and

WHEREAS, Virginia Electric and Power Company, d/b/a Dominion Virginia Power (Dominion), proposes to construct new electrical transmission line infrastructure in the Hampton Roads area of Virginia, to resolve projected violations of the North American Electric Reliability Corporation (NERC) Reliability Standards, resulting from the closure of two coal-fired power generating units at the Yorktown Power Station which will be deactivated no later than in 2017 and to meet projected growth in regional demand. The Project is designed to provide sufficient and reliable electricity to residents, businesses, and government agencies located on the Virginia Peninsula for public health and human safety, and national security interests. The Project is collectively known as the Surry – Skiffes Creek – Whealton project, located in Surry, James City, and York Counties and the Cities of Newport News and Hampton, Virginia (the Project); and

WHEREAS, the Project involves construction of a new high voltage aerial electrical transmission line that consists of three components; (1) Surry – Skiffes Creek 500 kilovolt (kV) aerial transmission line, (2) Skiffes Creek 500 kV – 230 kV – 115 kV Switching Station, and (3) Skiffes Creek – Whealton 230 kV aerial transmission line. The proposed project will permanently impact 2,712 square feet (0.06 acres) of subaqueous river bottom and 281 square feet (0.01 acres) of

non-tidal wetlands, and convert 0.56 acres of palustrine forested wetlands to scrub shrub non-tidal wetlands. The transmission lines will cross portions of the James River, Woods Creek, and Skiffes Creek. In addition to structures being built within the James River, structural discharges are proposed in non-tidal wetlands. The proposed activities will require a Corps permit pursuant to Section 10 of the Rivers and Harbor Act and Section 404 of the Clean Water Act; and

WHEREAS, the Corps, in consultation with the Department of Historic Resources (DHR), which serves as the SHPO in Virginia, has determined that for this Project the Area of Potential Effects (APE) shall consist of the Direct APE and an Indirect APE. The Direct APE consists of areas where land disturbing activities may occur. The limits of the Direct APE consist of the limits of the Project right of way (ROW) and identified construction access areas. For construction access areas, a 25-foot width was used along the centerline of field located paths and roads outside of the Project ROW. The Indirect APE extends approximately 10 miles upstream and 13 miles downstream from the proposed river crossing and includes a buffer of approximately 0.5-miles inland from the shoreline within this area. The Indirect APE for areas where the proposed work will not result in a change in structure height greater than 10% or 20 feet is defined by the adjacent parcel boundaries or a 0.5 mile buffer, whichever is less. The limits of the Direct and Indirect APEs are shown on Attachment A; and

WHEREAS, Dominion has completed the identification of historic properties; and the Corps, in consultation with the SHPO, finds that the documents listed in Attachment B 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 (2011)* and the SHPO's "Assessing Visual Effects on Historical Properties;" and

WHEREAS, the Corps, in consultation with the SHPO, has determined that 57 resources as described in the attached table (Attachment C) and as depicted on the attached map (Attachment C) are listed, eligible for listing, or treated as eligible for listing in the NRHP and are considered historic properties for purposes of the Project. One additional resource, the Jamestown Island-Hog Island Cultural Landscape Historic District, was considered potentially eligible and also was included for consideration, and it also is listed on Attachment C; and

WHEREAS, the Corps requested a formal determination of eligibility (DOE) for the Captain John Smith Chesapeake National Historic Trail (Captain John Smith Chesapeake NHT) from the Keeper of the National Register (Keeper) on July 2, 2015; and, the Keeper issued a formal DOE to the Corps on August 14, 2015 (Attachment D) and concluded that the entire Indirect APE, excluding the inland portions, is eligible for the NRHP as a historic district under Criteria A, B, C, and D, because it contains a significant cultural landscape and that the Captain John Smith Chesapeake NHT within the APE is a contributing element of that district; and

WHEREAS, the Corps refers to the eligible historic district identified by the Keeper in its letter of August 14, 2015 as the “Historic District (formally Jamestown Island-Hog Island Cultural Landscape) including CAJO (No VDHR#)” and for the purposes of this Memorandum of Agreement (MOA) shall refer to this property as the “Jamestown Island-Hog Island-Captain John Smith Trail Historic District” (No VDHR#)¹; and

WHEREAS, the Corps, in consultation with the SHPO, Advisory Council on Historic Preservation (ACHP), and consulting parties, has determined that the undertaking will have an adverse effect on archaeological site 44JC0662, the Jamestown Island-Hog Island-Captain John Smith Trail Historic District, which includes the contributing section of the Captain John Smith Chesapeake NHT within the APE, Carter’s Grove National Historic Landmark (VDHR #047-0001)², Colonial National Historical Park/Colonial Parkway Historic District (VDHR #047-0002), Hog Island Wildlife Management Area (VDHR #090-0121), Jamestown National Historic Site/Jamestown Island/Jamestown Island Historic District (VDHR #047-0009), the Battle of Yorktown (VDHR #099-5283), and Fort Crafford (VDHR #121-0027) (Attachment C); and

WHEREAS, the Corps has invited the participation of the ACHP in this consultation as a signatory party, and ACHP has elected to participate; and

WHEREAS, the Corps has invited the Catawba Indian Nation, the Delaware Tribe of Indians and the Delaware Nation to participate in this consultation and the Delaware Tribe of Indians has accepted, and the Catawba Indian National and the Delaware Nation have declined to participate; and

WHEREAS, the Corps has invited Dominion to participate in this consultation and to sign this MOA as a signatory party and Dominion has elected to participate; and

WHEREAS, the Corps has invited the following Virginia State Recognized Tribes: Cheroenhaka (Nottoway), the Chickahominy, the Eastern Chickahominy, the Mattaponi, the Upper Mattaponi, the Nansemond Tribal Association, the Nottoway Tribe of Virginia, the Pamunkey, and the Rappahannock to participate in this consultation and the Chickahominy have elected to participate; and

WHEREAS, the Corps has invited James City County, Surry County, the City of Newport News, York County, the City of Williamsburg, and the City of Hampton to

¹ In its determination of eligibility the Keeper of the National Register did not establish a formal name for this historic property, which has been referred to by the Corps as Historic District (formally Jamestown Island-Hog Island Cultural Landscape) including CAJO (No VDHR#). The SHPO has referred to this property as the Captain John Smith Trail Historic District. The Corps’ name for the historic property is used here and later simplified to Jamestown Island-Hog Island-Captain John Smith Trail Historic District for reference purposes in this MOA only.

