

MEMORANDUM OF AGREEMENT BY AND AMONG THE UNITED STATES OF AMERICA, ACTING BY AND THROUGH ITS GENERAL SERVICES ADMINISTRATION, THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER AND THE CALEXICO COMMUNITY ACTION COUNCIL, INC. REGARDING THE CONVEYANCE, REHABILITATION AND PRESERVATION OF THE CALEXICO OLD CUSTOMS HOUSE

WHEREAS, the General Services Administration, is the federal agency that owns and operates the real property located at 12 Heffernan Avenue, Calexico, California including the Property located thereon and commonly known as the “Calexico Old Customs House” (the “Property”); and

WHEREAS, the Property is listed on the National Register of Historic Places; and

WHEREAS, acting upon the request of the Calexico Community Action Council, Inc. (CCAC), the United States of America is proposing to convey the Property to the CCAC pursuant to the Public Benefit Allowance authority set forth in 40 U.S.C. 550(h) and the regulation promulgated thereunder; and

WHEREAS, the CCAC is acquiring the Property in order to use it as a healthcare facility and proposes to alter the Property in order to adapt the Property for these purposes; and

WHEREAS, in accordance with 36 C.F.R. §800.6(a)(1), GSA has consulted with the California State Historic Preservation Officer (SHPO) and notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect determination with specified documentation and the ACHP has chosen not to participate in the consultation pursuant to 36 CFR §800.6(a)(1)(iii); and

WHEREAS, the CCAC has participated in this consultation and has been invited to concur in this Memorandum of Agreement (MOA); and

WHEREAS, the CCAC agrees that the rehabilitation and preservation shall be in accordance with the following stipulations.

NOW THEREFORE, GSA, the SHPO, and the CCAC agree that the undertaking shall be implemented in accordance with the following stipulations to take into account the effects of this project on historic properties and to satisfy GSA’s Section 106 responsibilities for all aspects of the project.

Stipulations

A. DEFINITIONS

The following definitions are in addition to those included in 36 CFR §800.16.

1. “ACHP” means the Advisory Council on Historic Preservation.

2. "SHPO" means the California State Historic Preservation Officer.
3. "GSA" means the United States General Services Administration.
4. "CCAC" means the Calexico Community Action Council, Inc.
5. "Commercially Reasonable Efforts" means that, as and when required hereunder, the party charged with making such efforts is diligently taking, or causing to be taken, in good faith in a commercially reasonable manner the steps that would usually, reasonably and customarily be taken by an experienced real estate developer, lessee or owner, as applicable, under similar circumstances seeking with reasonable diligence to lawfully achieve the objective to which the particular effort pertains.
6. "Consultation" means the process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the section 106 process. GSA, SHPO and ACHP, with the concurrence of the CCAC, if applicable, may adjust the timing and extent of Consultation, depending upon the urgency of the required action and other factors. The Secretary of Interior's "Standards and Guidelines for Federal Agency Preservation Programs pursuant to the National Historic Preservation Act" provide further guidance on Consultation.
7. "Consulting Parties" means, collectively, GSA, SHPO, ACHP, and the CCAC, or its successors and assigns, and every successor-in-interest to the Property.
8. "Historic Preservation Covenant" means restrictions on the deed for the Calexico Old Customs House.
9. "MOA" means Memorandum of Agreement.
10. "Development" means adaptation of the property for its new use, consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties.
11. "HBPP" means Historic Building Preservation Plan prepared by Fields & Devereaux, Architects, AIA, Los Angeles, CA, 4 December 1995. The HBPP is a guide that has specified what aspects of the Property are considered historic and fall under the authority of this MOA. Alterations to non-historic portions of the interior of the property need to be considered for their potential to affect historic portions.
12. "Property" means the real property located at 12 Heffernan Ave, Calexico, CA 92231.
13. "Secretary's Standards" means the "Secretary of the Interior's Standards for the Treatment of Historic Properties".
14. "SHBC" means State Historical Building Code, Title 24, Part 8 of the California Administrative Code relating to Building Standards.

15. "Transfer" means (a) conveyance of fee simple title to any parcel of the Property by deed or (b) conveyance of possession of all or substantially all of the Property.

B. PROPERTY DESCRIPTION, HISTORIC SIGNIFICANCE

The CCAC acknowledges and understands that the CALEXICO OLD CUSTOMS HOUSE, located at 12 Heffernan Avenue, Calexico, California, is an historic structure, including the site, subject to preservation protections set forth in this MOA. The CCAC hereby acknowledges receipt of the HBPP. The Property and setting are described in detail in the HBPP which noted, among other items, the following facts:

1. Construction of the Property was completed in 1933. The Property was designed by Louis A. Simon under the aegis of James A. Wetmore, Acting Supervising Architect of the U.S. Treasury Department.
2. The Property is significant on a national level under National Register Criterion A within the context of politics and government, and under Criterion C for its architecture.
3. The building is a 16,108 square foot two-story, with basement. It is a free-standing L-shaped building whose primary elevation faces west.
4. The building was designed in the Spanish Colonial Revival style, and constructed with unreinforced brick covered with stucco. The main building is symmetrical with a side gabled red clay tile roof and a centered octagonal cupola. There is a one-story wing to the south. Behind the building to the northeast is a detached one-story garage/inspection shed.
5. The Property has undergone various alterations, including:
 - i. The original porte cochere was replaced by a metal canopy in 1962. By 1995 this metal canopy had been removed and replaced by the current three bay portico whose design echoes that of the original porte cochere.
 - ii. Other modifications include replacement of some of the original doors and transoms, as well as a wood-sided addition, constructed in 1970, to the east end of the south wing.

