

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34

**EXHIBIT 1**

BOT Resolution 15-013

**MEMORANDUM OF AGREEMENT**

**AMONG THE  
US DEPARTMENT OF VETERANS AFFAIRS**

**AND THE**

**WASHINGTON STATE DEPARTMENT OF VETERANS AFFAIRS**

**AND THE**

**WASHINGTON DEPARTMENT OF ARCHAEOLOGY AND HISTORIC  
PRESERVATION**

**AND THE**

**ADVISORY COUNCIL ON HISTORIC PRESERVATION**

**AND THE**

**CONFEDERATED TRIBES OF THE UMATILLA INDIAN RESERVATION**

**REGARDING A LAND TRANSFER AND CONSTRUCTION OF A  
SKILLED NURSING FACILITY  
ADJACENT TO THE VA MEDICAL CENTER, WALLA WALLA, WASHINGTON**

WSDVA Skilled Nursing Facility  
VAMC Walla Walla  
2/02/15

35 **WHEREAS**, the US Department Of Veterans Affairs (VA) proposes to transfer approximately  
36 10.5 acres (parcel) and provide 65% funding in the range of \$20-25 million through the VA State  
37 Home Construction Grant program to the Washington State Department Of Veterans Affairs  
38 (WSDVA) for the construction by the WSDVA of a Skilled Nursing Facility (Facility), and  
39 associated utility upgrades, as described in Exhibit A (Undertaking); and  
40

41 **WHEREAS**, Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. 470f,  
42 and its implementing regulations at 36 CFR Part 800 (Section 106) requires Federal Agencies to  
43 take into account the effects of their undertakings on historic properties and provide the Advisory  
44 Council on Historic Preservation (ACHP) a reasonable opportunity to comment on those  
45 undertakings; and  
46

47 **WHEREAS**, the purpose of this Memorandum of Agreement (MOA) is to document compliance  
48 with Section 106 of the NHPA, pursuant to 36 CFR § 800.6 (c); and  
49

50 **WHEREAS**, VA initiated consultation with the WSDVA, ACHP and Washington Department  
51 of Archaeology and Historic Preservation (DAHP); and  
52

53 **WHEREAS**, the WSDVA, ACHP and DAHP have chosen to participate in the consultation for  
54 this Undertaking; and  
55

56 **WHEREAS**, VA identified the following tribes as having ancestral or traditional interests in the  
57 area and invited them to be consulting parties:  
58

- 59 • Colville Confederated Tribes
- 60 • Confederated Tribes of the Umatilla Indian Reservation (CTUIR)
- 61 • Confederated Tribes and Bands of the Yakama Indian Nation
- 62 • Nez Perce Tribe
- 63 • Wanapum Tribe; and  
64

65 **WHEREAS**, the CTUIR have agreed to be a Signatory Party; and  
66

67 **WHEREAS**, VA notified and invited the City of Walla Walla and local historic preservation  
68 community to be Consulting Parties; and  
69

70 **WHEREAS**, VA, in consultation with the WSDVA, ACHP, DAHP and CTUIR, established the  
71 Undertaking's Area of Potential Effect (APE) to be:  
72

73 Built environment of the Walla Walla Veterans Affairs Medical Center (VAMC) campus

WSDVA Skilled Nursing Facility  
VAMC Walla Walla  
2/02/15

74 (parcel #360730130080) including approximately 2.5 acres of City of Walla Walla land  
75 located adjacent and to the south; and the archaeological APE as the area of land to be  
76 transferred; and,  
77

78 **WHEREAS**, VA has developed a research design for the inventory and evaluation of the APE in  
79 consultation with the WSDVA, DAHP, ACHP and CTUIR (*Washington Department of Veterans*  
80 *Affairs Skilled Nursing Facility Phase I and II Cultural Resources Investigation Plan Walla*  
81 *Walla County, Washington August 2012*). A Phase I Cultural Resource Survey was undertaken  
82 and Report of Findings submitted for review and comment to DAHP, ACHP, CTUIR, interested  
83 tribes and other Consulting Parties. Phase II archaeological investigations have identified  
84 archaeological historic properties (Site 45WW341) which will be adversely affected by the  
85 undertaking; and  
86