² The Virginia Department of Historic Resources and Virginia Outdoors Foundation are the current holders of historic preservation and open space easements on the Carter’s Grove property.

participate in this consultation, and James City County has elected to participate; and

WHEREAS, the Corps has invited the following consulting parties: The National Parks and Conservation Association, the Save the James Alliance, the Chesapeake Conservancy, United States Department of the Interior (National Park Service, Colonial National Historical Park), United States Department of the Interior (National Park Service, Northeast Region), the Colonial Williamsburg Foundation, Preservation Virginia, Scenic Virginia, The National Trust for Historic Preservation, BASF, the James River Association, the National Park Service American Battlefield Protection Program, First California Company Jamestowne Society, Margaret Fowler, citizen, and the Council of Virginia Archaeologists, to participate in this consultation and they have all elected to participate; and

WHEREAS, the Corps has invited the Kingsmill Community Services Association, the Southern Environmental Law Center and the steward of Carter's Grove National Historic Landmark, to participate in this consultation and they have declined to participate; and

WHEREAS, the Corps has posted notice for public comment on the following: initiation of consultation under Section 106 (August 28, 2013), identification of historic properties (November 13, 2014), and assessment and resolution of adverse effects (May 21, 2015); and public hearing (October 30, 2015) (Attachment E); and

WHEREAS, the Corps, ACHP, SHPO, Dominion, and the consulting parties have held five official consulting party meetings (September 25, 2014; December 9, 2014; June 24, 2015; October 15, 2015; and, February 2, 2016), which also were open to the public, as well as numerous informal meetings, correspondence, and conferences/teleconferences (Attachment E); and

WHEREAS, the Corps notified the consulting parties by email on October 13, 2015, that it had determined that identification and evaluation of historic properties was complete, that the Corps had applied the criteria of adverse effects according to 36 CFR 800.5 and reached a finding of adverse effect for the Project, that the Corps was accepting public comment until November 13, 2015 and that the Corps was now consulting to resolve adverse effects in accordance with 36 CFR 800.6 (Attachment E); and

WHEREAS, the Corps conducted a Public Hearing for the Project on October 30, 2015, to solicit public comments and advertised the hearing electronically and held the Public Comment Period open until November 13, 2015 (Attachment E); and

WHEREAS, the Corps, in accordance with 54 U.S.C. § 306107, has undertaken the consideration of all available project alternatives to minimize harm to National Historic Landmarks to the maximum extent possible and to avoid adverse effects to nationally significant historic properties; and

WHEREAS, in developing this MOA, the parties find that the numerous types of mitigation that this MOA employs and contemplates (e.g., land acquisition, natural and cultural resource restoration or preservation, cultural interpretation, historical education, etc.) all create acceptable mitigating value. To address the range of opinions on the mitigation required, the parties have created a flexible structure to implement a diverse suite of mitigation that will appropriately mitigate the Project's adverse effects by providing significant additional value to the historic properties and their greater landscape.

WHEREAS, the Project's adverse effects to historic properties, direct, indirect, and cumulative, have been minimized and avoided to the greatest extent possible, and that through this MOA the parties seek to mitigate the remaining direct, indirect, and cumulative adverse effects to the greatest extent practicable; and

WHEREAS, the Corps and Dominion have fully identified cumulative effects, i.e. "*reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative*" in accordance with 36 CFR § 800.5(a)(1); and

WHEREAS, the Corps and Dominion recognize that conservation efforts have been and can be effective at doing what they were created to do—limit future development and/or impacts related thereto in the APE and the proposed mitigation will further this goal; and

NOW THEREFORE, in order to satisfy the Corp's Section 106 responsibilities to take into account the effects of the undertaking requiring Corps permits on historic properties, the signatories here agree that compliance with this MOA shall be made a condition of any permit issued by the Corps for the work described; thereby effectively incorporating all terms, provisions and stipulations of this MOA 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.

STIPULATIONS

I. TREATMENT OF ARCHEOLOGICAL SITES

a. TREATMENT OF ARCHEOLOGICAL SITE 44JC0662 (Switching Station)

1. Prior to construction at the Skiffes Creek Switching Station, Dominion shall develop a Treatment Plan in consultation with the Corps, SHPO, ACHP, and the other concurring parties to this MOA for site 44JC0662. The Treatment 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 Historic Resources Survey*

in Virginia (2011) and shall take into account the ACHP's publications, *Recommended Approach for Consultation on Recovery of Significant Information from Archeological Sites* (1999; updated September 30, 2010) and *Section 106 Archaeology Guidance* (April 2009).

- A. The plan shall specify at a minimum, the following:
- i. the property, properties, or portions of properties where site specific data recovery plans will be carried out;
 - ii. 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;
 - iii. any property, properties, or portions of properties that will be destroyed or altered without data recovery;
 - iv. the research questions to be addressed through data recovery, with an explanation of their relevance and importance;
 - v. the methods to be used with an explanation of their relevance to the research questions;
 - vi. the methods to be used in analysis, data management, and dissemination of data, including a schedule;
 - vii. the proposed disposition of recovered materials and records;
 - viii. 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
 - ix. a schedule for the submission of progress reports to the Corps, SHPO, ACHP, and other concurring parties.
2. Dominion shall submit the draft Treatment Plan to the Corps, SHPO, ACHP, and other concurring parties to this MOA for review and comment. All comments shall be forwarded to the Corps within 30-day of receipt for consideration. The Corps will ensure that all comments received in a timely manner are taken into account. If no comments are submitted, the Corps may

assume the non-responding party has no comments. Following approval in writing from the Corps, Dominion shall proceed to implement the Treatment Plan.

