

**MEMORANDUM OF AGREEMENT
AMONG THE GENERAL SERVICES ADMINISTRATION,
THE OREGON STATE HISTORIC PRESERVATION OFFICER,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
AND THE NATIONAL PARK SERVICE
REGARDING
THE SEISMIC UPGRADE AND REHABILITATION OF THE
PIONEER COURTHOUSE, PORTLAND, OREGON**

WHEREAS, the General Services Administration ("GSA") proposes to seismically upgrade and rehabilitate the Pioneer Courthouse ("Undertaking"), located at 520 SW Morrison Street in Portland, Multnomah County, Oregon, a process that involves the installation of a base isolation friction pendulum system, upgrade of mechanical and electrical systems, fire and life-safety retrofit to meet new International Building Code ("IBC") requirements, the Americans with Disabilities Act ("ADA") accessibility improvements, and basement level entry and access drive to accommodate five secured parking spaces in accordance with the U.S. Courts Design Guide; and

WHEREAS, the United States Ninth Circuit Courts ("Courts") and GSA propose to enter into a 20 year agreement wherein after rehabilitation the Courts will occupy the Pioneer Courthouse in its entirety to meet current and future functional and security needs of the Courts; and

WHEREAS, the GSA and the Courts have determined that the seismic upgrade and rehabilitation of the Pioneer Courthouse is an Undertaking that will have an adverse effect upon the Pioneer Courthouse, a property that has been designated a National Historic Landmark ("NHL"); and

WHEREAS, the GSA has consulted with the Oregon State Historic Preservation Officer ("SHPO"), the Advisory Council on Historic Preservation ("ACHP"), and the National Park Service ("NPS"), all referred to collectively as Signatories to this Memorandum of Agreement ("MOA"), pursuant to 36 CFR Part 800, regulations implementing Section 106 of the National Historic Preservation Act ("Act") as amended, 16 U.S.C. 470f and Section 110(f) of the same Act, 16 U.S.C. 470h-2h(f), regarding the Undertaking's adverse effect on the Pioneer Courthouse and potential archeological resources; and

WHEREAS, the GSA has also consulted with the National Trust for Historic Preservation ("NTHP"), that said consultation was taken into consideration in preparing this MOA, and that the NTHP will be a Concurring party to this MOA; and

WHEREAS, the GSA has also consulted with the Courts, the United States Postal Service ("USPS"), and the City of Portland, and that said consultation was taken into consideration in preparing this MOA; and

WHEREAS, the GSA has consulted with all of the parties regarding the goal of retaining an ongoing and historical use of the Pioneer Courthouse as a functioning Federal courthouse and presented secured parking alternatives, and no other practical or cost effective alternative could be found that will fulfill compliance with current security requirements of the Courts; and

WHEREAS, the SHPO and the NTHP have signed this agreement, it is noted that they have taken exception to the creation of underground parking;

NOW, THEREFORE, GSA, SHPO, NPS, ACHP agree that the Undertaking shall be implemented in accordance with the following stipulations in order to take into account and mitigate the Undertaking's effect on historic properties and that these stipulations shall govern the Undertaking and all of its parts until this MOA expires or is terminated.

STIPULATIONS

The GSA shall ensure that the following measures are carried out:

