MEMORANDUM OF AGREEMENT
AMONG
THE JONATHAN M. WAINWRIGHT MEMORIAL
VETERANS AFFAIRS MEDICAL CENTER
THE WASHINGTON STATE HISTORIC PRESERVATION OFFICER AND
THE CONFEDERATED TRIBES OF THE UMATILLA INDIAN RESERVATION
REGARDING
DEMOLITION OF BUILDING 7 AND NEW BUILDING CONSTRUCTION
AT THE WALLA WALLA VA MEDICAL CENTER

WHEREAS, the US Department of Veterans Affairs, Veterans Health Administration, Jonathan M. Wainwright Memorial Veterans Affairs Medical Center (Walla Walla VAMC), located at 77 Wainwright Drive, Walla Walla, Walla Walla County, Washington, plans to demolish Building 7 due to significant damage and deterioration, and construct a two-story building in its location; and

WHEREAS, Walla Walla VAMC has determined that the proposed project is a federal action that meets the definition of undertaking, per 36 CFR § 800.16(y), and is the type of activity that has the potential to cause effects on historic properties, and therefore subject to Section 106 of the National Historic Preservation Act (NHPA) (54 USC § 306108) and its implementation regulations (36 CFR Part 800 – Protection of Historic Properties); and

WHEREAS, Walla Walla VAMC has consulted with the Washington State Historic Preservation Officer (SHPO); and

WHEREAS, Walla Walla VAMC has provided the public with information about the undertaking and its effects on historic properties and sought public comment and input, consistent with 36 CFR § 800.2(d), by advertisement in the local newspaper, the Union Bulletin, and a post on the Walla Walla VAMC external website; and

WHEREAS, Walla Walla VAMC has consulted with the City of Walla Walla and Fort Walla Walla Museum and invited them to sign this MOA and they have declined; and

WHEREAS, Walla Walla VAMC has consulted with the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), the Confederated Tribes of the Colville Reservation, the Confederated Tribes and Bands of the Yakama Nation, the Nez Perce Tribe and the Wanapum Tribe, and has invited the CTUIR to sign this MOA as a signatory, and the Confederated Tribes of the Colville Reservation, the Confederated Tribes and Bands of the Yakama Nation, the Nez Perce Tribe and the Wanapum Tribe to sign this MOA as concurring parties; and

WHEREAS, Walla Walla VAMC, in consultation with the SHPO, has determined the undertaking’s Area of Potential Effects (APE), as defined by 36 CFR § 800.16 (d), to be exclusive to Building 7 and its surrounding lot (Attachment A); and
WHEREAS, Walla Walla VAMC has identified the Fort Walla Walla Historic District as a historic property within the APE that will be affected by the undertaking; and

WHEREAS, Walla Walla VAMC has found that the undertaking will have an adverse effect on the Fort Walla Walla Historic District (Attachment B) as Building 7 is a contributing resource and consulted to resolve the adverse effect; and

WHEREAS, in accordance with 36 CFR § 800.6(a)(1), Walla Walla VAMC has notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect finding 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, Walla Walla VAMC offered to move Building 7 to Fort Walla Walla Museum property via an email dated 18 January 2019 and the Fort Walla Walla Museum chose not to accept the offer via an email response dated 22 January 2019; and

NOW, THEREFORE, Walla Walla VAMC, SHPO and CTUIR agree that the adverse effect will be resolved through execution of this Memorandum of Agreement (MOA), pursuant to 36 CFR § 800.6(b)(1)(v), and that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on the historic property.

STIPULATIONS

Walla Walla VAMC shall ensure that the following measures are carried out.

I. Professional Qualifications

Walla Walla VAMC will ensure that all historic preservation and archaeological resources work performed by or on behalf of the agency pursuant to this MOA, shall be accomplished by or under the direct supervision of persons who meet or exceed the pertinent qualifications standard for the relevant discipline set out in the Secretary of the Interior’s Professional Qualifications Standards (48 FR 44738-44739). Additionally, an architect or architectural historian meeting the Secretary of the Interior’s Professional Qualifications Standards shall be employed by Walla Walla VAMC and/or consultants to review and comment upon architectural designs of the proposed building.

