

**MEMORANDUM OF AGREEMENT  
BETWEEN THE U.S. DEPARTMENT OF ENERGY, RICHLAND OPERATIONS OFFICE,  
THE WASHINGTON DEPARTMENT OF ARCHAEOLOGY AND HISTORIC  
PRESERVATION, AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION  
REGARDING THE REMEDIATION OF WASTE SITE 600-385, AND REMOVAL OF  
MISCELLANEOUS RESTORATION ITEMS SG4DH-169 AND SG4DH-207 IN THE 100-D  
AND 100-H INTERMEDIARY AREA OF THE HANFORD SITE, BENTON COUNTY,  
WASHINGTON (HCRC#2011-100-083)**

The purpose of this memorandum of agreement (MOA) is to establish mitigation, stipulations and actions. Such actions are associated with findings of adverse effects to historic properties as determined through the *National Historic Preservation Act* (NHPA) Section 106 process. Mitigation, stipulations and actions will be determined through consultation with the Confederated Tribes and Bands of the Yakama Nation, the Confederated Tribes of the Umatilla Indian Reservation, the Nez Perce Tribe, and the Wanapum (hereafter described as Tribes); the Department of Archaeology and Historic Preservation (DAHP); and the Advisory Council on Historic Preservation (ACHP) for adverse effects to National Register-eligible archaeological sites 45BN141 and 45BN483, in association with undertakings defined in HCRC#2011-100-083 in the 100-D and 100-H Areas of the Hanford Site, Benton County, Washington.

**WHEREAS** the U.S. Department of Energy, Richland Operations Office (RL) is required by the *Comprehensive Environmental Response, Compensation and Liability Act* of 1980 (42 USC 103) (CERCLA) and the *Hanford Federal Facilities Agreement and Consent Order* (Tri-Party Agreement) to complete remediation of the 600-385 Waste Site and plans to remove of two miscellaneous restoration (MR) items, SG4DH-169 and SG4DH-207; and

**WHEREAS** RL requires that the remedial and removal actions be performed in accordance with laws, regulations, and CERCLA-identified Applicable or Relevant and Appropriate Requirements (ARARs), including those pertaining to the protection of Cultural Materials and historic properties; and

**WHEREAS** those laws, regulations, and ARARs require the remedial and removal actions to be performed in a manner that minimizes and mitigates impacts to historic properties; and

**WHEREAS** RL will provide that the undertaking is in accordance with requirements and processes in the National Historic Preservation Act, Archaeological Resources Protection Act, American Indian Religious Freedom Act, Native American Graves Protection and Repatriation Act, Executive Order 13007, and its government to government relationship with the Tribes; and

**WHEREAS** RL will provide that the undertaking is consistent with the requirements under the CERCLA Record of Decision and Action Memorandum to complete the undertaking as defined in HCRC#2011-100-083. Any alteration to the project, as defined for this undertaking, will require a new NHPA Section 106 review; and

**WHEREAS** nothing in this MOA expands or diminishes rights reserved in the Treaties and Agreements with the Tribes; and

**WHEREAS** RL has defined the undertaking Area of Potential Effect (APE) as the location and extent of potential ground disturbance and all necessary staging and work areas needed to support the removal of MR items SG4DH-169 and SG4DH-207, and the sampling and remediation of waste site 600-385. The APE encompasses land totaling approximately 4 hectares (10 acres), as defined in HCRC#2011-100-083; and

WHEREAS RL has established the undertaking APE in accordance with NHPA Section 106 (54 U.S.C. § 306108) under implementing regulations at 36 *Code of Federal Regulations* 800.4 (a), "Protection of Historic Properties," in the 100-D and 100-H Areas, as defined in HCRC#2011-100-083; and

WHEREAS DAHP has concurred in the delineation of the APE and concurs that remediation activities for 600-385 Waste Site and removal activities associated with MR items SG4DH-169 and SG4DH-207 overlap with contributing elements of the eligible sites 45BN141 and 45BN483; and

WHEREAS RL has determined that the undertaking will have an adverse effect on 45BN141 and 45BN483, which are eligible for listing in the National Register of Historic Places, and has consulted with the DAHP pursuant to 36 CFR 800, the regulations implementing NHPA Section 106 (54 U.S.C. § 306108); and

WHEREAS RL has consulted with the DAHP and Tribes pursuant to 36 CFR 800, the regulations implementing NHPA Section 106 (54 U.S.C. § 306108) to resolve the adverse effects of the undertaking on 45BN141 and 45BN483; and