I. RECORDATION OF THE PIONEER COURTHOUSE

- A. GSA will consult with the NPS to determine appropriate Historic American Buildings Survey ("HABS") documentation for the Pioneer Courthouse. This documentation will include a thoroughly researched history and chronology of the Courthouse and site using Level 1 "Outline Format" requirements for HABS written documentation. Although new drawings will not be required as part of this documentation, format camera reproductions and/or full-size Mylar reproductions of drawings, photographs or other graphic information that helps illustrate the written history and development of the Courthouse and site will be required. A narrated video will also be required as part of this documentation. It will show the configuration, important architectural features and condition of the Courthouse and site prior to rehabilitation. It will also document the rehabilitation in progress and reasons for and explanation of the introduction of base isolation as the preferred seismic solution.
- B. Consultants selected to produce this HABS documentation will meet the Secretary of the Interior's Professional Qualification Standards (36 Code of Federal Regulations CFR 61) for architectural historians.
- C. Besides meeting documentation requirements as outlined by the National Park Service, the Historic American Buildings Survey (HABS) report will support research and documentation needs for the development of other written and graphic information required as part of this MOA. Consequently, an outline of that agreed documentation, including an outline of the written history of the HABS documentation portion of the recordation, will be presented to the Pioneer Courthouse Citizens Advisory Panel ("CAP"), referenced in Stipulation II (A), to provide it with an understanding of historic documentation that will be obtained during the project; as said documentation will assist the CAP in advising the GSA and Courts on the Public Outreach and Interpretation Program's plan.
- D. The GSA will revise the existing GSA Building Preservation Plan ("BPP") and the Historic Structures Report ("HSR") for the Pioneer Courthouse based on research and documentation as part of the recordation to provide the public with a better understanding of its original design and evolution over time. GSA's Regional Historic Preservation Officer ("RHPO") located in Auburn, Washington and GSA's Center for Historic Buildings located in Washington, D.C. will maintain hard copies of the revised BPP, HSR, and above documentation. These revised documents and HABS documentation will continue to be available to the public in an abbreviated format via the Center for Historic Building's website at www.gsa.gov/historicpreservation via the GSA Historic Buildings Database.

II. PUBLIC OUTREACH AND INTERPRETATION PROGRAM

In furtherance of the goals of the National Historic Preservation Act and Sections 1 and 5(b) of Executive Order 13287, *Preserve America*, GSA shall institute an active, on-going Public Outreach and Interpretation Program to enhance and celebrate the public's appreciation of the Pioneer Courthouse, to promote the public's understanding of its historical and architectural significance and evolution, and to increase its visibility and image as a prominent Federal public building.

- A. To provide input to the GSA and the Courts on creation and execution of a Public Outreach and Interpretation Program ("Program"), and to work in partnership with other public groups and organizations, the GSA shall organize a Pioneer Courthouse Citizens Advisory Panel ("CAP"). Members of the CAP may include representatives of the Courts, Court Historical Societies, Pioneer Courthouse Square area businesses, Portland Oregon Visitors Association, the City of Portland (including its Historic Preservation Commission or equivalent), and other individuals with interests and expertise in historic preservation, tourism, and public relations. Of these outside members, a significant number shall have relevant professional historic preservation training and experience. Service on the CAP will be on a voluntary basis. The GSA shall begin soliciting members for the CAP as soon as possible, with a goal of having some members in place to coincide with scheduling and coordination of the CAP's activities as outlined in this MOA.
- B. Within one (1) year of the date of execution of this MOA, the GSA and the Courts, with input from the CAP, shall develop a plan that describes how the GSA and the Courts will interpret the Courthouse to the public. Said interpretation shall include, minimally, interpretive signage and exhibits both inside and outside of the building, narrated video, public tours and access to the building, and publicity and outreach efforts. In addition, the plan will describe other creative ways to encourage the public, including visitors and tourists, to visit the Courthouse, such as using the building for occasional special events or exhibits. The GSA shall forward a copy of the plan to Signatory and Concurring Parties for review in accordance with Stipulation VII of this MOA.

As acknowledgement of the involvement of the Courts in this effort, a copy of a letter from the Courts dated April 16, 2003 is attached to this MOA (See Attachment A).

- C. Annually, on or near the anniversary date of execution of this MOA, the GSA shall develop a brief report listing the members of the CAP, public outreach and interpretation activities carried out during the previous year, and similar activities planned for the coming year. The GSA shall forward a copy of the report to Signatory and Concurring Parties for review in accordance with Stipulation VII of this MOA.
- D. During construction of the project, the GSA will prominently post two interpretive panels for the public to view. One panel will describe the history and significance of the building and its rehabilitation. The second will address the seismic upgrade of the Pioneer Courthouse.
- E. The GSA will work with the Courts, with input from the CAP, to provide a permanent interpretive display within the building, including narrated video, describing its history, significance, rehabilitation, and the seismic upgrade solution related to this project.
- F. The GSA will develop an informational and illustrative brochure and poster, as part of the Center for Historic Buildings Historic Buildings Brochure and Poster Series, for the Pioneer Courthouse and make these products available to the public at the Courthouse and online via the Center's website at www.gsa.gov/historicpreservation.

