

MEMORANDUM OF AGREEMENT  
AMONG THE UNITED STATES GENERAL SERVICES ADMINISTRATION, THE  
ADVISORY COUNCIL ON HISTORIC PRESERVATION, AND  
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER,  
REGARDING THE REHABILITATION, SEISMIC UPGRADE,  
AND TENANT IMPROVEMENTS OF THE  
FEDERAL OFFICE BUILDING,  
50 UNITED NATIONS PLAZA, SAN FRANCISCO, CALIFORNIA

WHEREAS, this Memorandum of Agreement (“Agreement”) is made as of this 23 day of December, 2009, by and among the United States General Services Administration (“GSA”), the Advisory Council on Historic Preservation (“ACHP”), and the California State Historic Preservation Office (“SHPO”) (referred to collectively herein as the “Signatories” or individually as a “Signatory”), pursuant to Section 106 of the National Historic Preservation Act (“NHPA”), 16 U.S.C. 470f, and its implementing regulations at 36 CFR part 800 and Sections 110 and 111 of the NHPA;

WHEREAS, the property (“Property”) is an approximately 350,213 GSF federal office building located at 50 United Nations Plaza in San Francisco, California;

WHEREAS the Property was built between 1934 and 1936, listed on the National Register of Historic Places and the California Register of Historic Places as a contributing structure to the San Francisco Civic Center in 1978, and designated as a contributing structure to the San Francisco Civic Center National Historic Landmark Historic District in 1987 (“Historic District”);

WHEREAS, consisting of a rehabilitation of the Property interiors and the exterior, installation of a punched shear wall seismic system, tenant improvements for site security, and replacement of plumbing, heating, ventilation, fire protection, and electrical building systems, the efforts at the Property will be referred to collectively herein as the Undertaking (“Undertaking”);

WHEREAS, upon completion of the Undertaking, GSA intends to retain the Property in the federal inventory and federal tenants will occupy the Property;

WHEREAS, GSA and the SHPO agree that the area of potential effect for the Undertaking is the area bounded by McAllister Street to the north, United Nations Plaza to the south, Leavenworth Street to the east, and Hyde Street to the west (“Area of Potential Effects” and “APE”), as shown on Attachment 1;

WHEREAS, GSA has received funding under the American Recovery and Reinvestment Act of 2009 (Public Law 11-5) (“Recovery Act”) for this Undertaking, and this funding will expire if it is not obligated by September 30, 2010;

WHEREAS, GSA has consulted with the Signatories to this Agreement, pursuant to 36 CFR part 800.6 and Section 110(f) of the same Act, 16 U.S.C. 470h-2(f), to develop a process for fulfilling its obligations under the NHPA;

WHEREAS, GSA has completed a Historic Structure Report (“HSR”) (Mendel Mesick Cohen Waite Architects, Albany, NY, 1982) (Attachment 2) and a Historic Building Preservation Plan (“HBPP”) (Page & Turnbull, Architects, San Francisco, CA, April 9, 1992) (Attachment 3), the latter of which identifies the aspects of the Property which are considered historic and identifies non-historic portions of the interior of the Property to consider their potential to affect historic portions;

WHEREAS, GSA will select an architectural/engineering team (“Architect”), a construction management team (“Construction Manager”), and a general contractor through its Construction Manager as Constructor (“CMc”) program;

WHEREAS, a Program Development Study for Alterations (Interactive Resources Architects & Engineers, April 7, 2009) for the Property, which sets forth the General Scope (“General Scope”) of the Undertaking, will be provided by GSA to the Architect along with a copy of the 1930’s original drawings (Arthur Brown, Jr., Architect), and both documents will also be provided by GSA to the Construction Manager;

WHEREAS, soil borings have been completed, and given the location and nature of the Property, there is no potential for effects to historic properties of significance to Indian tribes and no tribal interest in the Undertaking or the Property has been expressed to GSA;