II. Cultural Resources Awareness Training

Walla Walla VAMC will ensure that key personnel involved in the demolition of Building 7 complete the Cultural Resources Awareness Training (Attachment C).
III. Architectural Treatment Measures

A. Design Review

During design for any proposed building, Walla Walla VAMC will engage the SHPO for architectural review and comment to ensure compliance with the Secretary of the Interior’s Standards. The design will complement the architecture of Buildings 48 and 49, former Fort Walla Walla single officer’s quarters located immediately adjacent and to the east of Building 7.

B. New Building Construction Design Review

Walla Walla VAMC will ensure opportunities for iterative discussions shall take place between Walla Walla VAMC’s Design/Build contractor and architect, DAHP, ACHP (if they so desire), and interested Consulting Parties to coordinate appropriate design aesthetics for a new building, site layout, and landscape elements. Design review will occur at 30%, 60% and 95% design completion. Opportunities may include conference calls, web-based exchanges, and mailings. Walla Walla VAMC is committed to receiving and integrating stakeholder design suggestions and will provide written responses to design review comments at 95% design completion.

IV. Interpretive Panel

Walla Walla VAMC proposes to research, develop, and install a small interpretive panel on the history of Building 7 to be posted along the sidewalk that runs on the northern side (front) of the building. This panel will include historical photographs of the buildings, contemporary photos, and a small history on its connection to both Fort Era and VA Era occupations of the Walla Walla VAMC property. Signatories will be invited to review and comment on the panel content.

V. Post-Review Discoveries

If historic properties are discovered or unanticipated effects on historic properties occur during implementation of the undertaking, Walla Walla VAMC will follow the protocols set forth in the Walla Walla VAMC Monitoring Plan and Cultural Resources Discovery Plan (Attachment D).

VI. Duration

This MOA will expire if its terms are not carried out within five (5) years from the date of execution. Prior to such time, Walla Walla VAMC may consult with the other signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation VII below.
VII. Dispute Resolution

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

A. Forward all documentation relevant to the dispute, including the Walla Walla VAMC’s proposed resolution, to the ACHP. The ACHP shall provide Walla Walla VAMC 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, Walla Walla VAMC 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. Walla Walla VAMC 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, Walla Walla VAMC may make a final decision on the dispute and proceed accordingly. Prior to reaching a final decision, Walla Walla VAMC shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories or concurring parties and provide them and the ACHP with a copy of such written response.

C. Walla Walla VAMC’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.

VIII. Amendment

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 the signatories is filed with the ACHP.

IX. 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 per Stipulation VII, 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, Walla Walla VAMC 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. Walla Walla VAMC shall notify the signatories as to the course of action it will pursue.
X.  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 SHPO, or Walla Walla VAMC, their officers, or employees, any Consulting Party, or any other person not a signatory to this Agreement.

XI.  Anti-Deficiency Act

Walla Walla VAMC obligations under this MOA are subject to the availability of funds and the stipulations of this MOA are subject to the provisions of the Anti-Deficiency Act (31 USC § 1341). Walla Walla VAMC will 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 its ability to implement the stipulations of this MOA, Walla Walla VAMC will consult in accordance with the amendment and termination procedures in Stipulations VII and VIII above.

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

SIGNATORIES:

By: _______________________________ Date: ________________
   Christopher R. Bjornberg, Director
   Walla Walla VA Medical Center

By: _______________________________ Date: ________________
   Allyson Brooks, Washington State Historic Preservation Officer
   Department of Archaeology and Historic Preservation

By: _______________________________ Date: ________________
   Gary Burke, Chair, Board of Trustees
   Confederated Tribes of the Umatilla Indian Reservation
CONCURRING PARTIES:

By: ____________________________ Date: __________
   Guy Moura, Tribal Historic Preservation Officer
   Confederated Tribes of the Colville Reservation

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

By: ____________________________ Date: __________
   Samuel N. Penny, Chairman
   Nez Perce Tribe

By: ____________________________ Date: __________
   Rex Buck,
   Wanapum Tribe