III. U.S. COURTS DESIGN GUIDE

Within one month of the execution of this MOA, the GSA will request via a letter that the Administrative Office of the U.S. Courts revise the U.S. Courts Design Guide to reflect Section 106 and Section 110 of the NHPA with the intention of raising awareness of the historic significance of many of the buildings occupied by the Courts and encouraging, to the greatest extent feasible, the appropriate retention, reuse, and rehabilitation of these public assets. GSA will forward a copy of said letter to the Signatory and Concurring parties and will keep them abreast of further developments.

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IV. RELOCATION OF U.S. POSTAL SERVICE

The GSA has worked with, and will continue to work with, the USPS to identify central space in the immediate downtown area to relocate the postal service currently provided at the Pioneer Courthouse location. In addition, GSA will offer financial assistance to the USPS to relocate these services to the historic former postal lobby in the Gus Solomon Courthouse. The GSA will make every effort to encourage the USPS to occupy this space.

As evidence of these efforts, a copy of a letter from the USPS dated March 25, 2003 on the Proposed Solomon Courthouse Relocation is attached to this MOA (See Attachment B).

V. ARCHITECTURAL ISSUES, DESIGN REVIEW, AND CONSULTATION

- A. As part of the ongoing consultation process GSA invited Signatory and Concurring parties to review the Design Program for the Pioneer Courthouse. The GSA considered and, where feasible, incorporated into the program the comments from these parties regarding improvements to the rehabilitation of the courthouse exterior and interior.
- B. During consultation, several areas agreed upon conceptually were identified requiring further design consideration. On execution of this MOA, GSA will proceed with the construction for the majority of the project (subject to the other provisions of this MOA), with the exception of the following areas:
 1. New exterior stone steps and metal gates, West Elevation
 2. New Driveway and Entrance Doors for parking, including retaining walls, guard rails and pedestrian warning system
 3. Space 105 (Entry Vestibule) and Space 106 (Main Lobby)
 4. Space 120 (Courthouse Conference)
 5. Exterior enhancements to increase public visibility and image of the Courthouse, such as, dramatic exterior lighting, etc.
- C. For these unresolved areas, GSA agrees to hold the final contract agreements and construction in these unresolved areas pending review and comment by the Signatory and Concurring Parties and the CAP. GSA shall work with these parties in developing and refining concepts and approaches for the resolution of these areas.
- D. Architectural Salvage
 1. Regarding the creation of an opening into the Courthouse wall for seismic upgrade and parking, GSA agrees to document and remove the original stones and other building fabric and securely store them to enable possible, future reinstallation in their original configuration on the Courthouse.
 2. GSA shall consult to determine architectural elements from the Courthouse selected for present or future reuse. GSA shall ensure that salvaged items are documented, catalogued, removed in a manner that minimizes damage, and afforded appropriate storage until reuse.

VI. ARCHAEOLOGICAL RESOURCES

A. Archaeological Research

Prior to carrying out ground-disturbing activities at the Pioneer Courthouse, GSA shall ensure that a professional archaeologist analyzes the potential of the areas of Courthouse site to incur ground-disturbing activities, including basement, to contribute information important in history or prehistory, including the history of the Courthouse. To this end, the historical archaeologist shall carry out very focused, additional historical research (including property, tax records, census and city directories, graphic materials, and other records) and consult existing geo-technical site data to understand further the pre-Courthouse occupation of the areas of the site that may be affected by ground disturbance.

