

**MEMORANDUM OF AGREEMENT BY AND AMONG THE UNITED STATES
OF AMERICA, ACTING BY AND THROUGH the GENERAL SERVICES
ADMINISTRATION AND THE WASHINGTON STATE HISTORIC
PRESERVATION OFFICER REGARDING THE CONVEYANCE,
REHABILITATION AND PRESERVATION OF THE SEATTLE IMMIGRATION
AND NATURALIZATION SERVICES BUILDING**

THIS MEMORANDUM OF AGREEMENT ("MOA") is entered into as of this third day of March 2008

WHEREAS, the General Services Administration (GSA), is the federal agency that owns and operates the real property located at 815 Airport Way South, Seattle, Washington commonly known as the "Seattle INS Federal Building" (the "Property"); and

WHEREAS, the United States of America acting by and through the GSA has determined that Property is surplus to the Government's needs. Title 40, United States Code §§ 541, et seq. requires the disposal of surplus Federal real property.

WHEREAS, the Property is listed in the National Register of Historic Places ("National Register"), with national, state and local significance, and GSA seeks to provide for the long-term preservation, public accessibility and stewardship of the Property for future generations;

WHEREAS, the future use and occupancy of the Property are undetermined at this time and GSA intends to convey the Property for non-Federal ownership which constitutes an undertaking for the purpose of Sec. 106 of the National Historic Preservation Act (NHPA) (16 U.S.C. § 470f), and its implementing regulations (36 CFR Part 800);

WHEREAS, Section 106 of the NHPA requires that the head of any federal agency having direct or indirect jurisdiction over a proposed federal or federally-assisted undertaking shall, prior to the approval of the expenditure of any federal funds on the undertaking or prior to the issuance of any licenses, take into account the effect of the undertaking on any district, site, building, structure, or object that is included, or eligible for inclusion, in the National Register and afford the ACHP a reasonable opportunity to comment with regard to such undertaking; and

WHEREAS, GSA has determined that the Area of Potential Effect ("APE") for the undertaking, as defined in 36 CFR §800.169d, to be the current property line of the former INS Building legally described as Lots 12-16 and part of lot 11, Columbia and Puget Sound R.R. re-plat of part of the Block 283, Seattle Tideland,

WHEREAS, GSA has a Historic Building Preservation Plan which will be made available to the Grantee and will be implemented through the covenants included herein, and

WHEREAS, pursuant to 36 CFR § 800.3, GSA invited the Washington State Historic Preservation Office (SHPO) and the Advisory Council on Historic Preservation (ACHP) to participate in the consultation and these agencies have expressed their willingness to participate.

NOW, THEREFORE, GSA, the SHPO, the ACHP and GRANTEE agree that the undertaking shall be implemented in accordance with the following stipulations to mitigate any negative effects of this undertaking on the Property and to satisfy GSA's Section 106 responsibilities for all aspects of the undertaking until this MOA expires or is otherwise terminated.

STIPULATIONS

To mitigate the effects of the proposed undertaking in accordance with 36 CFR § 800.6, the parties agree to the following stipulations:

I. **GSA** and the Grantee stipulate that all of the Preservation Covenants listed in the section III of this Memorandum of Agreement will be included in all pertinent document(s) transferring title of the Property from GSA to the Grantee and that all of the Preservation Covenants will be recorded in the permanent real estate records of King County, State of Washington, when the Property is transferred.

II. **GSA** stipulates that upon proper recording of the Property's transfer in King County, State of Washington, GSA will send the SHPO a copy of the deed and any other papers showing that the Preservation Covenants were properly recorded in King County.

III. PRESERVATION COVENANTS

A. The Grantee hereby covenants to maintain and preserve at all times the Seattle INS Federal Building, 815 Airport Way South, Seattle, Washington (Property) in accordance with the Secretary of the Interior's Standards for the Treatment of Historic Properties ("Standards") in 36 CFR § 68.3(a), in order to preserve and enhance the distinctive materials, features, and spaces as identified in the Historic Building Preservation Plan that make this Property eligible for inclusion in the National Register of Historic Places.

B. The Grantee's acceptance of the deed shall constitute conclusive evidence that the Grantee agrees to be bound by these Preservation Covenants and to perform all obligations set forth in these Preservation Covenants

C. The Grantee shall preserve or cause to be preserved the distinctive materials, features, finishes, construction techniques, and examples of craftsmanship that characterize the Property as identified in the Historic Building Preservation Plan.

D. If the Grantee determines that rehabilitation is the appropriate treatment for the Property, Grantee shall rehabilitate the Property in accordance with the Standards. The Grantee shall cause all plans for the proposed construction, alteration, or replacement of distinctive materials, features, finishes, or space that may affect the appearance or structural integrity of the Property to be submitted to the SHPO for review for consistency with the Standards. No such construction, alteration, or replacement shall begin or occur until the Grantee receives written approval from the Washington SHPO.

