

MEMORANDUM OF AGREEMENT
BETWEEN
THE UNITED STATES GENERAL SERVICES ADMINISTRATION,
THE VIRGINIA DEPARTMENT OF HISTORIC RESOURCES,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
AND LCOR ALEXANDRIA, L.L.C.
REGARDING CONSOLIDATION OF THE
UNITED STATES PATENT AND TRADEMARK OFFICE

WHEREAS, the United States General Services Administration ("GSA"), the federal agency responsible for obtaining and assigning office space for use by federal agencies, is acquiring approximately 2.4 million rentable square feet of office and related space under a 20-year lease to consolidate and meet the future needs of the United States Patent and Trademark Office ("USPTO");

WHEREAS, GSA undertook a competitive lease procurement process during which the following sites in northern Virginia were fully considered: the Crystal City Site, the Carlyle Site, and the Eisenhower Avenue Site;

WHEREAS, on June 14, 1999, GSA issued its Record of Decision ("ROD") selecting the proposal submitted by LCOR Alexandria, L.L.C. ("LCOR"), the offeror of the Carlyle Site for USPTO's consolidation;

WHEREAS, GSA's ROD was based on the analysis in a number of reports, including but not limited to the Final Environmental Impact Statement for the consolidation of the USPTO offices and supporting technical analyses. In addition, the following reports provide the background information concerning the relevant historic resources for this Memorandum of Agreement ("MOA"): the Phase 1a Archaeological Assessment for the Proposed Patent & Trademark Office Consolidation, prepared by Peter Glumac, Ph.D., Parsons Engineering Science, Inc., February 1998; Phase 1a Archaeological Assessment for the Consolidation of the Naval Systems Commands, Alexandria and Arlington County, Virginia, prepared by Donna J. Seifert, Ph.D, John Milner Associates, Inc., 1992; and Summary of Area A Archaeological Phase II Survey: Carlyle Project, Alexandria, Virginia, prepared by Alexandria Archaeology, City of Alexandria, Virginia for Alexandria Southern Properties, Inc., Alexandria Archaeology Publications Number 67, 1994;

WHEREAS, in accordance with Section 110(k) of the National Historic Preservation Act ("NHPA"), GSA reviewed the facts and circumstances surrounding the demolition by Carlyle Development Corp. of the Southern Railway Roundhouse on the Carlyle Site and, after consultation with the Advisory Council on Historic Preservation ("ACHP"), it was found that neither Carlyle Development Corp. nor LCOR intended to avoid the requirements of Section 106 of the National Historic Preservation Act;

WHEREAS, GSA has determined that construction at the Carlyle Site has the potential to cause an adverse effect on historic resources within the Carlyle Site because there is a potential to impact subsurface archaeological deposits in the applicable portions of the project footprint which were not tested previously (Blocks M and N) or where further testing may be appropriate due to the limited nature of earlier testing (Blocks F and J) :

WHEREAS, the ROD states that prior to its issuance, GSA issued Amendment No. 14 to the Solicitation for Offers ("SFO") which required that the selected offeror cause to be prepared and execute a MOA, between and among, at a minimum, the intended Lessor, in this case LCOR ("Lessor"), GSA, the Virginia Historic Preservation Officer ("SHPO") and the ACHP, in accordance with 36 C.F.R. § 800, to ensure that any remaining requirements pursuant to Section 106 of the NHPA area addressed;

WHEREAS, this MOA is required pursuant to the Lease between GSA and LCOR, and LCOR has committed to meet all requirements pertaining to historic and archaeological resources as set forth in its Best and Final Offer, May 21, 1999;

WHEREAS, the completion of further archaeological studies and the development and implementation of specific mitigation measures to address adverse impacts, if any, to historic resources within the Carlyle Site will be the responsibility of LCOR;

WHEREAS, the SHPO, the ACHP, and the City of Alexandria have been consulted with regard to this project throughout the Environmental Impact Statement ("EIS") process and in the preparation of this document;

NOW THEREFORE, GSA, the SHPO, the ACHP and LCOR agree that the proposed undertaking at the Carlyle Site shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic resources:

STIPULATION

GSA shall ensure that:

A. Existing Documentation

Extensive documentation of the Southern Railway Roundhouse was completed by Carlyle Development Corporation prior to its demolition in accordance with a Memorandum of Understanding between Carlyle Development Corporation and the City of Alexandria. Carlyle Development Corporation has already provided this documentation to the City of Alexandria.