WHEREAS in accordance with 36 CFR § 800.6(a)(1), RL has notified with the ACHP of its adverse effect determination with specified documentation, and the ACHP has chosen to participate in the consultation pursuant to 36 CFR § 800.6(a)(1)(iii); and

WHEREAS RL will ensure that any mitigation or stipulation contained in this MOA that extends beyond the project completion date and is not completed by the project will be funded and implemented by DOE-RL to meet mitigation actions. The funding for implementation will not be taken from DOE's Cultural Resource Program budget; and

NOW, THEREFORE, RL, the DAHP, and ACHP agree that RL shall ensure that the undertaking is carried out in accordance with this MOA. The executed and implemented MOA evidences the agency official's compliance with NHPA Section 106 and shall govern the undertaking and all of its parts until this MOA expires or is terminated.

#### STIPULATIONS

RL, the DAHP/SHPO, and the ACHP agree that RL shall ensure that the following measures are carried out:

1. RL will establish administrative and engineered controls for project activities located within 45BN141 and 45BN483, including the following:
  - a. RL will hand remove the tumbleweeds within the waste site prior to remediation.
  - b. RL will provide cultural sensitivity training for all personnel involved with the undertaking outlined in this MOA and prior to any work under this stipulation. The training will be given by a professional archaeologist and customized to focus on the unique sensitivity of the specific project area.
  - c. RL will require that the Project work area for remediation and debris removal boundaries will be determined in the field by the Monitor, Project, and cultural resources team using an engineered system such as "T" posts and rope, cones, pin flags, stakes, or other suitable application. Project personnel will be directed to remain within the engineered system for the duration of the project.
  - d. RL will require that all 600-385 waste site remediation activities and vehicle access be confined to access roads and the waste site. Otherwise, the equipment and the Environmental Restoration Disposal Facility (ERDF) containers will be staged at existing 100-D and 100-H

- remediation support areas. Some remediation equipment including the water truck and excavator may be left within the waste site boundary for the duration of the project.
- e. RL will assure that protective matting (construction access matting or equivalent) and adequate leveling sand for matting foundation be utilized to protect 45BN141 and 45BN483 on the road and off-road surfaces, as determined in the field by the Cultural Resources Monitor (Monitor), Project, and cultural resources team.
  - f. RL will require that all SG4DH-169 (transite pile) debris removal activities be completed using a rubber-tired vehicle. Access will be confined to the access road, and off-road access determined by the Monitor and Tribal Monitors in the field during project work.
  - g. RL will require that SG4DH-207 30-gallon drum and 5-gallon bucket) debris removal activities be accomplished on foot. Access will be confined to the access road, and off-road access determined by the Monitor and Tribal Monitor.
  - h. RL will ensure that shallow scoops (approximately 18 inches) be utilized by equipment operators where sediment and soil, not construction and other debris, are prevalent within the 600-385 waste site.
  - i. RL will ensure that a water truck will be used to keep the waste site wet in a way that minimizes disturbance of cultural material related to 45BN141 and 45BN483 and still meet safety requirements.
  - j. RL will ensure that the number of vehicles to support remediation activities will be kept to a minimum during project work.
2. RL will ensure the following monitoring activities will be followed in lieu of a separate monitoring plan:
- a. RL will require that full-time cultural resources monitoring will be conducted by an archaeologist who meets the U.S. Secretary of Interior's standards for professional archaeologists ([http://www.nps.gov/history/local-law/arch\\_stnds\\_9.htm](http://www.nps.gov/history/local-law/arch_stnds_9.htm)).
  - b. The Cultural Resources Monitor will inspect each avoided area to ensure it remains intact at the end of the work day. If at any time cultural resources are encountered, the DAHP and the Tribes will be notified immediately in accordance with Stipulation 5.
  - c. RL will require training for Tribal Monitors, Monitor, and Project support, to enter the waste site and conduct close-out sampling or other investigation purposes related to cultural resource monitoring.
    - i. RL will require 24-hour hazardous waste training for entry into the exclusion zone.
    - ii. RL will provide the asbestos awareness training for Tribal Monitors.
    - iii. RL will ensure that all participants working onsite agree to read, sign, and follow the site-specific health and safety plan and be under the control of the Site Safety Officer provided by the Contractor.
  - d. RL will ensure that the Monitor has adequate access to the waste site and excavation before, during, and after remediation.
    - i. RL will ensure that the Monitor will have access to the edge of the excavation to monitor the excavation of the waste material and routine activities outside the swing radius of the equipment.

