

**AGREEMENT BETWEEN
THE NATIONAL PARK SERVICE, U.S. DEPARTMENT OF THE INTERIOR
AND THE CONFEDERATED TRIBES OF THE UMATILLA RESERVATION
FOR THE ASSUMPTION BY THE TRIBES OF CERTAIN RESPONSIBILITIES
PURSUANT TO THE NATIONAL HISTORIC PRESERVATION ACT (16 U.S.C. 470)**

WHEREAS, sovereign Indian tribes are uniquely suited to make decisions about historic resources on tribal lands; and

WHEREAS, enhancing the role of Indian tribes in the national historic preservation partnership will result in a stronger and better national effort to identify and protect historic and cultural resources for future generations of all Americans; and

WHEREAS, Section 101(d)(2) of the National Historic Preservation Act provides that, "A tribe may assume all or any part of the functions of a State Historic Preservation Officer in accordance with subsections (b)(2) and (b)(3), with respect to tribal land;" and

WHEREAS, for the purpose of this agreement tribal lands means all lands with the exterior boundaries of the Umatilla Reservation, an additional lands held in trust for the Tribe by the Secretary of the Interior (hereafter, Secretary), and lands owned by the Tribe subject to a restriction on alienation, and any dependent Indian communities formally recognized as such by the Department of the Interior; and

WHEREAS, in accordance with Section 101(d)(2)(A), the chief governing authority of the Confederated Tribes of the Umatilla Reservation has requested approval to assume certain of those functions; and

WHEREAS, in accordance with Section 101(d)(2)(B), the Confederated Tribes of the Umatilla Reservation have designated a tribal preservation official to administer the tribal historic preservation program; and

WHEREAS, in accordance with Section 101(d)(2)(C), the Tribes have provided to the Secretary acting through the National Park Service a plan that describes how the functions the tribes propose to assume will be carried out; and

WHEREAS, the National Park Service, on behalf of the Secretary, has reviewed the Tribe's plan for conformance with the following applicable Federal regulations: 36 CFR 60 and 36 CFR 61; and has determined that the plan meets the requirements of those regulations; and

WHEREAS, the National Park Service, on behalf of the Secretary, has reviewed the plan and has determined in accordance with Section 101(d)(2)(D)(i) that the Confederated Tribes of the Umatilla Reservation are fully capable of carrying out the functions specified in the Tribe's plan: now, therefore,

THE NATIONAL PARK SERVICE AND THE CONFEDERATED TRIBES OF THE UMATILLA RESERVATION DO HEREBY AGREE AS FOLLOWS:

1. The Umatilla Tribes assume responsibility on tribal lands for the following functions set out in Section 101(b)(3) of the Act:
 - A. Direct and conduct a comprehensive, Reservation-wide survey and maintain an inventory of historic and culturally significant properties;
 - B. Identify and nominate eligible properties to the National Register of Historic Places and otherwise administer applications for listing historic properties on the National Register;
 - C. Develop and implement a comprehensive, Reservation-wide historic preservation plan;
 - D. Advise and assist, as appropriate, Federal and State agencies and local governments in carrying out their historic preservation responsibilities;
 - E. Cooperate with the Secretary, the Advisory Council on Historic Preservation, and other Federal agencies, State agencies, local governments, and organizations and individuals to ensure that historic properties are taken into consideration at all levels of planning and development;
 - F. Provide public information, education and training, and technical assistance in historic preservation;
 - G. Consult with the appropriate Federal agencies in accordance with Section 106 of the Act on:
 - i. Federal undertakings that may affect historic and culturally significant properties within the boundaries of the Reservation;
 - ii. the content and sufficiency of any plans to protect, manage, or to reduce or mitigate harm to such properties.
2. In accordance with the Tribes' plan noted above, the Oregon State Historic Preservation Officer (hereafter, SHPO), in consultation and cooperation with the Tribes, retains responsibility for the functions in Section 101(b)(3), as follows:
 - A. Cooperate with local governments in the development of local historic preservation programs and assist local governments in becoming certified pursuant to subsection (c) of the Act;