B. Testing Program

1. LCOR shall develop a testing program, to identify and evaluate archaeological resources prior to any ground disturbing activity affecting Blocks M, N, F and J. The testing program shall be of sufficient intensity

to provide an evaluation of eligibility for the National Register of Historic Places by GSA, in consultation with the SHPO, for all identified properties in the testing area, following the regulations outlined in 36 CFR § 800.4(c). National Register eligibility shall be evaluated using criteria outlined in National Register Bulletin 15, Guidelines for Applying the National Register Criteria for Evaluation published by the National Park Service. LCOR shall conduct all archaeological testing within the testing area pursuant to a scope of work developed in consultation with, and approved by, GSA and the SHPO.

2. If, as a result of the testing program, archaeological resources are identified that are eligible for the National Register of Historic Places, LCOR shall develop a plan for their avoidance, protection, recovery of information or destruction without data recovery, in consultation with GSA, the SHPO, and the City of Alexandria, and the plan will be approved by GSA, the SHPO, and the City of Alexandria prior to implementation.

ADMINISTRATIVE PROVISIONS

A. Professional Qualifications

All cultural resources work undertaken by LCOR pursuant to this Agreement shall be conducted by or under the direct supervision of qualified individuals meeting the qualifications presented in 36 CFR Part 61, Appendix A.

B. Standards and Guidelines

All cultural resources work undertaken by LCOR pursuant to this Agreement shall be conducted in accordance with the following standards and guidelines, as applicable:

1. The Secretary of Interior: Standards and Guidelines for Archaeology and Historic Preservation (1983) (48 FR 44716-44742).
2. Advisory Council on Historic Preservation: Treatment of Archaeological Properties: A Handbook (1980).
3. National Park Service: The Archaeological Survey: Methods and Uses (1978), The Archaeological Resources Protection Act (1979), National Register Bulletin 15 – Guidelines for Applying the National Register Criteria for Evaluation, National Park Service Guideline No. 28 – Cultural Resource Management Guideline, and the Archeology Laboratory Manual of the Regional Archeology Program, National Capital Region.
4. 16 USC § 470aa – 470II: Archaeological Resources Protection Act of 1979.

5. Virginia Department of Historic Resources: Guidelines for Archaeological Survey in Virginia (1995), Guidelines for Preparing Identification and Evaluation Reports for Submission Pursuant to Sections 106 and 110, National Historic Preservation Act (1992), How to Use Historic Contexts in Virginia: A Guide for Survey, Registration, Protection, and Treatment Projects (1991), and State Standard Curation Guidelines (1993).
6. City of Alexandria: City of Alexandria Archaeological Standards (January 1996)

Any direct conflict between or among the foregoing standards and guidelines identified by LCOR during its performance of the cultural resources work shall be promptly identified to GSA and the SHPO. GSA and the SHPO, in consultation with the City of Alexandria, agree to work diligently and expeditiously with LCOR to resolve any such conflicts.

C. Completion of Testing

LCOR shall notify the SHPO in writing, with a copy to GSA, once the fieldwork portion of the testing program, if any, is complete so that a site visit may be scheduled within ten (10) days of such notice if the SHPO believes such a site visit to be appropriate. The proposed construction may proceed following this notification while the technical report is being prepared.

D. Data Recovery

All data recovery plans for archaeological resources that are identified as eligible for the National Register of Historic Places prepared under the terms of this MOA shall include the following elements:

1. Information on the archaeological property or properties where data recovery is to be carried out, and the context in which such properties are eligible for the National Register;
2. Information on any property, properties, or portions of properties that will be destroyed without data recovery;
3. Discussion of the research questions to be addressed through the data recovery, with an explanation/justification of their relevance and importance;
4. Description of the recovery methods to be used, with an explanation of their pertinence to the research questions;
5. Information on arrangements for any regular progress reports or meetings to keep the Virginia SHPO up to date on the course of the work. The plan

should contain the expected timetable for excavation, analysis and preparation of the final report:

6. Proposed methods for disseminating results of the work to the interested public (e.g. slide packet for use in local schools, an exhibit in libraries during Virginia Archaeology Month, etc.); and
7. Proposed methods by which any relevant Indian tribes and other specific groups/interested parties will be kept informed of the work, if human remains or grave goods are expected to be encountered, and if such human remains or grave goods are found, information on consultation with the Virginia Council on Indians, the United Indians of Virginia, and any other relevant Indian tribe regarding final disposition of the materials.