87 **WHEREAS**, the parcel to be transferred from VA to the WSDVA is within, and contributes to,  
88 the National Register of Historic Places (NRHP) -listed Fort Walla Walla Historic District (NRIS  
89 #74001985) and is therefore a historic property; and,  
90

91 **WHEREAS**, the Historic District is significant under Criteria A, C and D for association with  
92 events surrounding exploration/settlement, military, health/medicine; architecture; and ability to  
93 answer questions through archaeology. The periods of significance are the Fort era (1859-1920)  
94 and VA era (1921-1950). The proposed undertakings will affect integrity of location, design,  
95 setting, materials, workmanship, feeling, and association; and,  
96

97 **WHEREAS**, construction of the new Facility will occur entirely after the transfer of land out of  
98 Federal ownership; and,  
99

100 **WHEREAS**, the transfer of land out of federal ownership without adequate and legally  
101 enforceable conditions to ensure long-term preservation is considered an adverse effect; and,  
102

103 **WHEREAS**, the demolition of the 1928 Water Tower (Building 96) is considered an adverse  
104 effect; and,  
105

106 **WHEREAS**, the alteration of the cultural landscape within the parcel is considered an adverse  
107 effect; and,  
108

109 **WHEREAS**, VA has determined the Undertaking, which includes the aforementioned findings,  
110 will have an adverse effect on historic properties and submitted a Finding of Adverse Effect to  
111 the WSDVA, DAHP, ACHP, CTUIR and other Consulting Parties; and,  
112

113 **WHEREAS**, the WSDVA submitted a preliminary Facility design development packet (20%) to

114 VA, DAHP, ACHP, CTUIR, interested tribes and other stakeholders. The WSDVA submitted a  
115 design development packet (50%) to DAHP for review and comments have been received.  
116

117 **NOW, THEREFORE,** VA, WSDVA, DAHP, the CTUIR, and the ACHP agree that the  
118 undertaking shall be implemented in accordance with the following stipulations in order to take  
119 into account the effect of the undertaking on historic properties:  
120  
121

## 122 **STIPULATIONS**

### 123 **I. Transfer of Real Property with Historic Preservation Covenant**

124 VA shall include a Historic Preservation Covenant with the Quitclaim Deed that will run with  
125 the land and will obligate the WSDVA to fulfill the conditions included therein (Exhibit B).  
126  
127  
128

### 129 **II. Assumption of Cultural Resource Management Responsibilities**

130  
131 Upon legal transfer of the parcel to the WSDVA, the WSDVA shall be solely responsible for  
132 future cultural resource management of the parcel as stipulated in the Historic Preservation  
133 Covenant Exhibit B.  
134

### 135 **III. Archaeological Resources**

#### 136 **A. Archaeological Data Recovery (Phase III) and Site Management Plan**

137 Previous Phase I and II investigations have identified, tested and reported on a historic  
138 artifact scatter and several archaeological features within the APE. The investigations  
139 have determined that a majority of the landscape and features have been truncated,  
140 disturbed and/or do not have the potential to significantly contribute to the understanding  
141 of the history and use of the site. Additional archaeological investigation has been  
142 recommended for a single historic feature (Building 57 root cellar) that lies within the  
143 proposed construction footprint.  
144  
145

146 A Phase III Work Plan has been submitted to Consulting Parties that explicates the  
147 research design and methodology for additional investigation and data recovery of the ca.  
148 1885 – ca. 1905 root cellar feature which appears to consist of intact stratigraphic cultural  
149 deposits. The root cellar feature will be investigated through large-block controlled hand  
150 and mechanical excavation.  
151

152 Feature 1 appears to be an intact pre-contact cooking (fire-cracked rock) feature  
153 identified in Phase I and further explored in Phase II studies. Additional investigations

154 entailed magnetometer remote sensing followed by 0.5 meter (m) by 0.5m shovel tests  
155 excavated at 10.0m, 5.0m and 2.5m intervals in four directions from the known feature.  
156