3. Dominion shall ensure that the approved Treatment Plan is implemented prior to commencing construction activities at the Switching Station Site that could affect archaeological site 44JC0662.
4. Dominion shall notify the Corps in writing once the fieldwork portion of the Treatment Plan is complete and provide a brief management summary so that a site visit may be scheduled, if requested. Project activities may proceed following this notification while the technical report is in preparation. The Corps may approve implementation of the undertaking's construction or construction related ground disturbing activities in the area and within the boundary of the affected archaeological site while the technical report is in preparation.
5. Dominion and/or its assignees may photograph the work and artifacts, and display on a temporary or permanent basis artifacts or images, with the exception of human remains, funerary objects, or sacred items, in an appropriate place within the Project vicinity.
6. Dominion shall prepare a report (following the requirements for preparation and review of draft and final reports in stipulation V) of the results of the Treatment Plan investigations within one (1) year of the notification that fieldwork has been completed. When the final report has been approved by the Corps, the Permittee shall provide two (2) copies of that document, bound and on acid-free paper and one electronic copy in Adobe® Portable Document Format (.pdf) to the SHPO; and one copy to each of the other consulting parties.

b. AVOIDANCE OF UNDERWATER AND TERRESTRIAL ARCHAEOLOGICAL SITES

1. Prior to construction, Dominion shall complete and submit to the Corps and SHPO an underwater archaeological survey sufficient to determine the type and extent of identified underwater anomalies located within 200 feet of proposed structures or mooring locations in the Direct APE.
2. Upon written concurrence of Stipulation I(b)(1) from the Corps and SHPO, Dominion shall use the results of the underwater and terrestrial surveys to develop a draft avoidance plan for archaeological sites listed in Attachment C.

- A. Among other things, the draft avoidance plan shall include:
- i. Project plans showing the location of the cultural anomalies and all archaeological sites identified in Attachment C located within the direct APE;
 - ii. Boundaries of the buffered anomalies and archaeological sites identified in Attachment C within the direct APE, relative to all proposed project elements including but not limited to coffer dams, tower footers, fenders, and mooring/anchoring locations, access roads, construction staging and equipment and materials storage area;
 - iii. Detailed steps and construction protocols for ensuring avoidance of buffered areas and the handling of any unanticipated project activity that may inadvertently affect the underwater anomalies or terrestrial archaeological sites during construction.
 - iv. Dominion shall fund an independent archeologist (Archaeological Monitor) who meets the professional qualifications established in Stipulation IV below and who is approved by the SHPO to observe and monitor ground disturbances associated with construction to ensure the protection of all archaeological sites identified in Attachment C. The Archaeological Monitor shall also be responsible for ensuring that the requirements of Stipulation VII for unanticipated discoveries are carried out as appropriate.

B. A copy of Dominion's draft avoidance plan shall be submitted to the Corps, SHPO, ACHP, and other concurring parties to this MOA for review and comment. All comments shall be forwarded to the Corps within 30-day of receipt for consideration. The Corps will ensure that all comments received in a timely manner are taken into account. If no comments are submitted, the Corps may assume the non-responding party has no comments.

C. Following review and comment, Dominion shall address any comments received and submit their final avoidance plan to the Corps for written approval.

D. Dominion shall implement the final avoidance plan prior to construction.

II. TREATMENT OF ARCHITECTURAL PROPERTIES AND/OR HISTORIC LANDSCAPES

a. INTERPRETIVE SIGNAGE

1. Prior to construction within the James River, Dominion shall commence development of twenty (20) interpretive signs which inform visitors about the historic significance of the Jamestown Island-Hog Island-Captain John Smith Trail Historic District as well as the cultural resources investigations conducted as part of the development process. Signage shall be placed on publically accessible lands and include recreational and heritage tourism destinations.
2. Dominion shall submit a draft of the signage text, images and other materials, and proposed signage locations to the Corps, SHPO, ACHP, and concurring parties to this MOA for a 30-day review and comment. Dominion shall take into account any comments received and make necessary revisions to be submitted for final written approval by the Corps and SHPO.
3. Dominion shall pay for the fabrication and installation of all interpretive signs and notify the Corps, SHPO, ACHP, and concurring parties of the installation in writing within thirty (30) days of their completion.

b. VIEWSHED DOCUMENTATION OF JAMES RIVER

1. Prior to construction within the James River, Dominion shall complete photography required for a Historic American Landscapes (HALS) Survey of the Jamestown Island-Hog Island-Captain John Smith Trail Historic District and all other adversely effected properties identified in Attachment C. Dominion shall comply with National Park Service (NPS) Heritage Documentation Program Standards and Guidelines.
2. Prior to construction within the James River, Dominion shall photo-document the current view shed of all adversely effected properties identified in Attachment C. Prior to completion of construction, Dominion shall prepare a written report illustrated with maps and line drawings, and TrueScape (11"x17") quality photographs. Dominion shall ensure documentation, including photographs, are completed in accordance with the most recent SHPO archival guidelines, and that all materials are accepted by the SHPO prior to construction within the James River.
3. Prior to completion of construction, Dominion shall submit the completed HALS survey documentation to the Corps, SHPO,

and other concurring parties to this MOA for review and comment and to the NPS Heritage Documentation Program for review and acceptance.

c. **SURRY – SKIFFES CREEK TOWER COATINGS**

1. Dominion shall examine all viable and feasible tower coating and finishing materials and methods that will minimize the visibility of transmission line infrastructure crossing the river that meet and comply with all applicable state and federal law.
2. Prior to construction within the James River, Dominion shall submit its analysis of potential tower coating and finishing materials and methods along with its recommendation to the Corps, SHPO, ACHP, and other concurring parties to this MOA for review and comment. Following receipt and consideration of comments as appropriate, Dominion shall determine if there are any suitable tower finishing and coating materials and methods that will further minimize visibility of the transmission line infrastructure, above and beyond the standard weathered galvanized coating, and, if so, apply the selected coating or finishing material or method to the towers no earlier than one (1) year after energization of the line, but as soon as conditions allow for effective application.
3. Dominion shall ensure that the selected tower coating or finishing material or method, if applied, is maintained over the lifespan of the project.

d. **PRE-CONSTRUCTION MITIGATION ASSURANCE**

1. Prior to any construction within the James River, Dominion shall secure and provide proof of investments in options on lands, visitor facilities, archaeology documentation and conservation, or site enhancements associated with the Werowocomoco and supporting sites and facilities in Gloucester and York counties as described in Stipulation II.e.1.A.iv.

2. Prior to any construction within the James River Dominion shall secure and provide proof of permission for investments in shoreline stabilization or related enhancements at Carter's Grove from the landowner or The Conservation Fund assuring obligations under Stipulation II.e.1.A.i.

3. Prior to any construction within the James River, Dominion shall secure and provide proof of permission from either: (1) the National Park Service or Preservation Virginia concerning obligations under Stipulation II.e.1.A-C; or (2) entities responsible for the restoration

and preservation of Ft. Monroe in Hampton, Virginia and Chippokes Plantation in Surry County concerning obligations under Stipulation II.e.1.D.i. and ii.

4. Prior to any construction within the James River, Dominion shall secure and provide proof of permission from the DGIF concerning obligations under Stipulation II.d.2.A.i. iv, and v.).

