

**MEMORANDUM OF AGREEMENT
REGARDING THE DISPOSAL OF THE OMAHA FEDERAL OFFICE BUILDING
BY AND BETWEEN THE U.S. GENERAL SERVICES ADMINISTRATION,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, AND
THE NEBRASKA STATE HISTORIC PRESERVATION OFFICE**

IN OMAHA, NEBRASKA

THIS MEMORANDUM OF AGREEMENT ("MOA") is entered into as of this 26 day of May, 2009, by and between the United States of America, acting by and through the Administrator of the General Services Administration and authorized representatives ("GSA"), the Advisory Council on Historic Preservation ("ACHP"), and the Nebraska State Historic Preservation Office (the "SHPO").

WITNESSETH:

WHEREAS, GSA is the federal agency that has jurisdiction, custody and control of the Omaha Federal building (FOB) located at 106 South 15th Street, Omaha, Nebraska, the legal description of which is set forth in Attachment A, attached hereto and incorporated herein by reference, and exterior photos which are referenced hereto in Attachment B; and

WHEREAS, GSA has determined that the public sale of the FOB may have an adverse effect upon the property which is eligible for the National Register of Historic Places, and GSA seeks to provide for the long-term preservation, public accessibility and stewardship of the FOB for future generations; and

WHEREAS, GSA has determined that the Area of Potential Effect ("APE") of the undertaking as defined in 36 C.F.R. § 800.16(d), to be the area bounded by Sixteenth Street on the North, Douglas Street on the West, 15th Street on the South, and Dodge Street on the East, a map of which is found in Attachment C, attached hereto and incorporated herein by reference; and

WHEREAS, pursuant to 36 C.F.R. § 800.3, GSA invited the SHPO and ACHP to participate in the consultation process; and

WHEREAS, GSA has consulted with the ACHP and the SHPO pursuant to 36 CFR Part 800, regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. Section 470(f)) to mitigate the adverse effects of this undertaking on historic properties; and

WHEREAS, GSA determined that the FOB was excess to the needs of GSA, pursuant to 41 CFR Part 102-75 in September 2005; and

WHEREAS, GSA determined that the FOB was surplus to the needs of the Federal Government, pursuant to 41 CFR Part 102-75 in November 2005; and

WHEREAS, GSA commenced screening the property for public body and homeless need, pursuant to 41 CFR Part 102-75 in February 2006; and

WHEREAS, GSA has completed the real property disposal process under 41 CFR Part 102-75 and will be offering the FOB for competitive public sale; and

WHEREAS, GSA has completed the nomination of the FOB to the National Register of Historic Places and the FOB was listed on the National register of Historic Places on March 17, 2009; and

WHEREAS, GSA has invited the SHPO and ACHP to execute this MOA.

NOW, THEREFORE, GSA, the ACHP and the SHPO agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties and to satisfy GSA's Section 106 responsibilities for all aspects of the project until this MOA expires or is otherwise terminated.

STIPULATIONS

1. The SHPO shall coordinate designation of the FOB as a local landmark under Title 4 of the Omaha Municipal Code, as amended.

2. GSA shall ensure that the following measures are carried out:

I. Covenants. GSA will place covenants in any conveyance document transferring ownership of the FOB out of the federal inventory. These covenants are set forth in Attachment D, attached hereto and incorporated herein by reference.

II. Marketing. GSA will include the following as part of their marketing effort to sell the FOB:

- A. GSA will inform prospective purchasers of the FOB of its status of listing in the National Register of Historic Places, of the covenants, and that the FOB may be eligible for federal tax credits worth 20% of the rehabilitation costs and State of Nebraska valuation incentive programs. This information will be made available in the Invitation for Bids.
- B. GSA will describe the availability of technical and administrative support from the SHPO for any appropriate rehabilitation planned for the FOB.
- C. GSA will include photographs of the FOB to convey the FOB's visual characteristics, including interior photos, to document existing conditions of the FOB at such time as the sale or transfer.
- D. GSA will note the FOB's approximate gross square footage.

E. GSA shall provide an Invitation for Bids to potential developers, as may be recommended by the SHPO.

III. Notification. Within 30 days of conveyance of the FOB, GSA shall provide SHPO with the name and contact information of the new property owner(s) along with a copy of the quitclaim deed, as recorded with the Douglas County Register of Deeds.

IV. Duration. This agreement will be null and void upon conveyance of the FOB with the above covenants properly recorded or if its terms are not carried out within five years from the date of its execution. Prior to such time, GSA may consult with other signatories to reconsider the terms of the agreement and amend in accordance with the appropriate section below.