WHEREAS, based on the General Scope of the Undertaking, as reviewed in consultation with the Signatories, GSA has determined that the Undertaking will have an adverse effect upon the Property;

WHEREAS, in accordance with 36 CFR § 800.10, because the Property is a National Historic Landmark, GSA has notified the Secretary of the Interior of this consultation, and has invited the Secretary to participate in the consultation to resolve the adverse effect, and GSA and the Department of the Interior National Park Service (“NPS”) have agreed that NPS is a concurring party (“Concurring Party”);

WHEREAS, GSA has identified, pursuant to 36 CFR § 800.3(f), the following consulting parties: the National Trust for Historic Preservation (“NTHP”), the San Francisco Landmarks Preservation Advisory Board (“LPAB”), California Preservation Foundation (“CPF”), and San Francisco Architectural Heritage (“Heritage”), who will be referred to collectively herein as the Consulting Parties (“Consulting Parties”);

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 and mitigate the Undertaking’s effect on historic properties, and that these stipulations shall govern the Undertaking and all of its parts until this Agreement expires or is terminated.

## STIPULATIONS

GSA shall ensure that the following stipulations are carried out:

### I. DEFINITIONS

- A. Unless otherwise noted, this Agreement utilizes the definitions found in 36 CFR part 800, and particularly 36 CFR § 800.16.
- B. “CHBC” means California Historical Building Code, Title 24, Part 8 of the California Administrative Code relating to Building Standards.

### II. GENERAL REQUIREMENTS

- A. **Applicable Codes and Standards.** The Undertaking shall be planned, developed and executed in a manner consistent with the recommended approaches contained in the Secretary of the Interior’s Standards for the Treatment of Historic Properties (“Secretary’s Treatment Standards”), in accordance with the CHBC, and in consideration of the HSR, the HBPP, GSA’s Technical Preservation Guidelines, (<http://www/gsa.gov/technicalpreservationguidelines>), and prevailing applicable codes.
- B. **Qualifications.** GSA shall ensure that all historic preservation and archaeological work performed by GSA or on its behalf pursuant to this Agreement shall be accomplished by or under the direct supervision of a person or persons who meet(s) or exceed(s) the pertinent qualifications in the Secretary’s Professional Standards [36 CFR 61 (1983)] in those areas in which the qualifications are applicable for the specific work performed.
- C. **Existing Documentation.** The Undertaking shall be carried out in substantial accordance with the following documents, copies of which have been provided herein as attachments:
- “Program Development Study for Alterations,” by Interactive Resources Architects & Engineers, April 7, 2009, also referred to herein as the General Scope (“General Scope”).
  - “Final Report on Seismic Evaluation and Upgrade Concepts” by Forell/Elssesser Engineers, Inc., January 10, 2005.
  - “Hazardous Materials Survey Report,” by ENV America Inc. of Long Beach, California, October 10, 2008,
  - “Comprehensive Asbestos Survey Report,” by ENV America Inc. of Long Beach, California, October 2, 2008,
  - “Lead-Based Paint Survey Report,” by ENV America Inc. of Long Beach, California, October 13, 2008

### III. DOCUMENTATION REQUIREMENTS

A. Prior to selective demolition resulting in the removal or substantial alteration of historically significant features or spaces of the Property, GSA shall consult with the NPS Historic American Building Survey/ Historic American Engineering Record/Historic American Landscape Survey (HABS) program in the Pacific West Regional Office to determine the appropriate level of recordation and. GSA shall complete existing conditions drawings and stipulated HABS photographic documentation.

B. Public Availability. In addition to the requisite copies for final submission to NPS (2 archival, 2 non archival), GSA shall, within 30 days after completion of the documentation make a copy available to the Bancroft Library at the University of California, Berkeley.