- B. Advise and assist in the evaluation of proposals for rehabilitation projects that may qualify for Federal assistance, such as historic preservation income tax credits.
3. The SHPO, in accordance with Section 101(d)(2)(D)(iii) of the Act, may exercise the historic preservation responsibilities along with the tribal preservation official on land that is neither owned by a tribal member nor held in trust for the tribe by the Secretary, provided that the owner of such property requests the SHPO's participation.
 4. The Umatilla Tribes will consider nominations to the National Register of Historic Places in accordance with 36 CFR 60. The Tribes' process is described in the Tribes' letter of May 16, 1996, to NPS, and summarized as follows. The process includes review of the nominations by the program staff or by consultants qualified in the discipline appropriate to the nomination, and by the Cultural Resources Commission. The Commission is established to provide recommendations to the Board of Trustees on cultural resource management issues. The Tribes also intend to solicit the comments of the SHPO on National Register nominations. In accordance with the Tribes' program proposal, the owners of any property under consideration for the National Register will be notified and offered the opportunity to comment. In addition, a public hearing will be held on any proposed nomination.

In accordance with 36 CFR 60, the Tribe will provide written notice to property owners and to the chief elected local official (if any) of its intent to bring a National Register nomination before the Cultural Resources Commission for consideration. The Tribe shall send such notice at least 30 but not more than 75 days before the meeting of the Commission. The notice shall offer the opportunity to submit written comments and concur in or object to the nomination. For a nomination with more than 50 property owners the Tribe may instead publish a general notice at least 30 and not more than 75 days before the Commission meeting. The content of the notices used by the Tribe must be approved by the National Park Service.

In the event that a property to be nominated is privately owned, the owner, or a majority of the owners in the case of multiple ownership, may formally object to listing the property to the National Register. In the event of such objection or objections, the Keeper of the National Register may determine that the property is eligible for listing but will not formally list the property in the National Register, unless and until the owner or majority of owners no longer objects to the listing. In submitting a nomination to the Keeper of the National Register, the Tribal Historic Preservation Officer shall also forward to the Keeper all comments and/or objections received by the Tribe concerning that nomination.

Any person or organization which supports or opposes the nomination of a property by the Tribe may petition the Keeper of the National Register during the nomination process either to accept or reject a nomination in accordance with 36 CFR 60.6.

In the event that the Tribal Historic Preservation Officer fails or refuses to act on a completed nomination, anyone may appeal that failure to act directly to the Keeper of the National Register in accordance with 36 CFR 60.12.

5. The Tribes will carry out their responsibilities for review of Federal undertakings pursuant to Section 106 of the Act in accordance with the regulations (36 CFR Part 800) of the Advisory Council on Historic Preservation. In the event that the Tribes seek to substitute its own review procedures for those established by the Council, such substitution is subject to a separate negotiation with the Council, pursuant the Section 101(d)(5) of the Act.
6. The Tribal Archeologist meets the Secretary of the Interior's Professional Qualifications Standards for archeology. In evaluating the significance of an impact on resources other than archeological sites, the Tribe will consult, as needed, with individuals who meet the Secretary's Standards for the discipline or disciplines that correspond to the resource under consideration. The Tribal Historic Preservation Officer will retain a record of the consultation, along with the resume of the consultant.
7. The Tribal Historic Preservation Officer will, in accordance with Section 101(d)(4)(C), provide for the appropriate participation in the historic preservation program by the tribe's traditional cultural authorities, representatives of any other tribes whose traditional lands within the Umatilla, and the interested public, in a manner described in the Tribes' plan and summarized below.

As set forth in the plan, the Cultural Resources Commission will provide ongoing oversight for the Cultural Resources Protection Program. Additional participation of traditional cultural authorities will be achieved through a program activity of interviewing tribal Elders and other knowledgeable people about the history of the reservation. In addition, the Tribal Historic Preservation Officer will periodically solicit and take into account comments on the program from all those individuals and groups who may be affected by the program's activities. In accordance with the plan, such solicitation may occur through open Cultural Resource Commission meetings, or publication of a notice inviting comments in the tribal newspaper, or such other activities as the tribe deems appropriate and consistent with the practice of other tribal programs. In any case where an action arising pursuant to the Act may affect the traditional lands of another tribe, the Preservation Officer will, as needed, seek and take into account the views of that tribe.