5. Dominion shall pursue the land acquisition and permissions referenced in Stipulations II.d.1.-4. above diligently up and until the earlier of (A) Dominion's reasonable conclusion that the actions cannot be satisfied or (B) twelve months after the effective date of this MOA. Thereafter, Dominion promptly shall coordinate with the Corps, ACHP, SHPO, the concurring parties, and the third party (e.g., The Conservation Fund) implementing the fund under which the proposed mitigation project that cannot be implemented is listed to determine an alternative mitigation project that, directly or indirectly, enhances the integrity and values of the adversely effected historic property(ies) in a manner that is consistent with this MOA.

e. **ADDITIONAL MITIGATION COMPENSATION FOR ADVERSE EFFECTS ON HISTORIC PROPERTIES WITHIN THE APE**

The Corps, in consultation with the SHPO, has determined that the Project will have an adverse effect on the Jamestown Island-Hog Island-Captain John Smith Trail Historic District. Along with specific identified historic properties, the cultural and natural landscapes that contribute to the district (See Attachments C and D), will be visually affected. Dominion shall fulfill the following actions as mitigation for the Project's direct, indirect, and cumulative adverse effects to Historic Properties and cultural and natural landscapes contributing to their significance.

1. **The Jamestown Island-Hog Island-Captain John Smith Trail Historic District Mitigation**

Dominion shall establish and make a contribution to a legally separate mitigation compensation fund in coordination with The Conservation Fund (TCF). Proof of establishment and deposit must be provided to the Corps, SHPO, ACHP, and concurring parties prior to any construction within the James River.

Dominion shall ensure that the funds are disbursed over a period not to exceed ten (10) years, to support the following projects within the Jamestown Island-Hog Island-Captain John Smith Trail Historic District and thematically related areas that contribute to the preservation and enhancement of sites associated with early

American and Native Indian cultures of this area. Dominion shall seek input on specificity for these projects from recognized subject matter experts that are a party to this MOA, including professionals with the Commonwealth of Virginia and within TCF.

The funds shall be used for:

- A. Landscape enhancement and shoreline protection projects to include:
 - i. Shoreline landscape enhancement and stabilization of approximately 6,000 linear feet of shoreline or other priority projects to enhance the preservation of Carter's Grove.
 - ii. Landscape enhancement and shoreline protection to preserve the setting and feeling of the Colonial Parkway unit at the Colonial National Historical Park consistent with the National Park Service's Cultural Landscape Inventory (2008).
 - iii. Seawall rehabilitation or replacement at Historic Jamestowne to provide protection from erosion and sea level rise and to execute a project that provides further protections through a series of breakwaters, sills and revetments greater than those provided in 2004; and, the restoration of Back Creek at Historic Jamestowne.
 - iv. Captain John Smith Chesapeake NHT enhanced experiences dedicated for land acquisition, visitor interpretation and facilities, archeological investigation and preservation of Werowocomoco, Gloucester County, Virginia (principal residence of Powhatan, paramount chief of Indian Tribes in Virginia's coastal region at the time English colonists arrived in 1607, and located along the Captain John Smith Chesapeake NHT on the York River) and natural and cultural values on the James River and on the north and south sides of the York River in the area of Werowocomoco that will preserve and provide the visitor with an undisturbed landscape and vista that evokes the setting and feeling of the rivers during the period of Captain John Smith's exploration. In addition to land acquisition of Werowocomoco, sites and facilities at York River state park will serve as the visitors' gateway to understanding the Virginia Indian cultures at Werowocomoco. A visitor center with scholarly exhibits, visitor accommodations and associated infrastructure and a burial ground for Virginia Indians will introduce the visitor to the significance of

Werowocomoco before and during the time of the English settlement at Jamestown.

B. Historic property documentation projects to include:

- i. Archaeological investigation and identification at Historic Jamestowne to support ongoing investigations including excavations around Memorial Church with a focus on discovering the early churches that stood on the site of the 1617 church, the site of the nation's first representative government.

C. Heritage tourism enhancement projects to include:

- i. Additional visitor interpretation and visitor engagement opportunities at Colonial National Historical Park.
- ii. Captain John Smith Chesapeake NHT visitor engagement and visitor interpretation programs and projects at the National Park Service's visitor center on Jamestown Island.
- iii. Projects identified in Stipulations II.e.1.A-C shall take into account the findings and recommendations resulting from Heritage Tourism studies completed in accordance with Stipulation II(f) below.

D. In the event funding cannot be obligated for projects and activities identified in Stipulation II.e.1.A.i-iii, B.i. or C.i. ii., funding shall be available for restoration, archeological documentation and visitor facilities, access and education at:

- i. Ft. Monroe. Programs shall emphasize the cultural interactions of this historic site that further visitor understanding of the strategic significance of Ft. Monroe, known also as Old Point Comfort. The site is thematically linked to Virginia's pre-colonial period because of its significance for Virginia Native Indian cultures, the English colonists arrival to the New World, including Captain John Smith's journeys of exploration, and as the first landing place of Africans forcefully brought to the colony in August, 1619. Projects shall include exhibits depicting the Captain John Smith Chesapeake National Historic Trail and John Smith's view of the Chesapeake region as recorded in his personal diaries. Support for facilities include a public boat and kayak launch area, interpretative trails, and archaeological investigation and interpretation at Fort Algernon; and

- ii. Chippokes Plantation. Funding shall enhance visitor facilities, interpretative exhibits of 17th century agricultural

techniques and plantation life outside of Jamestown and the preservation of Chippokes Mansion,

iii. Jamestown-Yorktown Foundation. Funding shall be for educational exhibits and programs on the area landscape and watershed before, during and after European contact. Programs are to examine the convergence of the three cultures – Virginia Indian, European and African – and their relationship to documenting and understanding the newly defined Jamestown Island-Hog Island-Captain John Smith Trail Historic District.

E. All projects funded in accordance with Stipulations II.e.1.A-C above, shall comply with all applicable local, Commonwealth, and federal laws and regulations in force and effect at the time of the project award.

F. Dominion shall provide an annual report due by January 30 each year summarizing disbursement of funds and progress for each project for the preceding year. The annual report shall also identify project changes or challenges experienced during the reporting year, as well as anticipated challenges or changes expected in the coming reporting year. Dominion will distribute the annual report to the Corps, ACHP, SHPO, and other concurring parties to this MOA for 30-day review and comment. Dominion shall address any comments received and submit a revised report to the Corps, SHPO, ACHP, and concurring parties to this MOA. Any disputes regarding dispensing and use of funds shall be handled in accordance with Stipulation IX below.

