

**MEMORANDUM OF AGREEMENT**

**BETWEEN THE  
US DEPARTMENT OF VETERANS AFFAIRS**

**AND THE**

**WASHINGTON DEPARTMENT OF ARCHAEOLOGY AND HISTORIC  
PRESERVATION**

**REGARDING THE  
JONATHAN M. WAINWRIGHT VA MEMORIAL MEDICAL CENTER  
DEMOLITION OF BUILDINGS 8, 97 AND 103 GARAGES PROJECT**

Demolition of Buildings 8, 97 and 103 Project  
October 24, 2014

**WHEREAS**, the **US Department of Veterans Affairs (VA)** proposes to demolish three garages within the Walla Walla Veterans Affairs Medical Center (VAMC) campus as described in Attachment A (Undertaking); and

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

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

**WHEREAS**, VA, in consultation with the Washington State Department of Archaeology and Historic Preservation (DAHP), has established the Undertaking's Area of Potential Effect (APE) (Attachment A), as defined by 36 CFR § 800.16 (d), to be:

Built environment of the VAMC campus (parcel #360730130080) including approximately 2.5 acres of City of Walla Walla land located adjacent and to the south; and the archaeological APE as those buildings to undergo demolition (Attachment A); and,

**WHEREAS**, VA, in consultation with DAHP, has determined that the Undertaking may have an adverse effect on the historic Buildings 97 and 103 considered contributing resources to the Fort Walla Walla Historic District (Attachment A); and

**WHEREAS**, VA has initiated consultation with the DAHP pursuant to 36 C.F.R. part 800, regulations implementing Section 106 of NHPA; and

**WHEREAS**, in accordance with 36 C.F.R. § 800.6(a)(1), VA has notified the ACHP of its adverse effect determination with specified documentation and the ACHP has chosen not to participate in the consultation pursuant to 36 CFR § 800.6(a)(1)(iii); and

**WHEREAS**, VA identified the following tribes as having ancestral or traditional interests in the area:

- Colville Confederated Tribes
- Confederated Tribes of the Umatilla Indian Reservation
- Confederated Tribes and Bands of the Yakama Indian Nation
- Nez Perce Tribe
- Wanapum Tribe; and

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**WHEREAS**, VA has consulted with the affected tribes and invited the tribes to articulate their views on the Undertaking and resolution of Adverse Effects and invited them to be concurring parties to the MOA; and

**WHEREAS**, VA has consulted with the City and County of Walla Walla and the Fort Walla Walla Museum regarding the effects of the undertaking on historic properties and has invited them to be Consulting Parties; and

**NOW, THEREFORE**, VA and DAHP agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties.

## STIPULATIONS

VA shall ensure that the following measures and stipulations are carried out.

### **I. Professional Qualifications**

VA will ensure that all historic preservation and archaeological resources work performed by or on behalf of the agency pursuant to this agreement, shall be accomplished by or under the direct supervision of persons who meet the pertinent qualifications standard for the relevant discipline set out in the Secretary of the Interior's *Professional Qualifications Standards* (48 FR 44738-44739).

### **II. Archaeological Resources**

#### **A. Archaeological Resource Monitoring Plan And Cultural Materials Discovery Protocol**

VA has developed a Monitoring Plan consistent with the Secretary of the Interior's Standards for Archaeological Documentation (48 FR 44734-44737), the Council's Treatment of Archaeological Properties (ACHP, draft 1980), and applicable Washington regulations (Attachment B). In accordance with Attachment B, the VA will ensure that archaeological monitoring will be implemented for all ground disturbing activities associated with demolition activities. In the event of unanticipated discovery of significant cultural resources, the VA and its contractors will consider the resources as NRHP-eligible and shall follow the procedures outlined in Attachment B in order to recover data and minimize construction delays.

#### **B. Communication and Coordination**

VA will undertake the following measures to ensure adequate communication between the VA, DAHP, the Consulting Parties, and archaeological field crews.

1. VA will designate the VAMC Cultural Resource Management Officer as Primary Point of Contact for cultural resource issues to ensure the efficient flow of technical information between parties through the continued consultation and implementation of the MOA.