8. The Tribal Historic Preservation Officer will, in accordance with Section 101(d)(2)(D)(iii), ensure that, for properties neither owned by tribal members nor held in trust for the Tribe by the Secretary of the Interior, the property owners are aware that they may request the participation of the State Historic Preservation Officer, along with the Tribal Historic Preservation Officer, in decisions pursuant to the Act that may specifically affect their property.
9. The Tribal Historic Preservation Officer will provide to the National Park Service a brief annual written report on the Tribes' accomplishments pursuant to this agreement. The report will include, at a minimum, the number of additional properties surveyed and added to the Tribe's inventory, the number of Federal undertakings reviewed pursuant to Section 106 of the Act, and a description of any educational activities and programs carried out. The report shall not be construed as requiring the provision of information that the Tribes' deem to be sensitive or culturally inappropriate.
10. As of the date of this agreement, the Umatilla Confederated Tribes' Tribal Historic Preservation Officer is Michael Burney, who also serves as Tribal Archeologist. The Tribe will notify the National Park Service whenever there is a vacancy in the position and whenever a successor is designated by the Tribe.
11. The National Park Service will, in accordance with Section 101(d)(2)(A) of the Act foster communication, cooperation, and coordination among the Tribes, the State Historic Preservation Officer, and Federal agencies in the administration of the national historic preservation program. All such efforts by NPS will be on an as-needed basis and will be based on consultation with the Tribes to ensure that tribal values are fully respected.
12. The National Park Service, upon execution of this agreement, will notify all Federal Preservation Officers, the Advisory Council on Historic Preservation, the Oregon State Historic Preservation Officer, and the National Conference of State Historic Preservation Officers that the Umatilla Tribe have assumed formal responsibility on tribal lands for all of the functions set out in Item 1 above. In particular, such notice shall make clear that the Tribes have assumed the role of the State Historic Preservation Officer on tribal lands for the purposes of consultation on Federal undertakings pursuant to Section 106 of the National Historic Preservation Act.
13. The National Park Service will consult with the Umatilla Tribes to determine what technical assistance the Tribes need and want in order to enhance their participation in the national historic preservation program. Based on that consultation, NPS will make available to the Umatilla Tribes such technical assistance as is appropriate and feasible. Nothing in this Memorandum of Agreement requires the National Park Service to provide financial assistance

to the Umatilla Tribes to carry out the functions they have assumed under this agreement. Only a separate grant agreement, cooperative agreement, or contract obligates NPS to provide funding for tribal activities.

14. The National Park Service, pursuant to Section 101(d)(2) and 101(b)(2) of the Act, and in direct consultation with the Tribe, will carry out a periodic review of the Tribe's program pursuant to the Act, to ensure that the Tribe is carrying out the program in conformance with the Tribe's plan and with this agreement. To the greatest extent feasible, the review will be a collegial process that involves both NPS and the Tribe in a mutual evaluation and assessment of the program. Generally, such a review will occur every four years.
15. The Umatilla Tribes may terminate this agreement for any reason by providing the National Park Service sixty days' written notice of such termination. The National Park Service may terminate this agreement upon determining that the Tribes have not carried out its assumed responsibilities in accordance with this agreement, the Act, or any other applicable Federal statute or regulation. Unless circumstances warrant immediate action, NPS will not terminate the agreement without first providing the Tribes a reasonable and appropriate opportunity to correct any deficiencies.
16. This agreement may be amended by the mutual consent of the Umatilla Tribes and the National Park Service.
17. This agreement shall become effective upon signature by the Director of the National Park Service or his designee, which signature shall not occur until after the Chairman of the Board of Trustees of the Umatilla Tribes has signed the agreement.

FOR THE NATIONAL PARK SERVICE:

FOR THE UMATILLA TRIBES:

 /S/ 10/22/96
Director Date

 /S/ 10/7/96
Chairman Date