- ii. RL will ensure that the Monitor will be able to view the sidewalls and construction debris during remediation and enter the excavation as needed.
  - iii. RL will ensure that the Monitor and Project personnel can monitor/watch for anomalies and cultural objects during the cascading or primary sort process as debris is lifted and cascaded during the wetting process (adequately wetted to control dust). If the Monitor determines cultural objects are present, they will be documented prior to removal, and they may be temporarily removed from the construction zone. The objects will be temporarily placed on the surface within the waste site boundary. The pre-contact objects will be covered with soil at the request of the Tribal Monitors. Historic objects will be recorded and/or curated and/or removed to ERDF. The Monitor and Tribal Monitors will determine the outcome in the field.
4. RL will ensure the following procedures are followed if verification sampling is deemed necessary:
  - a. RL will ensure that the number of samples, spatial distribution, and analytes for collection of environmental soil samples is provided to DAHP and Tribes before sampling takes place.
  - b. RL will ensure that the depth of the collection of environmental soil samples will be between 0 and 6 inches below the bottom of the excavation.
  - c. RL will ensure an archaeological survey is conducted following completion of remediation activities and before closeout samples are/may be collected.
  - d. RL will ensure that the Monitor will, and Tribal Monitors may, monitor the collection of environmental soil samples within the excavation. During excavation, environmental soil/debris samples may be collected if anomalies are encountered.
  - e. RL will ensure that if the Monitor present during closeout sampling of a proposed location identifies the sample location as being within archaeological material, then the sampling location will be moved within the limits defined by the Verification Work Instruction or as determined with approval of RL and the lead regulatory agency to avoid the archaeological materials.
  - f. RL will ensure that the Tribal Monitors may observe the soil from any samples collected in the plastic sample bags, prior to them being bottled.
  - g. RL will ensure that any cultural material identified in the plastic sample bags can be removed prior to being bottled.
5. RL will ensure that if at any time archaeological resources are damaged, the State Historic Preservation Officer and the Tribes will be notified immediately. RL shall undertake a professional archaeological damage assessment using the federal guidelines. The professional archaeologist tasked with undertaking the damage assessment shall not include the archaeologist involved in the original survey or site monitoring in order to assure an independent investigation. RL shall provide the damages assessment scope of the investigations draft reports to DAHP and Tribes for a 30-day review. Following the finalization of any damage assessment, and if any provisions of this stipulation are not followed, RL shall consult with the DAHP and Tribes regarding the restoration and mitigation.
6. RL will ensure the following actions are taken in the event of a discovery:
  - a. RL will follow 36 CFR 800.13(b).
  - b. Should the remediation and removal contractor encounter previously unknown historic properties; find that an action or activity is having an adverse effect that was not anticipated;

- or find artifacts, features, or other archaeological or burial remains that may, in the opinion of the Monitor and Tribal Monitor, be the remains of a historic property, grave, or cemetery, the remediation contractor must immediately stop all work activity within a 30-meter (98-foot) buffer zone around the previously unknown or newly discovered historic property. The Monitor and Tribal Monitor will follow the construction-related discoveries process in Stipulation 3 above and/or the *Hanford Cultural Resources Management Plan (HCRMP)* Section 5.4.2.1 (DOE/RL-98-10) (attached).
- c. If human remains are discovered all work will stop on the project. Tribes will be awarded the opportunity to repatriate the person in a traditional manner in a respectful and private setting. All project personnel will vacate the project area until such time the ceremonial services are complete and the individual has been properly tended to. At such time project activities will resume.
  - d. RL will ensure that following the project activities, any new information regarding cultural material identified during remediation and removal scope associated with HCRC#2011-100-083 will be considered. Information will be used to re-assess site boundaries and components, both pre-contact and historic era, as they pertain to the definition of sites and boundaries in the project area.
7. RL will ensure the following reporting and communication actions are taken:
- a. RL will ensure that the boundaries of 45BN483 and 45BN141 are updated based on artifacts encountered during remediation and other available information.
  - b. RL will determine if the two-track road is part of 45BN488 and re-evaluate the site (Isabella Burns site) for National Register of Historic Places eligibility within 18 months of project completion.
  - c. To support the re-evaluation of 45BN488 (Isabella Burns Farmstead), RL will ensure that Contractors transfer historic artifacts associated with farmsteading from the 600-385 waste site to an alternate location, if they can be decontaminated or are deemed not contaminated. The determination as to what artifacts are transferred and to where will be determined by the Monitor and Tribal Monitors in the field.
  - d. RL will provide the consulting parties an initial 7-day calendar advance notice in accordance with the Tribal Notification Matrix prior to commencement of project remediation activities.
  - e. RL will provide weekly summaries to consulting parties of the remediation work accomplished during remediation activities.
8. RL will ensure that the following actions are taken to mitigate adverse effects on 45BN483 and 45BN141.
- a. A recontour / revegetation plan for the area affected by the undertaking will be drafted, finalized, and implemented in consultation with the Tribes. This plan will follow the guidelines from the *Hanford Site Biological Resources Management Plan (DOE/RL-96-32)*. This plan will also address Tribal Plant studies, road use, access and stabilization. The plan will be developed and implemented within 18 months of waste site excavation completion. The plan for the undertaking will be monitored annually for success for a period of 5 years from plan implementation. Monitoring will start after revegetation activities are complete. An annual report will be provided to the Tribes and DAHP to identify if additional revegetation actions are necessary to assure success.