E. The Grantee shall not undertake, permit, or authorize any construction, alteration, or remodeling of the Property, other than minor repairs and routine maintenance, that deviate from the approved preservation requirements identified in four different zones of desired historic preservation and rehabilitation within the property described below without the express written permission of the SHPO or their authorized representative.

(See attachment "A" Historic Building Preservation Plan describing location of these zones in more detail and defining preservation and rehabilitation and other terms)

- Zone 1 (preservation) includes exterior building elements. The character and qualities of this zone are to be maintained and preserved.
- Zone 2 (preservation) includes interior spaces on the first floor-vestibule/reception area, corridors adjacent to the vestibule. Every effort should be made to maintain and preserve the character and qualities of this zone.
- Zone 3 (rehabilitation) includes the majority of the interior space on the first floor through third floors. All work in these areas is to be undertaken as sensitively as possible with original materials preserved where possible.
- Zone 4 (free) the basement and office spaces on the fourth floor. Work in this area should be sympathetic to the historic qualities and character of the building but may include extensive changes or total replacement.

Based on the zones identified above the areas of significant impacts are as follows:

- Exterior: Features to be retained include the entry steps, entry platform, cheek walls, and the landscape strip.
 - Basement: Zone 4, suitable for major redesign. The padded cell and locker room are Zone 2 and every effort should be made to maintain these features.
 - First Floor: The entire public lobby and entrance area at the center of the building and main corridor are Zone 2. The remaining office space is designated as Zone 3.
 - Second / Third Floors: Zone 3 space. The steel high security cells and original bathrooms should be retained when feasible.
 - Fourth Floor: Zone 4 spaces.
- F. The Grantee shall permit the SHPO (or the SHPO's authorized representative) access at all reasonable times to inspect the Property to ascertain if these Preservation Covenants are being observed. The right of inspection shall include the right to take photographs, make drawings, and prepare written descriptions of the Property for the purpose of documenting the appearance, condition, and uses of the property at the time of inspection.
- G. These Preservation Covenants are binding upon the Grantee for as long as it owns the Property. These Preservation Covenants are binding upon the Property and shall be deemed to run with the land. The Grantee shall ensure that its obligations under these Preservation Covenants are made binding on any and all successor owners of the Property. The Grantee shall notify the SHPO prior to conveying all or a portion of the Property to any other entity.
- H. If the SHPO's responsibilities under these Preservation Covenants are properly delegated or assigned by law to a third party, the Grantee agrees to continue to be bound by these Preservation Covenants as to that third party.
- I. In the event of a violation any of these Preservation Covenant, in addition to any remedy now or hereafter provided by law, the SHPO may, following reasonable notice to the Grantee, institute a suit to enjoin such violation and to require, at the expense of the Grantee, the restoration of the Property to the condition and appearance required under these covenants. The successful party shall be entitled to recover all costs or expenses incurred in connection with the suit, including all court and attorney fees.

- J. The failure of the SHPO or the delegated party third party to enforce any provision in these Preservation Covenants shall not constitute a waiver or limitation on their right to enforce that provision or any other provision in these Preservation Covenants.
- K. The invalidity or unenforceability of any provision of this instrument shall not affect the validity or enforceability of any other provisions of this instrument or any ancillary or supplementary agreement relating to the subject matter hereof.
- L. The Grantee agrees for itself, its heirs, successors, and assigns, to nominate the Property to be a City of Seattle Landmark.
- M. The Grantee agrees for itself, its heirs, successors, and assigns, that if any portion of the Property is destroyed by natural or human forces, including but not limited to fire, earthquake, or vandalism, the Grantee shall, to the maximum extent feasible, rehabilitate such portions of the Property after consultation with the SHPO. If, through no fault of the Grantee, the Property is damaged such that all or a portion of the Property loses its historic integrity, the Grantee will notify the SHPO or its designees or assigns to reach agreement on a course of action prior to starting repair or demolition, unless for reasons of public safety, action must be taken immediately to repair or demolish the property.
- N. The Grantee shall fund, fabricate and incorporate into the streetscape plan for the Property, and maintain in perpetuity, street level interpretive signage addressing the presence and nature of the INS and INS Building in Seattle. All such signage shall be coordinated with the appropriate local government cultural, preservation or planning office to seek comment on their content from local community cultural interests and to determine if it should be developed as part of a state-wide or city-wide interpretation program. All signage shall be subject to the SHPO's approval prior to obligating funds for fabrication, which approval shall not be unreasonably conditioned, delayed, or denied. The signage shall be installed at a minimum of two locations to be determined in consultation with the SHPO
- O. In addition to exterior signage, the Grantee shall prepare and maintain a brochure, based on information provided by GSA, on the history and importance of the Property. This brochure should be available to the public at the Property, as well as, in some form, on the Internet.