V. Dispute Resolution. Should any party to this agreement object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, GSA shall consult with the objecting parties to resolve the objection. If GSA determines, within 30 days, that such objections cannot be resolved, GSA will:

A. Forward all documentation relevant to the dispute to the ACHP in accordance with 36 CFR Section 800.2(b)(2). Upon receipt of adequate documentation, the ACHP shall review and advise GSA on the resolution of the objection within 30 days. Any comment provided by the ACHP, and all comments from the parties to the MOA, will be taken into account by GSA in reaching a final decision regarding the dispute.

B. If the ACHP does not provide comments regarding the dispute within 30 days after receipt of adequate documentation, GSA may render a decision regarding the dispute. In reaching its decision, GSA will take into account all comments regarding the dispute from the parties to the MOA.

C. GSA'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. GSA will notify all parties of its decision in writing before implementing that part of the Undertaking subject to dispute under this stipulation. GSA's decision will be final.

VI. Amendments and Noncompliance. If any signatory to this MOA, including any invited signatory, determines that its terms will not or cannot be carried out or that an amendment to its terms must be made, that party shall immediately consult with the other parties to develop an amendment to this MOA pursuant to 36 CFR §§800.6(c)(7) and 800.6(c)(8). The amendment will be effective on the date a copy signed by all of the original signatories is filed with the Council. If the signatories cannot agree to appropriate terms to amend the MOA, any signatory may terminate the agreement in accordance with the stipulation in VII below.

VII. Termination. If an MOA is not amended following the consultation set out with Stipulation VI, "Amendments and Noncompliance" above, it may be terminated by any signatory or invited signatory. Within 30 days following termination, GSA shall notify the signatories if it will initiate consultation to execute an MOA with the signatories under 36 CFR §800.6(c)(1) or request the comments of the Council under 36 CFR §800.7(a) and proceed accordingly.

MISCELLANEOUS

Any notice or other communication under this MOA required or permitted to be given by the parties shall be sufficiently given or delivered if dispatched by hand, by certified mail, return receipt required, or by overnight delivery service with confirmed receipt, addressed as follows:

In the case of a notice or communication to GSA:

U.S. General Services Administration
1500 East Bannister Road
Kansas City, Missouri 64131
Attn: Regional Historic Preservation Officer

With courtesy copies to:

U.S. General Services Administration
1500 Bannister Road
Kansas City, Missouri 64131
Attn: Regional Counsel

U.S. General Services Administration
Room 3344
1800 F Street, NW
Washington, DC 20405
Attn: Federal Preservation Officer

In the case of a notice or communication to the SHPO:

Nebraska State Historical Society
Nebraska State Historic Preservation Office
P.O. Box 82554
Lincoln, NE 68501
(402) 471-4787

Or on location at:
1420 P Street, Ste 300
Lincoln, NE 68501

In the case of a notice or communication to ACHP:

Advisory Council on Historic Preservation
The Old Post Office Building
1100 Pennsylvania Avenue, NW
Washington, DC 20004-2501
Attn: Executive Director

Or to such other address as any party from time to time shall designate by written notice to the others.

Execution of this MOA and implementation of its terms evidences that GSA has afforded the 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.

The parties hereto execute this MOA on the dates hereinafter identified.

U.S. GENERAL SERVICES ADMINISTRATION

Date: _____ By: Michael T. Brincks
Michael T. Brincks
Acting Regional Administrator

Concurrence:

Date: _____ By: Sylvia R. Augustus
Sylvia R. Augustus
Regional Historic Preservation Officer

Date: _____ By: Beth Savage
Beth Savage
Federal Preservation Officer

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Date: 5/26/2009 By: John M. Fowler
John M. Fowler
Executive Director

NEBRASKA STATE HISTORICAL SOCIETY

Date: _____ By: Michael Smith
Michael Smith
Nebraska State Historic Preservation Officer

Attachment A
Legal Description

Lot Number One (1) in Block Number One Hundred and Six (106) in the City of Omaha as surveyed and lithographed being a parcel of ground sixty six feet wide fronting on the south side of Dodge Street and extending back the same width along the west line of Fifteenth Street, one hundred and thirty two feet to the alley in said block. Also, the east two-thirds (2/3) of Lot Two (2) in Block One Hundred and Six (106) in said City of Omaha being a parcel forty four (44) feet wide fronting on the south side of Dodge Street and extending back the same width one hundred and thirty two feet to the aforementioned alley, .33 acres more or less.