157 A detailed Site Management Plan will be prepared to preserve in place and protect  
158 Feature 1 both during construction and for any subsequent work done in the area. The  
159 Site Management Plan shall be developed by VA with the Signatory Parties and will be  
160 implemented by WSDVA prior to ground-disturbing construction activities. To protect  
161 Feature 1 during construction, the VA and WSDVA agree to take the following steps.  
162

- 163 1. For a distance of five meters on each side of Feature 1, the sewer line trench will  
164 be excavated with the smallest excavator possible to achieve a maximum trench  
165 width of 24 inches.
- 166 2. A 10-meter long segment of sewer pipe centered on Feature 1 will be assembled  
167 on the surface of the ground. This section of pipe will be placed in a ductile iron  
168 sleeve. The pipe will be lowered into the trench from the surface; no personnel  
169 will enter the trench.
- 170 3. A no entry zone will be demarcated on the surface using protective fencing no  
171 less than four feet high. Supports for this fence will be t-posts that will not be  
172 driven more than 15 inches into the ground. This no work zone will include  
173 Feature 1 and a buffer 2.5 meters to the north and 10 meters to the south, east, and  
174 west.  
175

176 If construction activities impact unanticipated features, consultation with Signatory  
177 Parties will be undertaken to resolve adverse effects. This process is detailed in Exhibit  
178 C.  
179

180 All archaeological investigations will be completed in accordance with the Secretary of  
181 the Interior's standards (48 FR 44716), and applicable state regulations. A report of  
182 findings will be prepared and made available by VA to the Consulting Parties for review  
183 and comment within 30 calendar days. Cultural material will be handled in accordance  
184 with Exhibit C.  
185

186 Upon completion of Phase III investigations, VA shall have fulfilled its Section 106  
187 responsibilities and have no further obligations under this Agreement for archaeological  
188 resources, as they relate to the investigated areas. Notwithstanding, legal rights and  
189 obligations of the Signatories related to enforcement of the historic preservation covenant  
190 (Exhibit B) contained in the Quitclaim Deed will remain in effect as provided by Section  
191 V of the Quitclaim Deed and in accordance with applicable Federal law.  
192

193 **B. Archaeological Resource Monitoring Plan And Cultural Materials Discovery**  
194 **Protocol during Construction**

195 The WSDVA shall wholly adopt and take responsibility for implementation of the  
196 Resource Monitoring Plan and Cultural Materials Discovery Protocol (Exhibit C).  
197 WSDVA will implement the plans and protocol during project construction and any  
198 subsequent ground-disturbing activities.  
199

200 **C. Communication and Coordination**

201 VA and the WSDVA shall undertake the following measures to ensure adequate and  
202 effective communication between the Signatories throughout the period of time covered  
203 by this MOA.  
204

205 1. Prior to the land transfer, VA and the WSDVA shall each designate a Primary Point of  
206 Contact within their agencies. Each will have access to cultural resource expertise to  
207 ensure the efficient flow of technical information between the Signatories. The WSDVA  
208 will hire a private consultant who meets the Secretary of the Interior's Professional  
209 Qualification Standards and will consult concurrently with the Signatories on review of  
210 treatments of historic properties.  
211

212 2. Within four weeks of signature of the MOA, in consultation with Signatories, VA and  
213 the WSDVA shall identify key benchmarks and design a schedule of communications.  
214 Benchmarks will include the resolution of archaeological investigations, review of  
215 outstanding design submittals, and status reports regarding the land transfer process,  
216 preparation of the Quitclaim Deed, VA State Home Construction Grant application and  
217 completion of Site Management Plan.  
218

219 **D. Curation and Reporting**

220 VA will curate and report on any archaeological resources according to Stipulation III.A.  
221 The WSDVA shall curate and report on any archaeological resources according to  
222 Stipulation III.B. and the Historic Preservation Covenant (Exhibit B). Collections will be  
223 curated at Fort Walla Walla Museum.  
224

225 **E. Treatment of Human Remains and Items of Religious and Cultural Importance**

226 VA will treat human remains and items of religious and cultural importance found on  
227 federal lands in accordance with NAGPRA and applicable Federal laws. The WSDVA  
228 will treat human remains and items of religious and cultural importance found on state  
229 lands in accordance with the Historic Preservation Covenant (Exhibit B). VA will  
230 identify a place within their land (not the land to be transferred) that can be used for  
231 reburial of repatriated remains. If necessary, remains found on the land to be transferred  
232 to the state could be buried in that location.