### IV. PROJECT DOCUMENTS

A. Project Document Submission. GSA will prepare and submit to the SHPO and the NPS for review per Stipulation IV.B., below, (1) drawings addressing interior demolition and hazardous materials abatement, at the preliminary and final stages, (2) drawings addressing seismic upgrades, rehabilitation, and tenant improvements, at the Design Development stage, 50% Construction Documents, and 100% Construction Documents and Specifications ("Project Documents").

B. Project Document Review and Comment by the SHPO and the NPS. The SHPO and the NPS will review the Project Documents to comment on their conformance with the Secretary's Treatment Standards, and especially to comment on whether the work in the Project Documents may adversely affect the Property. The SHPO and the NPS will provide written comments to GSA within ten (10) calendar days of receipt of each submittal. The SHPO's and the NPS's comments will state whether the SHPO and/or the NPS, respectively, believes that the submittal is in such conformance and may not result in an adverse effect to the Property or a property in the Historic District.

C. Project Document Review and Comment by the ACHP. The ACHP may request, at its discretion, any or all Project Documents from GSA for review and comment purposes. The ACHP's review and comment would then proceed in accordance with this Stipulation IV..

D. Project Document Review and Site Visits. When submissions are received by the SHPO, NPS, or the ACHP, they may request, within five (5) calendar days of receipt of Project Documents, in writing to GSA, a site visit to the Property. Meeting minutes will be recorded by the party who requested the site visit, and such minutes may be considered by GSA as part of the comments provided under Stipulation IV.B., above, as long as minutes are received by GSA within five (5) calendar days of the site visit.

E. Consideration of Written Comments, Approved Project Documents. GSA will consider incorporation of written comments, provided in accordance with this Stipulation IV., into the Project Documents, to the fullest, reasonable extent. GSA will then provide a written

explanation to the SHPO, NPS and, only as appropriate per Stipulation IV. C, the ACHP, explaining how the Project Documents were or were not modified. Should GSA object to incorporating any comments into the Project Documents, GSA will provide the SHPO, NPS, and, only as appropriate per Stipulation IV.C, the ACHP, with a written explanation of its objection, and will initiate consultation with the same to resolve the objection. If no agreement is reached within ten (10) calendar days following receipt of the objection, GSA will request the ACHP review of this dispute pursuant to Stipulation IX. GSA will proceed in accordance with the Project Documents as finalized after no comments are received (see Stipulation IV.F., below), or after GSA has resolved the objections either informally or through the dispute resolution process in Stipulation IX. (“Approved Project Documents”).

F. Failure to Comment. If the SHPO, NPS, or the ACHP as appropriate per Stipulation IV.C, do not provide written comments within the agreed upon timeframes noted above, GSA may assume that the same does not have any comments regarding the Project Documents, and GSA may proceed in accordance with the Approved Project Documents.

G. Distribution of Written Comments. All written comments referred to in Stipulation IV. of this Agreement will be made available within ten (10) days by the GSA to the SHPO, NPS, ACHP, or any requesting Consulting Parties upon their request to GSA in writing.

## V. CONSTRUCTION MONITORING AND CHANGES TO SCOPE OF WORK

A. Construction Monitoring. GSA will hire an independent consultant, who meets the professional requirements set forth in Stipulation II.B, who will monitor the construction work associated with the Undertaking to ensure conformity with the Approved Project Documents and provide to GSA site visit notes, which will be provided within five (5) calendar days of the site visit to the SHPO, NPS and, only as appropriate per Stipulation IV.C, the ACHP.

B. Change Orders. GSA personnel, who meet the professional requirements set forth in Stipulation II.B, will determine whether any conflicting conditions discovered or changes proposed (e.g. change orders) to the work during implementation of the Undertaking may result in an adverse effect on the Property or a property in the Historic District. If the determination is that adverse effects may result, GSA will forward written documentation of the determination, along with proposed measures to resolve the adverse effects, to the SHPO and the NPS. Unless the SHPO or the NPS objects in writing within seven (7) calendar days of receiving such documentation, GSA may proceed with the work. Otherwise, GSA will resolve the objection through further consultation with the SHPO and/or NPS, or in accordance with the Dispute Resolution process in Stipulation IX. of this Agreement, before proceeding with the work.