Attachment B
Photographs

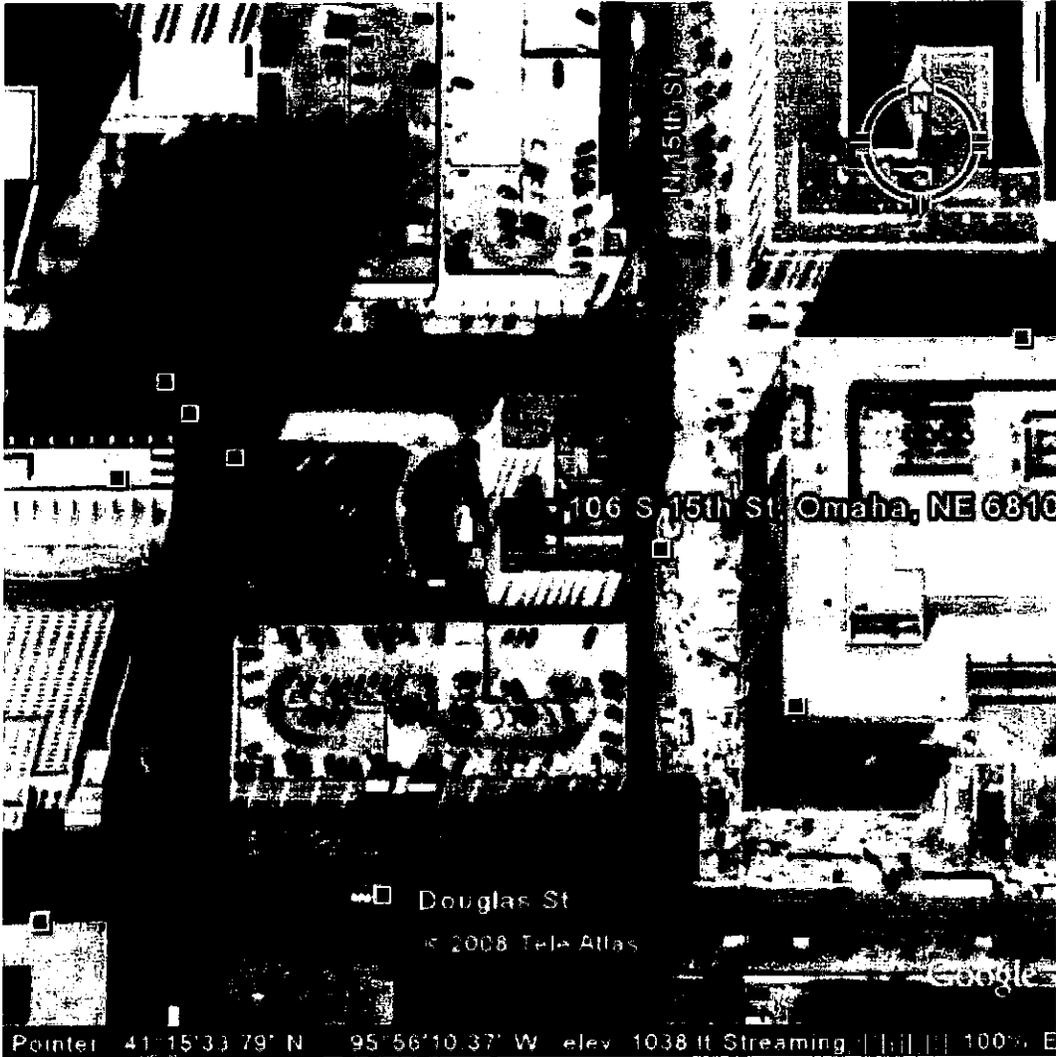
Photographs are permanently on file with the Nebraska State Historical Society. Existing condition photographs were taken by NESHPO on October 21, 2008. All photographs are keyed to building floor plans. Photographs are available by contacting the:

Nebraska State Historical Society
Nebraska State Historic Preservation Office
P.O. Box 82554
Lincoln, NE 68501
(402) 471-4787

Available on location at:
1420 P Street, Ste 300
Lincoln, NE 68501

Attachment C

APE Map



Attachment D **Covenants**

GRANTEE covenants for itself, its successors and assigns, and every successor in interest to the real property, or any part thereof, which is hereby conveyed subject to the following conditions, restrictions, and limitations, and which is herein referred to as the "Property."