B. Archaeological Planning

GSA shall ensure that a qualified historical archaeologist develops and implements an archaeological plan that reflects knowledge of the site from above historical research and outlines the conduct of archaeological fieldwork, including archaeological monitoring. The plan shall be consistent with the "*Secretary of the Interior's Standards and Guidelines for Archaeological Documentation*." The plan shall describe and justify the following: i.) archaeological remains that may be found; ii) the types of remains that would be deemed to be significant according to National Register eligibility criteria and conversely insignificant; iii) how archaeological monitoring and other fieldwork will be carried out both independently and in concert with construction activities (note: a phased approach may be useful); iv) field techniques and post-fieldwork analyses; v.) report preparation including deadline; vi.) provisions for the curation of archaeological materials and records, including discussion of the expected types of archaeological materials that would be deemed to be insignificant and those that could be disposed without long-term curation; and vii.) provisions for the discovery of unexpected archaeological remains. GSA shall provide a draft version of the Plan to the Signatory Parties, who shall have 10 days to review and provide comments on it prior to finalization and implementation. This plan, its review, and finalization shall be completed prior to the conduct of ground disturbance on this site.

C. Archaeological Monitoring

1. GSA shall ensure that ground-disturbing activities at the Courthouse are monitored in accordance with the final plan outlined above and this MOA. Project personnel and the archaeologist shall work cooperatively and in concert to achieve both archaeological and construction goals. If discoveries are made during construction, the construction contractor shall temporarily stop construction, avoid harm to the discovery, and consult with the monitoring archaeologist and GSA to enable the archaeologist to record a discovery consistent with the final plan. If there are differences regarding the conduct of archaeological work, GSA shall consult immediately with the Signatory Parties for advice. In such case, all parties shall be mindful of the project construction schedules and work quickly.
2. If archaeological discoveries are made that are not addressed in the final plan above and that require extended work stoppages, the archaeologist shall contact GSA's Contracting Officer (C.O.) or Contracting Officer's Technical Representative (C.O.T.R.), who shall stop work and take all reasonable measures to avoid harm to the discovery. GSA shall address the discovery in accordance with 36 CFR Section 800.13(b)(3) and (c). Only the C.O. has contract authority to stop work for extended periods

D. Other Considerations: Archaeological Standards and Qualifications, Report, Human Remains, Archaeological Curation

1. GSA shall ensure that all archaeological work pursuant to stipulation VI, including research, plan development, construction monitoring, and other actions, is carried out by a professional historical archaeologist who meets the professional qualifications for archaeologists outlined in the "*Secretary of the Interior Standards and Guidelines for Archeology and Historic Preservation*" (48 FR 44739). Further, all work carried out pursuant to stipulation VI shall be consistent with the "*Secretary of the Interior's Standards and Guidelines for Archaeological Documentation.*"
2. GSA shall ensure that a report is prepared after construction that details the archaeological work carried out pursuant to this stipulation. A draft version of this report shall be provided to the State Archeologist, who shall be afforded 30 days to review and provide comments to GSA. GSA shall provide copies of the final report to the SHPO, ACHP, CAP, the Courts, and other repositories to be determined jointly by GSA and the SHPO. Additionally, GSA, in consultation with the CAP, shall interpret the results of the archaeological work to the public through the Public Outreach and Interpretation Program in stipulation II, above. GSA shall incorporate the results in the archaeological work in the Courthouse BPP and HSR.
3. Consistent with the plan outlined above, GSA shall ensure that all archaeological remains and records resulting from work outlined in this stipulation are curated in accordance with 36 CFR Part 79, except for Native American human remains and items covered by the Native American Graves Protection and Repatriation Act ("NAGPRA")(P.L. 101-601) and 43 CFR Part 10 (see below).
4. If human remains of Native American origin are identified as result of the work outlined in this stipulation, that discovery shall be considered to be a historic property subject to Section 106 and NAGPRA. GSA shall ensure that all activities near the human remains cease and shall immediately notify appropriate law enforcement personnel, the SHPO, Indian tribes and other entities required by law. GSA shall follow NAGPRA and 43 CFR Part 10.