233

234 **IV. Treatment Measures**

235

236 This Stipulation sets forth treatment measures for historic properties adversely affected by the  
237 Undertaking.

238

**A. New Building Construction Design Review**

239

240

241

242

243

244

245

246

247

248

249

250

251

252

253

254

255

256

257

258

**B. Demolition of Historic Water Tower (Building 96)**

259

260

261

262

263

264

265

266

267

268

269

270

271

**C. Cultural Resource Curriculum and Public Education Exhibit Development**

272 Within one year from land transfer, the VA shall ensure VA funding and partnering with  
273 a public institution of higher learning to develop a curriculum and provide instruction that  
274 will present the process and findings of recent cultural resource and historic preservation  
275 investigations at the VAMC. The curriculum will also provide the context of the National  
276 Historic Preservation Act and VA legal responsibilities for compliance with  
277 implementing regulations and VA Directive 7545. Additional instructional topics will  
278 include material to accomplish a broad understanding of cultural, environmental and  
279 governmental issues germane to cultural resource management, archaeology and  
280 integration of planning for historic resources. The role of women and minorities will also  
281 be researched and presented. The VA shall consult with Signatories quarterly on  
282 curriculum design, content and presentation.  
283

284 This curriculum will include a breakout session regarding the history of tribal members  
285 on the land now used as the VA medical center in Walla Walla. The pre-contact, fur  
286 trade, Fort (tribal members likely held prisoner, serving as scouts, possibly doing other  
287 jobs), hospital (tribal members as patients or employees), and VA eras (with tribal  
288 members receiving care and possibly working there) will be examined to understand the  
289 role of tribal members in each. Since some relevant information is likely available only  
290 from tribal members, the VA will ensure that the public institution of higher learning will  
291 work with the CTUIR, providing funding as necessary. This information would be  
292 provided to Nixyáawii Community School (NCS) and made available to members of the  
293 CTUIR community in other ways.  
294

295 The deliverable will be the development of a curriculum that meets the requirements of a  
296 for-credit elective course at a public institution of higher learning. As a component of the  
297 course, the VA shall produce a video series of lectures to present basic cultural resource  
298 and historic preservation content about work at the VA. Experts in specific fields will be  
299 filmed providing content lectures. Experts, may include staff from VA Federal  
300 Preservation Office, the Washington State Historic Preservation Office, the Advisory  
301 Council for Historic Preservation, the Confederated Tribes of the Umatilla Indian  
302 Reservation, and the Fort Walla Walla Museum. The course will be available to the  
303 general public. The video series will be in a format that allows for use as VA Talent  
304 Management System (TMS) instruction for VA staff, veterans groups, schools and other  
305 interested organizations.  
306

307 In addition to the video and classroom curriculum development, VA shall develop a  
308 transportable public display and live presentation of recent archaeological findings at  
309 Walla Walla VAMC for venues throughout the greater Walla Walla area. Venues will  
310 include schools, veterans' events, local museums and other locations sufficient for public  
311 educational purposes. A series of presentations will actively engage the public to provide



312 a brief history of the Fort and VAMC, convey the legal compliance requirements, and  
313 explain basic archaeological principles and ethics. No sensitive archaeological  
314 information will be disclosed and no fee will be charged to the public.  
315

316 **D. Traditional Use Study**

317 Within three years of execution of this agreement, the VA will fund a traditional use  
318 study/documentation of CTUIR use of land that is now the Walla Walla Veterans Affairs  
319 Medical Center. This investigation will include historical research, review of tribal  
320 documents, identification of informants, interviews with informants, transcription of  
321 interviews, coordination with Language Program as necessary, and production of a  
322 report.  
323

324 **E. Recognition of Tribal Use of Area and Tribal Veterans**

325 Tribal members have used the area that is now the VA medical center in Walla Walla  
326 since time immemorial. Historically, Native Americans have the highest record of  
327 military service per capita when compared to other ethnic groups. In recognition of these  
328 facts, the WSDVA has agreed to the following.  
329