2. Historic Property Treatment at Hog Island Wildlife Management Area

Dominion shall establish and make a contribution to a legally separate mitigation compensation fund in coordination with Virginia Department of Game and Inland Fisheries (DGIF). Proof of establishment and deposit must be provided to the Corps, SHPO, ACHP, and concurring parties prior to any construction within the James River.

Dominion shall ensure that the funds are disbursed over a period not to exceed ten (10) years, to support the following projects located within the Jamestown Island-Hog Island-Captain John Smith Trail Historic District unless otherwise noted. Dominion shall seek input on specificity for these projects from recognized subject matter experts that are a party to this MOA, including professionals within DGIF.

The funds shall be used for:

- A. Natural resource enhancement and cultural resource identification and interpretation projects to include:
- i. Enhancement of 1,100 acres of palustrine emergent marsh at Hog Island.
 - ii. Living shoreline and shoreline restoration in Surry County, with priority given to projects within the APE or projects outside the APE that would benefit natural and cultural resource enhancement within the APE.
 - iii. Acquisition of 400 acres of upland/emergent marsh adjacent to the Chickahominy Wildlife Management Area, Charles City County, Virginia to improve water quality within the APE, subject to the approval by the Board of Game and Inland Fisheries.
 - iv. History and remote viewing and interpretation facility at Hog Island that recognizes Hog Island's connection and contributions to the Jamestown Island-Hog Island-John Smith Trail Historic District, and the individual significance to the Captain John Smith Chesapeake NHT.
 - v. Comprehensive archaeological identification survey of Hog Island.

B. All projects funded in accordance with Stipulation II(e)(2)(A) above, shall comply with all applicable local, Commonwealth, and federal laws and regulations in force and effect at the time of the project award.

C. Dominion shall provide an annual report due by January 30 each year summarizing disbursement of funds and progress for each project for the preceding year. The annual report shall also identify project changes or challenges experienced during the reporting year, as well as anticipated challenges or changes expected in the coming reporting year. Dominion will distribute the annual report to the Corps, ACHP, SHPO and other concurring parties to this MOA for 30-day review and comment. Dominion shall address any comments received and submit a revised report to the Corps, SHPO, ACHP, and concurring parties to this MOA. Any disputes regarding dispensing and use of funds shall be handled in accordance with Stipulation IX below.

3. Water Quality Improvements

Dominion shall establish and make a contribution to a legally separate mitigation compensation fund in coordination with the Virginia Environmental Endowment (VEE). Proof of establishment and deposit must be provided to the Corps, SHPO, ACHP, and concurring parties prior to Dominion initiating any construction within the James River.

Dominion shall ensure that the funds are disbursed over a period not to exceed ten (10) years, to support projects that enhance water quality and mitigate the cumulative impacts of the Project. Dominion shall seek input on goals and evaluation criteria for the Water Quality mitigation compensation fund from recognized subject matter experts that are a signatory party to this MOA, as well as professionals within VEE.

The funds shall be used for:

A. Water quality improvement projects benefitting the James River watershed with consideration given to projects located within the indirect APE including, but not limited to:

- i. Riparian buffer creation, replacement and enhancement projects.
- ii. Erosion and sediment control projects.

B. All projects funded in accordance with Stipulation II(e)(3)(A) above, shall comply with all applicable local, Commonwealth, and federal laws and regulations in force and effect at the time of the project award.

C. Dominion shall provide an annual report due by January 30 each year summarizing disbursement of funds and progress for each project for the preceding year. The annual report shall also identify project changes or challenges experienced during the reporting year, as well as anticipated challenges or changes expected in the coming reporting year. Dominion will distribute the annual report to the Corps, ACHP, SHPO, and other concurring parties to this MOA for 30-day review and comment. Dominion shall address any comments received and submit a revised report to the Corps, SHPO, ACHP, and concurring parties to this MOA. Any disputes regarding dispensing and use of unobligated funds shall be handled in accordance with Stipulation IX below.

4. Landscape and Battlefield Conservation

Dominion shall establish and make a contribution to a legally separate mitigation compensation fund in coordination with the

Virginia Land Conservation Foundation (VLCF). In accordance with the *Code of Virginia* §10.1-1020(B) the funds shall be restricted for the purposes described in Stipulation II.e.4.A. below. Proof of establishment and deposit must be provided to the Corps, SHPO, ACHP, and concurring parties prior to any construction within the James River.

Dominion shall ensure that the funds are disbursed over a period not to exceed ten (10) years, to support land conservation and open space easement projects that are associated with and will enhance the James River and the Jamestown Island-Hog Island-Captain John Smith Trail Historic District. Dominion shall seek input on specificity for these projects from recognized subject matter experts that are a party to this MOA, including professionals within VLCF.

The funds shall be used for:

A. Land conservation and open space easement projects:

- i. Battlefield land conservation on local government or private lands associated with the Battle of Yorktown, and Fort Crafford.
- ii. Landscape preservation to include land and easement acquisition with an emphasis on projects within the indirect APE and then on projects within the James River watershed benefitting the historic properties and district.

B. All projects funded in accordance with Stipulation II.e.4.A. above, shall comply with all applicable local, Commonwealth, and federal laws and regulations in force and effect at the time of the project award.

C. Dominion shall provide an annual report due by January 30 each year summarizing disbursement of funds and progress for each project for the preceding year. The annual report shall also identify project changes or challenges experienced during the reporting year, as well as anticipated challenges or changes expected in the coming reporting year. Dominion will distribute the annual report to the Corps, ACHP, SHPO, and other concurring parties to this MOA for 30-day review and comment. Dominion shall address any comments received and submit a revised report to the Corps, SHPO, ACHP, and concurring parties to this MOA. Any disputes regarding dispensing and use of funds shall be handled in accordance with Stipulation IX below.

5. Allocation and Expenditure of Funds

A. Subject to Stipulation II.e.5.E., Dominion shall ensure an amount of \$85,000,000 shall be contributed for activities described in Stipulations II.e.1.-4., or alternatives thereto described in Stipulation II.d., in the following distributions:

- i. The Jamestown Island-Hog Island-Captain John Smith Trail Historic District a total of \$52,700,000.00, of which no less than \$25,000,000.00 shall be for Stipulation II.e.1.A.iv.;

Funding for projects that cannot be obligated under this section shall be available to fund activities as follows:

(a) Stipulation II.e.1.A.iv. at 50 percent for York River State Park;

(b) Stipulation II.e.1.D.i. at 30 percent for Ft. Monroe;

(c) Stipulation II.e.1.D.iii. at 15 percent for the Jamestown-Yorktown Foundation; and,

(d) Stipulation II.e.1.D.ii. at 5 percent for Chippokes Plantation State Park.