#### **C. Curation and Reporting**

VA will ensure that all records and material resulting from identification and data recovery efforts are curated with an institution that meets the criteria of 36 CFR Part 79, except those human remains and objects subject to Native American Graves Protection and Repatriation Act (NAGPRA). Any objects subject to NAGPRA shall be treated in accordance with Section D below.

VA will assess any claims or curation requests made by any affected Tribal Government in accordance with applicable federal and state laws. VA will facilitate the involvement of affected Tribal Governments in the decisions related to final disposition of archaeological artifacts. If any party objects to any element of the disposition, they may object in accordance with the procedures outlined in Stipulation V, Dispute Resolution.

VA will ensure that the cultural resource monitoring and investigations related to the Undertaking are documented in a report that meets state and federal standards, except that investigations and findings involving Native American human remains and cultural resources subject to NAGPRA shall additionally be in conformance with Tribal Government requirements for culturally appropriate documentation and handling to the greatest extent possible. The report shall summarize the methodologies, results, and conclusions drawn from the documentation and analysis of any sites and artifacts conducted in accordance with this Agreement. The report shall be distributed to the Consulting Parties, and non-confidential portions of the report may be made available to the public.

**D. Treatment of Human Remains and Items of Religious and Cultural Importance**

1. If human remains are encountered during any construction and ground-disturbing activities, the VA will comply with all applicable Federal and State provisions. The VA will treat all encountered remains as though they are Native American, and accordingly consult with affected tribes, unless and until proven otherwise.

**IV. Resolution of Adverse Effects to Historic Resources**

VA will ensure that the following mitigative actions will be undertaken to resolve adverse effects:

1. Historic Property Inventory Forms for Buildings 97 and 103 will be updated and submitted to DAHP. Interior and exterior photographs will document the existing conditions and archival material will be retrieved to provide historic conditions and setting.
2. VAMC commits to completing and finalizing its Historic Preservation Plan and revisions to its Historic District National Register Nomination.

**V. Dispute Resolution**

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

1. VA will notify any non-objecting Signatories as to the nature of the dispute.
2. VA will attempt to informally resolve the objection.
3. In the event that informal attempts are unsuccessful, 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 objection 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, Confederated Tribes of the Umatilla Indian Reservation, 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, VA shall consult with the Tribal Governments to seek to resolve the objection under Stipulation V (A).

C. If VA determines that an objection cannot be resolved through Stipulation V (A), VA shall forward all documentation relevant to the dispute to the ACHP. Within 15 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.

## **VI. Amendment**

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

## **VII. Termination**

Any Signatory to this Agreement may terminate it by providing 60 days written notice to the other parties, provided that the signatories will consult during this 60-day waiting period to seek agreement on amendments or other actions that would avoid termination. In the event of termination, VA 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.

## **VIII. Scope of Agreement**

This Agreement is limited in scope to the Undertaking and is entered into solely for that purpose. Nothing in this Agreement is intended or shall be construed to diminish or affect in any way the right of the Tribes to take any lawful action to protect Native American graves from disturbance or desecration, to protect archaeological sites from damage, or to protect the Tribes' rights under cemetery and Native American graves protection laws, or other applicable laws.

Additionally, this Agreement does not create any right or benefit, substantive or procedural, enforceable by law or equity, by persons who are not a party to this Agreement, against the DAHP, or VA, their officers, or employees, any Consulting Party, or any other person not a signatory to this Agreement.

#### **IX. Effective End Date**

This Agreement will continue in full force and effect until January 1, 2016. At any time in the 6-month period prior to this date, VA may request in writing that the signatories review the Undertaking and consider an extension or modification of this Agreement. No extension or modification will be effective unless all signatories to the Agreement have agreed to it in writing.

#### **X. Satisfaction of Section 106 Responsibilities**

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

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**SIGNATORIES:**

By: Brian Westfield Date: 10/24/14  
Brian Westfield  
Director, VA Medical Center Walla Walla

By: Allyson Brooks Date: 11/3/14  
Allyson Brooks,  
Washington State Historic Preservation Officer