C. Site Visits. The SHPO, NPS, or the ACHP may contact GSA to schedule additional site visits during normal working hours, and such site visits will be scheduled by GSA for the SHPO, NPS, or the ACHP in a timely manner.

## VI. SEISMIC CONSIDERATIONS, EMERGENCIES, AND UNANTICIPATED ADVERSE EFFECTS

A. **Seismic Considerations.** GSA shall ensure that a seismic analysis of the Property is conducted, if deemed necessary by GSA, prior to any ground-disturbing activity on the Property and as warranted thereafter. GSA shall consider the results of this seismic analysis in the development of the Property so that the structural integrity of the Property and other National Register-listed or -eligible properties within the Historic District are not adversely affected by the Undertaking.

B. **Unanticipated Adverse Effects.** If GSA determines that the Undertaking has resulted in unanticipated adverse effects to the Property prior to completion of the Undertaking, GSA shall ensure that the SHPO, NPS, and the ACHP are notified of such unanticipated adverse effects within two (2) business days (not including a federal holiday) of GSA's learning of such unanticipated adverse effects, and shall comply with 36 CFR § 800.13(b).

C. **Emergencies.** GSA shall ensure that, in the case of an immediate rescue and salvage operation on the Property that is required because of an emergency (i.e., a disaster or emergency declaration by the President, Governor of California, or the Mayor of San Francisco, or another threat to life or property) ("Emergency") that may adversely affect the Property, GSA shall use its best efforts to notify the SHPO, NPS, and the ACHP of such operations within two (2) business days (not including a federal holiday) after the commencement of such operations. If GSA proposes such an emergency undertaking, which GSA determines may have an adverse effect on the Property, as an essential and immediate response to a Emergency declaration, GSA shall notify the SHPO, NPS, and the ACHP and afford the SHPO, NPS, and the ACHP an opportunity to comment within seven (7) business days (not including a federal holiday) of such notification. If GSA determines that circumstances do not permit seven (7) business days for comment, then GSA shall notify the SHPO, NPS, and the ACHP and invite comments within the time available. GSA shall consider, as applicable in light of the urgency of the circumstances, any comments received in reaching a decision on how to proceed with the emergency undertaking.

These emergency procedures apply only to undertakings that may have an adverse effect on the Property and that will be implemented within thirty (30) calendar days after the Emergency occurs. GSA may request an extension of the period of applicability from the SHPO, NPS, and the ACHP prior to the expiration of the thirty (30) calendar days.

Nothing in this Agreement shall be deemed to prevent GSA from taking immediate rescue and salvage operations to preserve life or property, such operations being exempt from Section 106 review per 36 CFR § 800.12(d).

## VII. DURATION OF THIS AGREEMENT

This Agreement will be in effect for ten (10) years after it is executed. Prior to such date, the Signatories may extend the duration of the Agreement through an amendment per Stipulation X. of this Agreement.

## VIII. REPORTING

At the end of each calendar year following the execution of this Agreement until it expires or is terminated, GSA shall provide all parties to this Agreement with a summary report detailing work undertaken pursuant to its terms. Such report shall include any scheduling changes proposed, and problems encountered, and any disputes or objections received in GSA's efforts to carry out the terms of this Agreement.

## IX. DISPUTE RESOLUTION

If any Signatory or the Concurring Party objects to GSA's implementation of this Agreement, the Signatory or the Concurring Party shall so notify GSA in writing, and GSA shall consult with the objecting Signatory or the Concurring Party to attempt to resolve the objection. If, after initiating such consultation, GSA determines within ten (10) calendar days that the objection cannot be resolved, GSA shall forward all documentation relevant to the objection, including GSA's issued or proposed response to the objection, to the ACHP. Within thirty (30) calendar days after receipt of all such documentation, the ACHP shall provide GSA with its advice on the resolution of the objection.