- ii. Historic Property Treatment at Hog Island Wildlife Management Area a total of \$4,205,000.00;
- iii. Water Quality Improvements a total of \$15,595,000.00; and,
- iv. Landscape and Battlefield Conservation a total of \$12,500,000.00.

B. All funds shall be obligated within ten (10) years of the effective date of this MOA; however, nothing herein shall require that funded projects be completed within that time frame, unless otherwise noted.

C. Dominion shall use reasonable efforts to obligate 50 percent of the funds within five years; and, 100 percent of the funds within ten years of the effective date of this MOA.

D. Notwithstanding Stipulations II.e.5.B-C, a failure to have all funds obligated within ten years after the mitigation fund is established does not constitute a breach of the terms of this MOA, but instead triggers Stipulation II.e.5.E.

E. Any mitigation compensation funds unobligated twelve years after the effective date of this MOA shall be transferred back to

Dominion. Dominion shall deposit any remaining unobligated funds in the legally separate mitigation compensation fund with the VLFCF for expenditure on projects, programs, and activities at historic properties and associated historic landscapes within or related to the APE that were adversely affected by this project.

F. Dominion promptly shall provide necessary additional funds to complete any mitigation project required under Stipulation I.a., I.b., II.a., II.b., II.c. and II.e.1-5..

f. **ADDITIONAL MITIGATION THROUGH THE ENHANCEMENT OF HERITAGE TOURISM**

1.Prior to construction within the James River, Dominion, in consultation with the Corps, SHPO, ACHP, and concurring parties shall initiate a heritage tourism and visitor experience study (which includes ecotourism) for publically accessible, publically owned, and actively marketed historic properties (heritage tourism sites) and ecotourism activities located within the Indirect APE). At a minimum, the study will include Jamestown Island and Historic Jamestowne, Hog Island Wildlife Management Area, Jamestown Settlement, Colonial Parkway and elements of Colonial National Historical Park, and elements of the Captain John Smith Chesapeake NHT. The purpose of the study is to evaluate current heritage tourism and visitor experience within the Indirect APE in order to develop a marketing and visitation program to promote and enhance heritage tourism sites (which includes the historic properties at issue in this MOA) and visitor experiences within the Indirect APE, as well as inform heritage tourism interpretation and visitor engagement mitigation identified in Stipulations II.e.1.A-C above.

2..The study shall be undertaken in collaboration with management entities of heritage tourism sites within the Indirect APE and be completed within six (6) months of initiation. Upon completion, Dominion shall submit the study to the Corps, SHPO, ACHP and other concurring parties to this MOA for review and comment. Following review and comment, Dominion shall address any comments received and submit the final heritage tourism visitor experience impact study to the Corps, SHPO, ACHP, and concurring parties.

3.Within 30 days of submission of the final study Dominion shall initiate consultation with the Corps, SHPO, ACHP, concurring parties and participating management entities of impacted heritage tourism sites, to develop a marketing and visitation program (Program) to promote and enhance the impacted heritage tourism

sites and visitor experience within the indirect APE for the river crossing.

4. Within 30 days of concurrence with and finalization of the Program, Dominion shall make a full contribution to the agreed upon implementing organizations to implement the Program. The contribution shall not exceed the average annual budget for the preceding two years for marketing programs by the management entities of publicly accessible sites within the Indirect APE of the river crossing.

5. The parties agree that, like the projects and activities undertaken pursuant to Stipulations II(e)(1-4), the Program will enhance the setting and feeling, among other aspects of integrity, of the adversely effected historic properties, as well as inform and enhance heritage tourism and visitor experiences with the Indirect APE.

6. Any disputes regarding use and dispensing of funds shall be handled in accordance with Stipulation IX below.

g. **AVOIDANCE AND MINIMIZATION OF POTENTIAL FUTURE AND CUMULATIVE EFFECTS WITHIN THE DIRECT AND INDIRECT APE OF THE RIVER CROSSING**

1. From the date construction is completed until the towers are dismantled, Dominion shall coordinate all project maintenance and repair operations that have the potential to cause or result in ground or underwater disturbance within the project's direct APE, with the SHPO and other regulatory agencies, consistent with the terms of the avoidance plan. Such coordination shall not prohibit the repair of the project required in response to emergency events; however, Dominion shall advise the SHPO and other regulatory agencies, as appropriate, of the completed emergency repair work as soon as practicable.

2. From the date construction is completed until the towers are dismantled, Dominion shall not construct or place any new or additional transmission line infrastructure, or increase the height or otherwise scale of the existing tower infrastructure within the project's defined indirect APE for the river crossing. Nothing in this commitment, however, shall preclude or otherwise prevent Dominion from adding additional lines or replacing lines to the existing tower infrastructure.

3. From the date construction is completed, Dominion shall examine the ongoing need for the river crossing at ten (10) year

increments, taking into account the most current PJM Interconnection load forecast data.

4. If, at any time prior to the conclusion of the project's life span of 50 years from energizing, Dominion determines that the river crossing is no longer needed, Dominion shall remove all river crossing and associated terrestrial based infrastructure and return the land-side area within the indirect APE of the river crossing to its pre-project condition.
5. If, at the conclusion of the project's life span of 50 years from energizing, Dominion determines that the project is still needed, Dominion shall examine the viability and feasibility of a submerged river crossing. If, at that time, industry accepted technology is available and required regulatory approvals are received, Dominion will replace the overhead river crossing with a submerged crossing.

III. REPORTING REQUIREMENTS

Upon the completion of each Permittee requirement to this MOA, Dominion shall provide the Corps, the SHPO and other consulting parties a signed memorandum documenting that Dominion has fulfilled such requirement. At the completion of all of the requirements, Dominion shall notify such parties that it has satisfied all its responsibilities under this MOA.