- 330 1. WSDVA will install public art that recognizes the tribal history of the area and/or  
331 with the armed forces. WSDVA will work with the CTUIR and other consulting  
332 parties to ensure the piece is appropriate.  
333
- 334 2. WSDVA will work with the CTUIR on the naming of one or more of the cottages that  
335 will be built as part of this project. This cottage may incorporate tribal themes in the  
336 interior.  
337
- 338 3. In the event that Washington State and/or Federal laws permit it, WSDVA will  
339 consider Native American preference in admissions to the facility.  
340

341 The VA agrees to co-host, co-organize, and fund enhanced annual Treaty Day  
342 celebrations in 2015 through 2019.  
343

344 **V. Dispute Resolution**

345

346 A. Unless otherwise specified in this Agreement, should any Signatory to this Agreement  
347 object in writing within 30 days to any plans, specifications, actions, or findings proposed  
348 pursuant to this Agreement, WSDVA shall consult with the objecting party to resolve the  
349 objection. Upon receiving the written objection(s):

- \*350
- 351 1. WSDVA will notify any non-objecting Signatories as to the nature of the dispute.

352  
353  
354  
355  
356  
357  
358  
359  
360  
361  
362  
363  
364  
365  
366  
367  
368  
369  
370  
371  
372  
373  
374  
375  
376  
377  
378  
379  
380  
381  
382  
383  
384  
385  
386  
387  
388  
389  
390  
391

2. WSDVA will attempt to informally resolve the objection within 30 days and notify the Signatories of the resolution.

3. In the event that informal attempts are unsuccessful, WSDVA will notify the Signatory Parties of the unresolved dispute in writing. VA will invite the objecting party to a reconciliation meeting for the purpose of discussing and resolving the objection. VA shall issue such invitation no later than ten (10) working days after receipt of the written notification from WSDVA and shall schedule a meeting to be held within fifteen (15) working days following receipt of the invitation unless the parties mutually agree to a later scheduling of the meeting. The time frames specified herein may be expedited by mutual written agreement.

B. Should the Colville Confederated Tribe, Wanapum Tribe, Confederated Tribes and Bands of the Yakama, and/or Nez Perce Tribe object to any proposed plan, curation procedure, handling of Native American human remains, the resolution of adverse impacts or sufficiency of proposed mitigation measures, WSDVA shall consult with the Tribal Governments to seek to informally resolve the objection.

C. If WSDVA determines that an objection from the non-signatory Tribes cannot be informally resolved, WSDVA shall forward all documentation relevant to the dispute to the VA and follow the procedures in Stipulation V.3. If the VA determines that an objection cannot be resolved, VA shall forward all documentation relevant to the dispute to the ACHP. Within 45 days of receipt of all documentation, the ACHP shall either:

1. Provide VA with recommendations, which VA shall take into consideration in reaching a final decision regarding the dispute, or
2. Notify VA that it will comment within 45 days in accordance with 36 CFR § 800.7(c)(2). Any Council comment provided in response to such a request will be taken into account by VA in accordance with 36 CFR § 800.7(c)(4) with reference to the subject of the dispute.

Any recommendation or comment provided by the ACHP will be understood to pertain only to the subject of the dispute; VA's responsibilities to carry out all actions under this Agreement that are not the subject of the dispute will remain unchanged.

In accordance with Stipulation I, the WSDVA will follow guidance and stipulations explicated within the Historic Preservation Covenant (Exhibit B to this MOA).

392 **VI. Amendment**

393

394 Any Signatory to this Agreement may request that it be amended, whereupon the parties will  
395 consult to consider such amendment. Any request to amend this Agreement shall be mailed to  
396 each signatory and concurring party at least 60 calendar days in advance of any proposed  
397 consultation date.

398

399 **VII. Termination**

400

401 Any Signatory to this Agreement may terminate it by providing 60 calendar days written notice  
402 to the other parties, provided that the signatories will consult during this 60-day waiting period to  
403 seek agreement on amendments or other actions that would avoid termination. In the event of  
404 termination, VA shall either: (a) execute a new MOA pursuant to 36 CFR § 800.6; or (b) request,  
405 take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. VA  
406 shall notify the signatories as to the course of action it will pursue.