VII. SUBMITTALS

- A. GSA has submitted and presented the proposed plan for the base Isolation system and final proposed design plans to the Signatories. GSA will continue working toward resolution of architectural issues with all Signatory and Concurring Parties, the CAP, and the City of Portland. To this end, GSA will submit to these parties the final proposed Design for areas covered under Stipulation V, concurrently, for review and comment.
- B. GSA will ensure that the construction documents, including the specifications, are developed in compliance with the proposed current Design. Significant architectural design changes made between the proposed design phase and the completion of construction documents will be subject to review and comment by the Signatories.
- C. GSA will consult with the parties as outlined in Stipulation VII (A) above, to establish mutually agreed upon time frames for the comments on plans developed pursuant to A and B above. In addition, GSA will consult with the Signatory and Concurring Parties regarding mutually agreed upon time frames for comments on the draft Public Outreach and Interpretation Program's plan

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and annual reports developed pursuant to Stipulation II (B) and (C). GSA will incorporate comments by Signatory and Concurring Parties wherever feasible. If GSA objects to the inclusion of any comments into these plans or other documents, GSA shall provide the Signatory and Concurring Parties with a written explanation of the reasons for its objection and initiate informal consultation with the SHPO and ACHP to resolve the objection. If GSA cannot reach an agreement with the parties it may request the ACHP's review of the dispute pursuant to Section VIII, Resolving Objections. Failure of the SHPO, NPS or the ACHP to provide written comments within the agreed upon time frame will not preclude GSA from proceeding with the development of the proposed design, project documents or authorizing construction in accordance with this MOA.

VIII. RESOLVING OBJECTIONS

- A. Should any party to this MOA timely object in writing to the manner in which the terms of this MOA are implemented, the GSA will immediately notify the other parties of the objection, request their comments on the objection within 15 days following receipt of the GSA's notification, and proceed to consult with the objecting party.
- B. If the objection is resolved during the consultation period, the GSA may proceed with the disputed action in accordance with the terms of such resolution.
- C. If after initiating such consultation, the GSA determines that the objection cannot be resolved through consultation, the GSA shall forward all documentation relevant to the objection to the ACHP, including the GSA's proposed response to the objection. Within 30 days after receipt of such documentation, the ACHP will exercise one of the following options:
 1. Advise the GSA that the ACHP concurs in the GSA's proposed response to the objection, whereupon the GSA will respond to the objection accordingly;
 2. Provide the GSA with recommendations, which the GSA will take into account in reaching a final decision regarding its response to the objection; or
 3. Notify the GSA that the objection will be referred for comment pursuant to 36 CFR 800.7(a)(4) and proceed to refer the objection and comment. In this event, the GSA shall ensure that the Agency Official is prepared to take the resulting comments into account in accordance with 36 CFR 800.7(c)(4).
- D. Should the ACHP not exercise one of the above options within 30 days after receipt of all pertinent documentation; the GSA may assume the ACHP's concurrence in its proposed response to the objection.
- E. The GSA shall take into account any ACHP recommendation or comment and any comments from the other parties to this MOA in reaching a final decision regarding the objection. The GSA's responsibility to carry out all actions under this MOA that are not the subjects of the objection shall remain unchanged.
- F. The GSA shall provide all parties to this MOA with a copy of its final written decision regarding any objection addressed pursuant to this stipulation.
- G. The GSA may authorize any action subject to objection under this stipulation to proceed after the objection has been resolved in accordance with the terms of this stipulation.

IX. MONITORING

The SHPO and the ACHP may monitor any activities carried out pursuant to this MOA. GSA shall cooperate with the SHPO and the ACHP in carrying out these monitoring responsibilities.

X. AMENDMENTS

Any Signatory to this MOA may propose that this MOA be amended, whereupon all Signatories will consult for no more than 15 days to consider such amendment.

36 CFR §800.6(c)(1) shall govern the execution of any such amendment. If this agreement is not amended, only the GSA, the ACHP, the SHPO or the NPS may terminate this MOA.

XI. TERMINATION

- A. Only the GSA, the ACHP, SHPO or NPS as Signatories may terminate this MOA. If this MOA is not amended the Signatory proposing termination shall in writing notify all other Signatories to this MOA, explain the reasons for proposing termination, and consult with the other Signatories up to 30 days to seek alternatives to termination. Should such consultation result in an agreement on an alternative to termination; the Signatories shall then proceed in accordance with the terms of that agreement.
- B. Should such consultation fail, the Signatory proposing termination may terminate this MOA by promptly notifying the other signatories to this MOA in writing. Termination hereunder shall render this MOA without further force or effect.
- C. If this MOA is terminated hereunder and if the GSA determines that the Undertaking will nonetheless proceed, then the GSA shall either consult in accordance with 36 CFR 800.6 to develop a new MOA or request the comments of the ACHP pursuant to 36 CFR Part 800.