IV. PROFESSIONAL QUALIFICATIONS

All archaeological and/or architectural work carried out pursuant to this MOA shall be conducted by or under the direct supervision of an individual or individuals who meet 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. Except as otherwise stated elsewhere in the stipulations, Dominion shall submit a draft of all technical reports, treatment plans and other required Permittee documentation to the Corps (one (1) copy) and the SHPO (two (2) hard copies and one electronic copy in Adobe® Portable Document Format (.pdf)) and to other concurring parties (one (1) Copy) for 30-day review and comment. Dominion shall consider all comments received within thirty (30) days of confirmed receipt in the revised technical report/documentation. Following written approval by the Corps, Dominion shall provide two (2) copies of all final reports, bound and on acid-free paper, and one 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 signatories of the MOA.

- b. All technical reports prepared by Dominion pursuant to this MOA will be consistent with the federal standards entitled *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* (2011), or any subsequent revisions or replacements of these documents.
- c. All architectural and landscape studies resulting from this MOA shall 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).
- d. The Corps, SHPO, ACHP, and other concurring parties of the MOA agree to provide comments on all technical reports, treatment plans, and other documentation arising from this MOA within thirty (30) calendar days of receipt. If no comments are received within the thirty (30) day review period, Dominion may assume the non-responding party has no comments.

VI. CURATION

Within thirty (30) days of the Corps' approval of the final technical report, Dominion 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 MOA (with the exception of human skeletal remains and associated funerary objects) for permanent curation with the DHR, which meets the requirements in 36 CFR 79, *Curation of Federally Owned and Administered Archeological Collections*. Dominion shall be responsible for all DHR curation fees associated with materials recovered during the project. Dominion shall provide the Corps with a copy of the curation agreement as evidence of its compliance with this stipulation. All such items shall be made available to educational institutions and individual scholars for appropriate exhibit and/or research under the operating policies of DHR.

VII. POST-REVIEW DISCOVERIES

- a. Dominion shall ensure that the following provision is included in all construction contracts: "If previously unidentified historic properties or unanticipated adverse effects to historic properties are discovered during construction, the construction contractor shall immediately halt all activity within a one hundred (100) foot radius of the

discovery, notify Dominion Virginia Power of the discovery and implement interim measures to protect the discovery from looting and vandalism.”

- b.** Immediately upon receipt of the notification required in Stipulation VII(a) above, Dominion shall:

 1. Inspect the construction site to determine the extent of the discovery and ensure that construction activities have halted;
 2. Mark clearly the area of the discovery;
 3. Implement additional measures, as appropriate, to protect the discovery from looting and vandalism;
 4. Engage a professional archeologist to 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 and the SHPO of the discovery describing the measures that have been implemented to comply with this stipulation.
- c.** Upon receipt of the information required in the above stipulation, the Corps shall provide Dominion and the SHPO with its assessment of the NRHP eligibility of the discovery and the measures proposed to resolve adverse effects. 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). Dominion, the SHPO and other consulting parties shall respond to the Corps’ assessment within forty-eight (48) hours of receipt.
- d.** The Corps will take into account the SHPO recommendations on eligibility and treatment of the discovery and will notify Dominion of any appropriate required actions. Dominion must comply with the required actions and provide the Corps and SHPO with a report on the actions when implemented. Any actions that the Corps deems appropriate for Dominion to take with regard to such discovery will automatically become additional stipulations to this MOA and thereby will be incorporated in the permit and become conditions to the permit. If Dominion fails to comply with such actions, such failure will constitute a breach of this MOA and noncompliance with the permit.
- e.** Construction may proceed in the area of the discovery when the Corps has determined that implementation of the actions

undertaken to address the discovery pursuant to this stipulation are complete.

VIII. HUMAN REMAINS

- a.** Dominion shall make all reasonable efforts to avoid disturbing gravesites, including those containing Native American human remains and associated funerary artifacts. Dominion shall treat all human remains in a manner consistent with applicable Federal and state law [and to the extent such laws do not apply, the ACHP's *Policy Statement Regarding Treatment of Burial Sites, Human Remains and Funerary Objects* (February 23, 2007; <http://www.achp.gov/docs/hrpolicy0207.pdf>)].
- b.** Dominion shall ensure that human skeletal remains and associated funerary objects encountered during the course of actions taken as a result of this MOA shall 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). If removal is proposed, Dominion shall apply for a permit from the SHPO for the removal of human remains in accordance with the regulations stated above.
- c.** Dominion 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 MOA shall make no photographs of any Native American burial site or associated funerary artifacts. 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 of remains or associated artifacts, and implement appropriate measures based on these consultations. Dominion shall deliver any Native American human skeletal remains and associated funerary artifacts recovered pursuant to this MOA to the appropriate tribe to be reinterred. The disposition of any other human skeletal remains and associated funerary artifacts shall be governed as specified in any permit issued by the SHPO or any order of the local court authorizing their removal. Dominion will be responsible for all reasonable costs associated with treatment of human remains and associated funerary objects.

IX. DISPUTE RESOLUTION

- a.** Should any signatory party to this MOA object in writing to the Corps regarding any action carried out or proposed with respect to any undertakings covered by this MOA or to implementation of this

MOA, the Corps shall consult with the objecting party to resolve the objection.

- b. 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.
- c. Within thirty (30) days after receipt of all pertinent documentation, the ACHP shall exercise one 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
 - 3. 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.
- d. 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.
- e. 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 all the actions under this MOA that are not the subjects of the objections shall remain unchanged.
- f. At any time during implementation of the measures stipulated in this MOA, should an objection pertaining to this MOA be raised by a member of the public, the Corps shall notify the parties to this MOA and take the objection into account, consulting with the objector and, should the objector so request, with any of the parties to this MOA to resolve the objection.

X. AMENDMENTS AND TERMINATION

- a. Any signatory party to this MOA may propose to the Corps that the MOA be amended, whereupon the Corps will consult with the other parties to this MOA to consider such an amendment. All signatories

to the MOA must agree to the proposed amendment in accordance with 800.6(c)(7).

- b. If Dominion decides it will not proceed with the undertaking, it shall so notify the Corps, the SHPO, and the other consulting parties and this MOA shall become null and void.
- c. If Dominion determines that it cannot implement the terms of this MOA, or if the Corps or SHPO determines that the MOA is not being properly implemented, Dominion, the Corps, or the SHPO may propose to the other parties to this MOA that it be amended or terminated.
- d. This MOA may be terminated by any signatory party to the MOA in accordance with the procedures described in 800.6(c)(8). Termination shall include the submission of a technical report or other documentation by Dominion on any work done up to and including the date of termination. If the Corps is unable to execute another MOA following termination, the Corps may choose to modify, suspend, or revoke the Department of the Army permit as provided by 33 CFR 325.7.
- e. Consideration of amendments shall not interrupt or delay any actions taken pursuant to the existing MOA.