- b. RL will ensure that the recontour / revegetation plan specifically provides measures for soil stabilization in the area directly adjacent to the south of the fenced area and all sides of the remediated area within the 600-385 waste site if necessary.
- c. RL will produce a report summarizing and integrating the cultural use of this area, including Native American pre-contact and ethno-historic occupation and use, historic-era settlers, and military occupation and use, creating a timeline of continual use at this location. The draft report will be provided to Tribes for a 30-day review before the report is finalized.
- d. RL will ensure that the condition of the fenced area remains stable and undisturbed during the duration of the project and subsequent mitigation actions. This will be accomplished by walking the perimeter of the fenced area with Tribal representatives and observing changes or disturbances.

#### **DURATION**

This MOA will remain in effect as long as project activities continue to affect historic properties, as defined in Stipulations 1, 2, 3, 4, 5, 6, 7 and/or 8. The MOA will be reviewed every 5 years by all consulting parties and revised if needed.

This MOA will expire if the project is not initiated within five (5) years from the date of its execution. Prior to such time, RL may consult with the other signatories to reconsider the terms of the MOA and amend it in accordance with the Effective Date and Termination section below.

#### **ADMINISTRATIVE PROVISIONS**

Submission of this executed MOA to the ACHP provides evidence that RL has afforded the ACHP a reasonable opportunity to comment on the undertaking and its effects on historic properties, and that RL has adequately taken into account the effects of the undertaking on historic properties prior to approving the undertaking in order to meet the requirements of NHPA Section 106.

#### **Dispute Resolution**

Should any signatory or concurring party to this MOA object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, RL shall consult with such party to resolve the objection. If RL determines that such objection cannot be resolved, RL will:

- a. Forward all documentation relevant to the dispute, including the RL's proposed resolution, to the ACHP. The ACHP shall provide RL with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, RL shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories and concurring parties, and provide them with a copy of this written response. RL will then proceed according to its final decision.
- b. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, RL may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, RL shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the MOA, and provide them and the ACHP with a copy of such written response.
- c. RL's responsibility to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remain unchanged.

**Amendments**

The signatories may propose, in writing, and will consider amendments to this MOA. This MOA may be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date a copy signed by all of the signatories is filed with the ACHP.

**Effective Date and Termination**

If any signatory to this MOA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other signatories to attempt to develop an amendment, as described above. If within thirty (30) days an amendment cannot be reached, any signatory may terminate the MOA upon written notification to the other signatories.

Once the MOA is terminated, and prior to work continuing on the undertaking, RL must either (a) execute an MOA pursuant to 36 CFR § 800.6 or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. RL shall notify the signatories as to the course of action it will pursue.

This MOA will become effective on the date that it is signed by all signatory parties. This MOA will terminate when all stipulations are met. Any signatory party who wishes to terminate the MOA must do so in accordance with 36 CFR 800.6 (c)(8) regulations.

**Anti-Deficiency Act**

RL obligations under this MOA are subject to availability of appropriated funds, and the stipulations of this MOA are subject to the provisions of the Anti-Deficiency Act. RL 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 RL's ability to implement the stipulations of this agreement, RL shall consult in accordance with the amendment and termination procedures found in this MOA.

**Coordination**

RL will ensure that each signatory and consulting party is provided a copy of the signed MOA. Execution of this MOA by RL and the DAHP will be considered to be an agreement on how the adverse effects will be resolved in accordance with 36 CFR 800.6(b)(2).

Execution of this MOA by RL, the DAHP, and the ACHP and implementation of its terms evidence that RL has taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment.