Prior to reaching a final decision on the dispute, GSA shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the Signatories, Concurring Party, and Consulting Parties, and provide them with a copy of this written response. GSA will then proceed according to its final decision.

If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, GSA may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, GSA shall prepare a written response that takes into account any timely comments regarding the dispute from the Signatories, the Concurring Party, and the Consulting Parties, and provide them with a copy of such written response.

GSA's responsibility to carry out all other actions subject to the terms of this Agreement that are not the subject of the dispute remain unchanged.

## X. AMENDMENTS

Any Signatory to this Agreement may propose that this Agreement be amended, whereupon all Signatories will consult for no more than thirty (30) calendar days to consider such amendment. The amendment will be effective on the date a copy signed by all of the Signatories is received by the ACHP.

## XI. TERMINATION

- A. Proposal to Terminate. If for any reason, GSA determines that it cannot implement the terms of this Agreement, or if the SHPO or the ACHP determines that this Agreement is not being properly implemented, such Signatory may propose to the other Signatories that this Agreement be terminated.
- B. Notification. The Signatory proposing to terminate this Agreement shall so notify all other Signatories, explaining the reasons for the proposed termination and affording them at least thirty (30) calendar days to consult and seek alternatives to termination.
- C. Termination Due to Failure to Agree. If such consultation fails and the Signatories cannot agree on an alternative to termination, this Agreement may thereafter be terminated by any of the Signatories. In the event of a termination, and prior to work continuing on the Undertaking, GSA shall notify the Signatories and the Concurring Party as to the course of action it will pursue: GSA shall either ensure that each action that would otherwise be covered in this Agreement is reviewed in accordance with 36 CFR § 800.3 through 800.7, or GSA shall pursue a new agreement developed per 36 CFR § 800.6.

## XII. EFFECTIVE DATE OF THIS AGREEMENT

This Agreement will be executed and go into effect when it is signed by the Signatories and filed with the ACHP. Execution of this Agreement and implementation of its terms by GSA, will evidence that the GSA has afforded the ACHP an 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.

*SIGNATURES ON FOLLOWING PAGE*

IN WITNESS WHEREOF, the Signatories hereto have caused this Agreement to be executed by their proper and duly authorized officers.

SIGNATORIES:

U.S. GENERAL SERVICES ADMINISTRATION

By: Mary M. Filippini Date: 9/22/09  
Mary M. Filippini, Acting Regional Commissioner

By: Beth L. Savage Date: 9/18/09  
Beth L. Savage, Federal Preservation Officer

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: John M. Fowler Date: 12/23/09  
John M. Fowler, Executive Director

CALIFORNIA STATE HISTORIC PRESERVATION OFFICER

By: M. Wayne Donaldson Date: 29 SEP 2009  
M. Wayne Donaldson, F.A.I.A. State Historic Preservation Officer

CONCURRING PARTY:

U.S. DEPARTMENT OF INTERIOR, NATIONAL PARK SERVICE

By: Jonathan B. Jarvis Date: 12/18/09  
Jonathan B. Jarvis, Regional Director

ATTACHMENTS:

1. Area of Potential Effect ("APE")
2. "Historic Structure Report," by Mendel Mesick Cohen Waite, 1982
3. "Historic Building Preservation Plan," by Page & Turnbull, April 9, 1992.
4. "Program Development Study for Alterations" by Interactive Resources Architects & Engineers, dated April 7, 2009.
5. "Final Report on Seismic Evaluation and Upgrade Concepts" by Forell/Elsesser Engineers, Inc., dated January 10, 2005.
6. "Hazardous Materials Survey Report," October 10, 2008, ENV America Inc. of Long Beach, California

7. "Comprehensive Asbestos Survey Report," October 2, 2008, ENV America Inc. of Long Beach, California
8. "Lead-Based Paint Survey Report," October 13, 2008, ENV America Inc. of Long Beach, California