XI. COORDINATION WITH OTHER FEDERAL REVIEWS

In the event that Dominion or other agency applies for additional federal funding or approvals for the Project 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 and notifying and consulting with SHPO and ACHP. Any necessary modifications will be considered in accordance with Stipulation X, Amendments and Termination.

XII. DURATION OF MOA

This MOA will continue in full force and effect until fifty (50) years after the effective date of the MOA. Dominion shall fulfill the requirements of this MOA prior to and in conjunction with the work authorized by the Corps permit. All obligations under this MOA must be complete before expiration of this MOA. If any obligation is not complete, the party responsible for such obligation is in violation of this MOA; such violation may also constitute a violation of the Corps permit. Failure of the Corps to pursue such violation is NOT a waiver. At any time in the six-month period prior to such date, the Corps may request the signatory parties to consider an extension or modification of this MOA. No extension or modification will be effective unless all parties to the MOA have agreed with it in writing.

XIII. ANTI-DEFICIENCY ACT

The Corps' obligations under this MOA are subject to the availability of appropriated funds, and the stipulations of this MOA are subject to the provisions of the Anti-Deficiency Act. The Corps shall make reasonable and good faith efforts to secure the necessary funds to implement this MOA in its entirety. If compliance with the Anti-Deficiency Act alters or impairs the Corps' ability to implement the stipulations of this MOA, the Corps shall consult in accordance with the amendment and termination procedures found at Stipulation X of this MOA.

XIV. EXECUTION OF MOA

This MOA may be executed in counterparts, with a separate page for each signatory party and shall be effective from the date of the issuance of the Department of the Army Standard permit for the Project. The Corps will ensure that each party is provided with a copy of the fully executed MOA.

Execution of this MOA by the Corps, the ACHP, and the SHPO, shall, 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. Execution and submission of this MOA, and implementation of its terms, evidence that the Corps has afforded the ACHP an opportunity to comment on the proposed undertaking and its effect on historic properties, and that the Corps has taken into account the effect of the undertaking on historic properties.

SIGNATORY PARTIES:

NORFOLK DISTRICT, U. S. ARMY CORPS OF ENGINEERS

By: _____

William T. Walker
Chief, Regulatory Branch

Date: _____

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: _____ Date: _____
John M. Fowler
Executive Director

June 7, 2016

VIRGINIA STATE HISTORIC PRESERVATION OFFICER

By: _____ Date: _____

Julie V. Langan
Director, Virginia Department of
Historic Resources

DOMINION:

By: _____ Date: _____

Robert M. Blue
President
Dominion Virginia Power

CONCURRING PARTIES:

By: _____ Date: _____
CONSULTING PARTY

ATTACHMENT A: DIRECT AND INDIRECT PROJECT APE MAPS

ATTACHMENT B: LIST OF DOCUMENTS SUBMITTED BY DOMINION IN SUPPORT OF CONSULTATION

- 1) *Phase II Evaluation Site 44JC0662 for the Dominion Virginia Power Skiffes Switching Station, James City County, Virginia (CRI, May 2012).*
- 2) *Phase I Cultural Resources Survey of the Proposed Approximately 20.2-mile Dominion Virginia Power Skiffes Creek to Whealton 230kV Transmission Line in James City and York Counties, and the Cities of Newport News and Hampton, Virginia, Volumes I and II (CRI, July 2012).*
- 3) *Phase I Cultural Resources Survey of the Proposed Dominion Virginia Power Skiffes Creek to Surry 500 kV Transmission Line Alternatives in James City and Surry Counties, Virginia, Volumes I and II, (Stantec, July 2013, Revised April 2014).*
- 4) *Memoranda Titled: Phase IA Walkover and Phase I Archaeological Survey - BASF Corridor Realignment – Surry to Skiffes Creek 500 kV Transmission Line Project (Stantec, July 2014).*
- 5) *Addendum to the Phase I Cultural Resources Survey of the Proposed Dominion Virginia Power Skiffes Creek to Surry 500 kV Transmission Line in James City, Isle of Wight and Surry Counties, Virginia (Stantec, October 2014). (Additional information regarding three properties {i.e. 047-5307; Artillery Site at Trebell's Landing, 090-0121; Hog Island, and 099-5282; Battle of Williamsburg} per VDHR's request was provided in Stantec's letter dated February 2, 2015.)*
- 6) *Addendum to A Phase I Cultural Resources Survey to the Proposed Approximately 20.2-mile Dominion Virginia Power Skiffes Creek to Whealton 230 kV Transmission Line in James City and York Counties, and the Cities of Newport News and Hampton, Virginia, Volumes I: Technical Report (Stantec, July 2015).*
- 7) *Visual Effects Assessment for the Proposed Dominion Virginia Power Surry to Skiffes Creek 500kV Transmission Line Project and Skiffes Creek 500-230-115 kV Switching Station James City, Isle of Wight, and Surry Counties (Stantec, March 2014).*
- 8) *Addendum to the Visual Effects Assessment for the Proposed Dominion Virginia Power Surry to Skiffes Creek 500 kV Transmission Line Project James City, Isle of Wight, and Surry Counties (Stantec, October 2014).*
- 9) *Addendum to the Visual Effects Assessment for the Proposed Dominion Virginia Power Surry to Skiffes Creek 500 kV Transmission Line Green Spring Battlefield (Stantec, November 2014).*

- 10) *Interactive Simulations Surry-Skiffes Creek 500 kV Transmission Line James River Crossing (Dominion/TRUESCAPE, March 2015).*
- 11) *Cultural Resource Affects Assessment, Surry-Skiffes Creek-Whealton Transmission Line Project, Surry, James City, and York Counties, Cities of Newport News and Hampton, Virginia (Stantec, September 2015).*
- 12) *Photo Simulation Overview Surry-Skiffes Creek-Whealton Transmission Line Project, Surry, James City and York Counties, Cities of Newport News and Hampton, Virginia. (Dominion/TRUESCAPE, April 2016).*

June 7, 2016

**ATTACHMENT C: LIST OF EFFECTED HISTORIC PROPERTIES UNDER
CONSIDERATION**

ATTACHMENT D: KEEPER'S DOE LETTER AND MAP

ATTACHMENT E: CORPS' SECTION 106 CONSULTATION AND PUBLIC INVOLVEMENT PLAN

ATTACHMENT F: MOA CONTEXT DOCUMENT