E. Curation

LCOR shall curate all materials resulting from archaeological investigations in accordance with 36 CFR Part 79 at the Offices of the City Archeologist of Alexandria.

F. Technical Reports

1. LCOR shall submit two draft copies of all final technical reports to the SHPO and one to the City of Alexandria for their review and comment. LCOR shall ensure that all relevant comments received from the SHPO and the City of Alexandria within 30 days of report receipt shall be addressed in the final technical reports.
2. LCOR shall deliver two copies of the final reports concerning archaeological investigations completed pursuant to this MOA to the SHPO and four copies to the City of Alexandria for dissemination to the appropriate public libraries, educational institutions, and other repositories.

G. Unanticipated Discoveries

LCOR shall ensure that construction documents contain a plan for the treatment of unexpected discoveries, as follows:

1. In the event that a previously unidentified archeological resource is discovered during ground disturbing activities, all construction work involving subsurface disturbance will be halted in the area of the resource and in the surrounding area where further subsurface remains can reasonably be expected to occur. An archeologist meeting the standards set forth in Paragraph A above will immediately inspect the work site and determine the area and the nature of the affected archeological property. Construction work may then continue in the project area outside the

resource area. Within ten (10) working days of the original notification of discovery, GSA in consultation with the SHPO, will determine the National Register eligibility of the resource.

2. If the resource is determined to meet the National Register Criteria (36 CFR Part 60.6), GSA will ensure compliance with 36 CFR § 800.13. Work in the resource area shall not proceed until either (a) the development and implementation of an appropriate data recovery or other recommended mitigation procedures or (b) the determination is made that the located remains are not eligible for inclusion on the National Register.

H. Dispute Resolution

1. If the SHPO and the ACHP objects within ten (10) working days to any treatment plans or reports provided for review, or any proposed action regarding issues covered by this Agreement, GSA will require that LCOR consult with the objecting party to resolve the objection. If LCOR determines that the objection can not be resolved, LCOR shall forward all relevant documentation to GSA and the ACHP. Within ten (10) working days after receipt of the documentation, the ACHP will provide recommendations to GSA. GSA will take such recommendations into account in reaching a final decision regarding the dispute and direct LCOR as it determines to be appropriate, within an additional ten (10) working days.
2. At any time during the implementation of the measures stipulated in this agreement should a reasonable and bona-fide objection to any such measures or its manner of implementation be raised by a member of the interested public, LCOR shall take the objection into account and consult as needed with the objecting party, GSA, the SHPO, or the ACHP to resolve the objection.
3. LCOR's obligations to carry out all other actions under this MOA that are not the subject of a dispute with the SHPO or ACHP will remain unchanged.

I. Expiration

This Agreement will continue in full force and effect for 5 years. At any time in the six-month period prior to expiration of the Agreement, GSA, the SHPO, the ACHP and LCOR may mutually agree to extend this agreement with or without amendments.

J. Execution

This Agreement may be executed in more than one counterpart, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

Execution and implementation of this Memorandum of Agreement is evidence that the ACHP has been afforded an opportunity to comment on the consolidation of the United States Patent and Trademark Office and its effects on historic properties, and that GSA has taken into account the effects of the undertaking on historic properties.

[SIGNATURE PAGE FOLLOWS]

GENERAL SERVICES ADMINISTRATION

By: _____
Anthony E. Costa
Assistant Regional Administrator
Public Buildings Service

Date: December __, 2001

VIRGINIA STATE HISTORIC PRESERVATION OFFICER

By: _____
H. Alexander Wise, Jr.
Virginia State Historic Preservation Officer

Date: December __, 2001

THE ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: _____
John M. Fowler
Executive Director, Advisory Council on Historic Preservation

Date: December __, 2001

LCOR ALEXANDRIA, L.L.C.

By: LCOR PTO Headquarters, L.L.C., its Managing Member
By: LCOR Public/Private, L.L.C., its Managing Member
By: LCOR Holdings L.L.C., its Managing Member

By: _____
R. William Hard
Executive Vice President

Date: December __, 2001