**SIGNATORY PARTIES**

U.S. Department of Energy, Richland Operations Office

By: Stacy Charboneau Date: 12/21/15  
 Stacy Charboneau  
 Site Manager

Washington State Department of Archaeology and Historic Preservation

By: [Signature] Date: 12/23/15  
 Dr. Allyson Brooks  
 Washington State Historic Preservation Officer/Director

**Advisory Council on Historic Preservation**

By: John M. Fowler Date: 6/16/16  
John M. Fowler  
Executive Director  
Advisory Council on Historic Preservation

**INVITED SIGNATORY**

**Confederated Tribes and Bands of the Yakama Nation**

By: JoDe L. Goudy Date: 12-15-15  
JoDe L. Goudy  
Chairman  
Yakama Nation Tribal Council

## HANFORD CULTURAL RESOURCES MANAGEMENT PLAN, SECTION 5.4.2.1

### 5.4.2.1 Discovery

All inadvertent discoveries of recognized or potential human skeletal remains will be immediately reported to the responsible manager or supervisor. Depending on the circumstances of the discovery, an inadvertent discovery could be made through any one of several situations—during cultural resources monitoring of construction activities; chance discoveries by workers during non-monitored construction; or a report of possible human skeletal materials from any non-construction area within the site.

Until a final evaluation can be made, all reports of potential NAGPRA discoveries will be taken seriously and dealt with expeditiously by all personnel involved in the discovery.

If applicable, e.g., the inadvertent discovery occurs in connection with an ongoing activity, responsible personnel will take measures to cease activity in the area where the discovery is made. Work will not proceed until proper notifications have been made, and a full professional evaluation of the nature of the discovery has been completed.

Securing and providing protection to the discovered remains is initially the responsibility of the discoverers, if during an on-going activity. In addition to stopping the activity in the area of the inadvertent discovery, on-site workers will provide initial security by both avoiding the discovery site proper, and by ensuring that other personnel do not intrude on to the discovery site. All cultural items are to be left in place, without further disturbance, and a temporary perimeter (flagging tape, stakes, etc.) may be established, if appropriate, until notifications have been made and a cultural resources professional has appeared. Covering the exposed remains with some type of natural material may be appropriate.

Depending on the outcome of the professional evaluation and the sensitivity of the discovery, longer-term protection may be required in the form of onsite guards and/or periodic patrols. It may also be necessary to establish additional security perimeters and access control to the area.

Depending on the circumstances of the discovery, notification may take several avenues. For example, if made during monitoring of construction, either by an archaeologist or a site worker, the initial notification will be to the appropriate contractor cultural resource manager, who will then notify the DOE-RL Hanford Cultural and Historic Resources Program Manager. Other feasible avenues of notification include a site worker notifying their supervisor or site security or a member of the public notifying the sheriff's department or the county coroner.

The key notification is to the responsible manager at DOE-RL, the DOE-RL Hanford Cultural and Historic Resources Program Manager, who will coordinate subsequent notifications, as necessary, following the professional evaluation of the discovery.

As soon as possible following the discovery and initial notification, the discovery will be evaluated to verify that the remains are human and that they are not a crime scene. Following this, determination will be made on whether the remains are Native American. This will be accomplished by technical staff from the DOE-RL Hanford Cultural and Historic Resources Program in consultation with

Native American representatives. If a clear determination can not be made, additional expertise will be obtained. If the skeletal remains are not determined to be Native American, disposition will be determined by the DOE- RL Hanford Cultural and Historic Resources Program Manager in consultation with interested parties.

If the discovery is determined to be Native American, and therefore subject to NAGPRA, the DOE-RL Hanford Cultural and Historic Resources Program Manager will initiate consultation and additional notifications as per requirements in 43 CFR 10, Section 10.4. Notifications include the DOE Federal Preservation Officer and the State Historic Preservation Officer. Within 24 hours, the DOE-RL Cultural and Historic Resources Program Manager will telephonically notify tribal technical contacts and within 3 working days will provide written notification, which may be provided by fax or certified mail, to the designated tribal NAGPRA points of contact. As soon as practicable, an emergency meeting with designated tribal personnel will be held to continue NAGPRA formal consultation, and to develop a coordinated plan of action for disposition of the inadvertent discovery.

If the inadvertent discovery occurred as a result of an ongoing activity such as construction, resumption of the activity will depend on the consultation process and the overall significance of the discovery. NAGPRA and 43 CFR 43 provide for resumption of the activity 30 days after the certified notification of the discovery. However, resumption may occur at an earlier date if a written, binding agreement is executed between DOE-RL and the affected Indian tribes for the mitigation of the impacts to the remains.