DURATION OF THIS MOA

The terms of this MOA should be satisfactorily fulfilled by March 01, 2006, with exception of Public Outreach and Interpretation Program provisions of Stipulation II(C). In such event that the MOA needs to be extended, GSA shall notify the parties to this MOA, and if the project proponents choose to continue with the undertaking, GSA shall re-initiate review of the undertaking in accordance with 36 CFR Part 800.

EFFECTIVE DATE OF THIS MOA

This MOA shall take effect when the GSA, the ACHP, the SHPO and the NPS have executed it.

Execution of this Memorandum of Agreement by the GSA, the ACHP, the NPS, and the SHPO, and implementation of its terms by the GSA, will evidence that the GSA has afforded the Signatory and Concurring Parties an opportunity to comment on the Undertaking and its effects on historic properties, and that the GSA has taken into account the effects of the Undertaking on historic properties.

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SIGNATORIES:

U.S. GENERAL SERVICES ADMINISTRATION Page 10
Jon R. Kvistad, Regional Administrator

NATIONAL PARK SERVICE Page 11
Jonathan B. Jarvis, Regional Director

ADVISORY COUNCIL ON HISTORIC PRESERVATION Page 12
John M. Fowler, Executive Director

OREGON STATE HISTORIC PRESERVATION OFFICE Page 13
Michael Carrier, State Historic Preservation Officer

CONCURRING:

NATIONAL TRUST FOR HISTORIC PRESERVATION Page 14
Michael Buhler, Regional Attorney

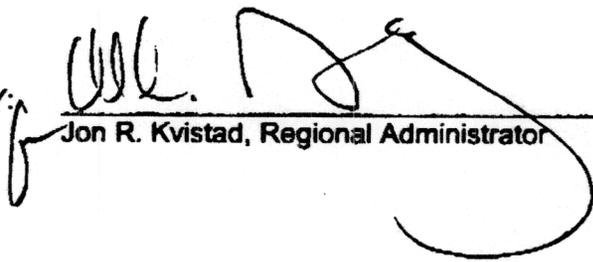
ATTACHMENTS:

- A. April 16, 2003, Letter from U.S. Courts of Appeals
- B. March 25, 2003, Letter from U.S. Postal Services to General Services Administration

**Memorandum of Agreement Regarding
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SIGNATORY (1 of 4):

U.S. GENERAL SERVICES ADMINISTRATION

BY: 

Jon R. Kvistad, Regional Administrator

Date: 5/6/03

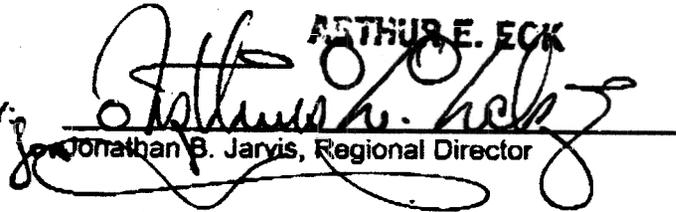
**Memorandum of Agreement Regarding
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SIGNATORY (2 of 4):

NATIONAL PARK SERVICE

ARTHUR E. ECK

BY:


Jonathan B. Jarvis, Regional Director

Date:

5/19/03

**Memorandum of Agreement Regarding
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SIGNATORY (3 of 4):

ADVISORY COUNCIL ON HISTORIC PRESERVATION

BY: 
John M. Fowler, Executive Director

Date: 5/27/03

**Memorandum of Agreement Regarding
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SIGNATORY (4 of 4):

OREGON STATE HISTORIC PRESERVATION OFFICE

BY: 
Michael Carrier, State Historic Preservation Officer

Date: 5-7-03