IV. DISPUTE RESOLUTION

- A. Should any signatory to this MOA object in writing to GSA regarding any action proposed to be or carried out with respect to the undertaking or implementation of this MOA, GSA shall consult with the objecting party to

resolve the objection. If, after initiating such consultation, GSA determines that the objection cannot be resolved through consultation, GSA shall forward all documentation relevant to the dispute to ACHP, including GSA's proposed response to the objection. Within thirty (30) days after receipt of all pertinent documentation, ACHP shall exercise one of the following options:

1. Consult with the objecting party, and with other parties as appropriate, to resolve the dispute;
 2. Provide GSA with recommendations, which GSA shall take into account in reaching a final decision regarding the dispute; or
 3. Notify GSA that the dispute will be referred for comment pursuant to 36 C.F.R. § 800.7(a)(4) and proceed to refer the dispute for comment. GSA shall take the resulting comment into account in accordance with 36 C.F.R. § 800.7(a)(4) and Section 110(1) of the NHPA, 16 U.S.C. § 470h-2(1).
- B. Should ACHP not exercise one of the above options within thirty (30) days after receipt of all pertinent documentation, GSA may assume ACHP's concurrence in its proposed response to the objection.
- C. GSA shall take into account any ACHP recommendation or comment provided in accordance with this Article IV with reference only to the dispute. GSA's responsibility to carry out all other actions under this MOA that are not subject of the dispute shall remain unchanged and in full force and effect.
- D. Disputes between the SHPO and Grantee regarding matters not specifically covered by the terms of this MOA shall be handled directly between the SHPO and Grantee without the involvement GSA

V. Amendment and Termination

- A. Any signatory may request that this MOA be amended, whereupon the parties to this MOA will consult in accordance with 36 CFR § 800.6(c)(7). This MOA may be amended or modified only by a written instrument executed by all of the parties to this MOA, and/or their respective successors and assigns.
- B. Any signatory may terminate this MOA by providing thirty (30) calendar days advance written notice to the other signatories, provided that the signatories consult during the thirty day notice period to seek agreement on amendments or other actions that would avoid termination. In the event of termination, GSA will comply with 36 CFR §800.3 through 800.7(c)(3), with regard to individual actions covered by this MOA.

VI. Miscellaneous

A. Contacts:

Manager, (9-PRF-10)
Real Property Disposal Field Office
400 15th Street
Auburn, WA 98001

Washington State Historic Preservation Officer
Department of Archaeology & Historic Preservation
PO Box 48343
Olympia WA 98504-8343

Advisory Council on Historic Preservation
1100 Pennsylvania Avenue, NW
Washington, DC 20004

Regional Historic Preservation Officer
400 15th Street
Auburn, WA 98001

Federal Preservation Officer
Center for Historic Buildings
Public Buildings Service
General Services Administration
1800 F Street, NW
Washington, DC 20405

Grantee

Name: _____

Address _____

Execution of this MOA and implementation of its terms evidences that GSA has afforded ACHP a reasonable opportunity to comment on the undertaking and its effects on historic properties and that GSA has taken into account the effects of the undertaking on historic properties.

IN WITNESS WHEREOF, the Signatories hereto have caused this MOA to be executed by their proper and duly authorized authority

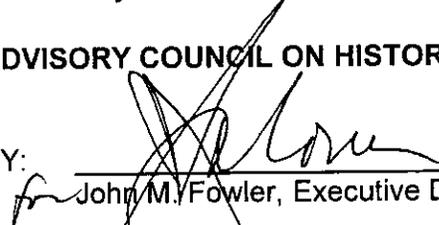
SIGNATORIES:

U.S. GENERAL SERVICES ADMINISTRATION

BY: 
Jon Kvistad, Regional Administrator

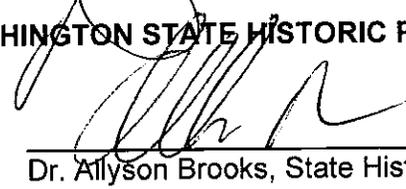
Date: 3/3/08

ADVISORY COUNCIL ON HISTORIC PRESERVATION

BY: 
John M. Fowler, Executive Director

Date: 4/8/08

WASHINGTON STATE HISTORIC PRESERVATION OFFICE

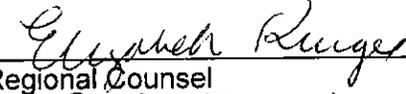
BY: 
Dr. Allyson Brooks, State Historic Preservation Officer

Date: 3/11/08

Concurrence:

Grantee

Date


Regional Counsel

3/03/08


Region 10 Historic Preservation Officer

Date

02/03/08


Federal Preservation Officer

Date

4.2.08

City of Seattle, Art's and Cultural Affairs

Date


Manager Real Property Disposal Office, Auburn

3/3/08

Date