407

408 **VIII. Effective End Date**

409

410 This Agreement will continue in full force and effect for 5 years. VA and/or the WSDVA may  
411 request in writing that the signatories review the Undertaking and consider an extension or  
412 modification of this Agreement. No extension or modification will be effective unless all  
413 signatories to the Agreement have agreed to it in writing. The Historic Preservation Covenant  
414 (Exhibit B) will be incorporated into the Quitclaim Deed and will run with the land in perpetuity.

415

416 **IX. Timeline for Implementation and Satisfaction of Section 106 Responsibilities**

417

418 The general timeline for implementation of this Agreement is: completion of Phase III  
419 archaeology, official land transfer, development of Site Management Plan, development of  
420 Course and Public Education offering, final Design Review, Water Tower demolition and  
421 construction of Facility.

422

423 Execution of this Agreement by the signatories and implementation of its terms evidence that  
424 VA and the WSDVA have taken into account the effects of this undertaking on historic  
425 properties and afforded the ACHP an opportunity to comment.

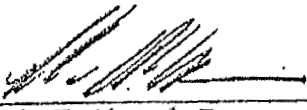
426

427 **X.** This agreement is subject to the Anti-Deficiency Act (31 U.S.C. Section 1341). VA's  
428 responsibilities under this agreement are contingent upon the availability of appropriated funds  
429 from which payment, if any, can be made. Should funds not be available to allow VA to meet its  
430 responsibilities, VA may re-initiate consultation to comply with 16 U.S.C. 470f, and its  
431 implementing regulations at 36 CFR Part 800.

WSDVA Skilled Nursing Facility  
VAMC Walla Walla  
2/02/15

432 SIGNATORIES:

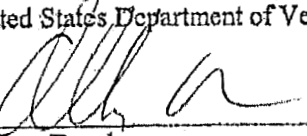
433  
434  
435  
436  
437

By:  Date: 5/11/15  
Lourdes E. Alvarado-Ramos  
Director, WA Department of Veterans Affairs

438 Lead Federal Agency Signatories  
439 found on Page 14.

By: \_\_\_\_\_ Date: \_\_\_\_\_  
~~Robert MacDonald, Secretary,~~  
United States Department of Veterans Affairs

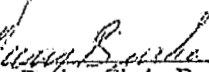
440  
441  
442  
443  
444  
445  
446

By:  Date: 3/16/15  
Allyson Brooks,  
Washington State Historic Preservation Officer

447  
448  
449  
450  
451

By:  Date: 3/25/15  
John M. Fowler, Executive Director  
Advisory Council on Historic Preservation

452  
453  
454  
455  
456

By:  Date: 2-28-15  
Gary Burke, Chair, Board of Trustees  
Confederated Tribes of the Umatilla Indian Reservation

457 CONCURRING PARTIES:

458  
459  
460  
461  
462  
463  
464  
465  
466  
467  
468  
469  
470  
471

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Guy Moura, Tribal Historic Preservation Officer  
Colville Confederated Tribes

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Kate Valdez, Tribal Historic Preservation Officer  
Confederated Tribes and Bands of the Yakama Indian Nation

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Silas C. Whitman, Chairman  
Nez Perce Tribe

WSDVA Skilled Nursing Facility  
VAMC Walla Walla  
2/02/15

472  
473  
474  
475  
476

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Rex Buck  
Wanapum Tribe

WALLA WALLA

WSDVA Skilled Nursing Facility  
VAMC Walla Walla  
2/02/15

478 SIGNATORIES:

479

480

481

482

483

484

485

486

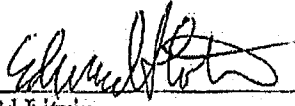
487


488

489

490

491

By:  Date: 3/12/2015  
Ed Litvin  
Department of Veterans Affairs  
Veterans Health Administration  
Director, Office of Capital Asset Management Engineering &  
Support (10NA5)

By:  Date: 3/9/15  
Brian W. Westfield  
Department of Veterans Affairs  
Veterans Health Administration Director, Jonathan M.  
Wainwright Memorial VA Medical Center (Station 687)