1. The Property will be preserved and maintained in accordance with the condition of the Property on the date of this conveyance; documentation of the Property condition at the date of this conveyance is depicted by the photographs referenced in Attachment B; no alteration may be made, except pursuant to paragraph six (6) herein, and only according to plans approved in writing by the State of Nebraska Historical Society ("Historical Society").
2. Grantee agrees, at its own cost and expense, to undertake all normal maintenance and repairs and will, at all times, maintain the Property in a good and sound state of repair and structural integrity.
3. The Property shall be used only according to appropriate zoning and special permit process (es) of City of Omaha ordinance(s). The property is subject to Title 4 of the Omaha Municipal Code, as amended.
4. Grantee, at its expense, shall keep the Property insured to full replacement value against casualty loss or damage. Grantee shall also insure against liability for injury or damage to persons or property according to terms as may be reasonably required by the Historical Society. The Historical Society shall be named as an additionally insured party under the liability policy.
5. Grantee shall pay immediately, when first due and owing, all general taxes, special taxes, special assessments, utility charges and other charges which may become a lien on the Property.
6. No construction, alteration, improvement, demolition or remodeling shall be undertaken or permitted to be undertaken on the Property which would adversely affect the architectural and historical character of the building, without the express written permission of the Historical Society, its successors or assigns, signed by a duly authorized representative thereof, prior to commencing any proposed construction, alteration, improvement, demolition or remodeling to the Property.
 - a. Provided, however, that the reconstruction, repair, repainting or refinishing of presently existing parts or elements of the Property, shall be permitted when damage to the Property has resulted from casualty loss, deterioration, or wear and tear; so long as such reconstruction, repair, repainting or refinishing is performed in a manner which would not alter the appearance of those elements of the Property as they are as of the date of this conveyance.
 - b. Proposed construction, alteration, improvement, demolition or remodeling will be reviewed for compliance with the "United States Secretary of the Interior's Standards for Rehabilitation" and "Guidelines for Rehabilitating Historic Buildings." Such activities may not commence until Grantee has received written approval from the Historical Society, its successors or assigns, signed by a duly authorized representative thereof.

- c. Grantee shall deliver to the Historical Society for review and approval all information as may be necessary for review of any proposed construction, alteration, improvement, and demolition or remodeling to the Property in advance of any such undertaking.
- d. Grantee shall also submit to the Historical Society a timetable for the proposed activity sufficient to permit the Historical Society to review and subsequently monitor such activity.

7. Nothing may be erected on the Property that would obscure the view from street level of any part of the facades shown in Exhibit A, except for temporary structures, such as scaffolds needed to assist workmen.

8. Grantee hereby agrees that representatives and agents of the Historical Society shall be permitted at all reasonable times to inspect the Property.

- a. Inspection will be made at times mutually agreed upon by Grantee and the Historical Society.
- b. Inspections will normally take place from the street; however, Grantee agrees that representatives of the Historical Society shall be permitted to enter and inspect the exterior and interior upon reasonable advance notice to Grantee.
- c. Grantee covenants not to withhold unreasonably its consent in determining a date and time for inspection of the interior.
- d. Inspection of the interior will not, in the absence of evidence of noncompliance with any covenant or restriction herein, take place more often than annually.

9. In the event of a violation of any covenant or restriction herein, in addition to any remedies now or hereafter provided by law:

- a. The State of Nebraska Attorney General may, on behalf of the Historical Society, institute a suit for injunctive relief, specific performance, or damages relating to such violation, and to require the restoration of the Property to its condition prior to the actions which gave rise to the suit; or
- b. Representatives of the Historical Society may enter upon the Property to correct any such violation, and hold Grantee and the Grantee's successors, heirs, and assigns, responsible for the cost thereof; such cost, until repaid, shall constitute a lien on the Property.

10. The State of Nebraska Attorney General, on behalf of the Historical Society, shall also have available all legal and equitable remedies to enforce Grantee's obligations hereunder, and in the event Grantee is found to have violated any of its obligations, Grantee shall reimburse the State of Nebraska, including the Historical Society and/or the Nebraska Attorney General, for any costs or expenses incurred in connection therewith, including, but not limited to, court costs and architect's and attorney's fees. The exercise by the Historical Society of one remedy, or the failure to exercise any remedy, shall not have the effect of waiving or limiting the use of any other remedy, or the use of such remedy at any other time.

11. Grantee agrees that restrictions contained in this covenant will be inserted, verbatim or by express reference, in any subsequent deed or other legal instrument by which Grantee's fee

simple title to the Property or any other possessory interest in the Property, or any part thereof, is divested or conveyed.

12. The Historical Society shall be notified, in writing, within thirty (30) days of any conveyance of some or all of the Property. Notifications shall include the name and contact information for the new owner(s).

13. These restrictions shall be binding on the parties hereto, their successors, and assigns in perpetuity; at its discretion and upon consultation, the Historical Society may, for good cause, modify or cancel any or all of the foregoing restrictions upon written application of the owner, its successors and assigns. Any such modification or cancellation must be in writing from the Historical Society, its successors or assigns, signed by a duly authorized representative thereof.

14. The acceptance of a Deed conveying title to the property shall constitute evidence of the agreement of the Grantee to be bound by the conditions, restrictions and limitations, and to perform the obligations herein set forth.

15. Notifications required by this covenant shall be made in writing and shall be sent by registered or certified mail to the Nebraska State Historical Society, P.O. BOX 82554, Lincoln, NE 68501, or at such other address for the Historical Society as specified in writing to the Grantee.

16. This covenant shall be governed by and construed in accordance with the laws of the State of Nebraska.