C. REVIEW OF ALTERATIONS

1. The CCAC shall use its best efforts to ensure that all improvements to the Property shall be planned, developed, and executed in accordance with the Secretary's Standards, the SHBC and prevailing applicable codes, and in a manner consistent with the recommended approaches contained in the HBPP.
2. The CCAC will submit to GSA, for review and approval, all plans and applications for alteration of the Property as required by Stipulations D, E, F and G of this MOA. The address is:

U.S. General Services Administration
450 Golden Gate Avenue, 3W
San Francisco, CA 94102
Attn: Regional Historic Preservation Officer (9PCN)

- a. GSA will review the project documents to determine conformance to the criteria outlined in Stipulation D.1. Within 30 calendar days from receipt of each submittal, GSA will either approve the submittal and the CCAC can proceed with the project or make comments and notify the CCAC. The CCAC will incorporate comments by GSA to the fullest, reasonable extent. If the CCAC modifies the project in response to the comments then no further review is required for that submittal.
- b. If GSA does not provide written comments within the agreed upon time frames, the CCAC may presume agreement with the submittal and proceed with the project.

D. GENERAL REQUIREMENTS, CARETAKER MAINTENANCE AND REHABILITATION, DESIGN SUBMISSION AND SEMI-ANNUAL PROGRESS REPORTING

1. DEVELOPMENT OF THE PROPERTY

- a. Prior to commencing with the Development of the Property, the CCAC shall submit to GSA, for review and approval, all plans for proposed work for the Initial Development.
- b. The CCAC shall, beginning with respect to the six-month period following the Effective Date of this Agreement, and with respect to each six-month period thereafter through Completion of the Development of the Property, provide a semi-annual progress report to GSA and SHPO within ninety (90) calendar days following the expiration of each such six-month period, addressing the following topics:
 - i. General summary of how this MOA has been implemented during such six-month period with respect to such Property;
 - ii. General summary of the status of development at such Property as it relates to historic preservation, and a discussion of any material problems or issues relating to compliance with this MOA that have arisen in the course of the six months regarding the Property.
 - iii. The CCAC shall make each such semi-annual progress report available to the general public at the same time that such report is issued to GSA and SHPO through such means, for example, as providing a copy of the report to the Camarena Memorial Library in Calexico, CA.

2. ALTERATIONS AFTER COMPLETION OF DEVELOPMENT OF THE PROPERTY

- a. The CCAC shall not, after Completion of Development of the Property, perform any alteration, or permit any inaction (excluding in-kind replacement, repairs, and maintenance) that would materially affect the Property (e.g., demolition of a façade, removal of significant historic materials, or the addition of material which may impact historic fabric, such as paint, signage or new construction) without:
 - i. the prior written approval of GSA in accordance with Stipulation C.2 of this MOA.
- b. After Completion of Development of the Property, the CCAC shall perform:
 - i. no material demolition of the Property; and
 - ii. no material disturbance of the ground surface of the Property, except for routine maintenance and repair of the streets, sidewalks, curbs and gutters and the emergency or routine repair of infrastructure underlying the streets, in a location that has not previously been the subject of an archeological investigation carried out by or on behalf of the CCAC or GSA, without the prior written approval of the GSA.

E. MAINTENANCE PROGRAM

1. The CCAC, its successors and assigns, shall preserve and maintain the Property in a manner that preserves and maintains its attributes that contribute to the eligibility of the Property for inclusion in the National Register of Historic Places. The CCAC agrees at all times to maintain the Property in good repair and in a clean and safe condition and in a manner that will not exacerbate the normal aging of the Property or accelerate its deterioration, all in accordance with the recommended approaches set forth in the Secretary's Standards and as described in the HBPP.
2. Commencing upon the effective date of this MOA, the CCAC, its successors and assigns, shall promptly take commercially reasonable actions to secure the Property from the elements, vandalism and arson, and shall carefully undertake any stabilization that is necessary to prevent deterioration, using the Secretary's Standards.
3. The CCAC, its successors and assigns, will make every effort to maintain reasonable public access to the Property, while providing appropriate security for Property tenants. Should major changes in Property use become necessary in the future, the CCAC, its successors and assigns, will give first preference to economically viable uses that meet the public access and stewardship goals of this deed restriction, and invite GSA to comment upon the use options.
4. The CCAC shall conduct seismic analyses of the Property, if necessary, prior to any ground disturbing activity on the Property that may affect the structural integrity of the Property, and as warranted thereafter. The CCAC shall take into consideration the results

of seismic analyses, so that the structural integrity of the Property is not adversely affected by such development.

5. The CCAC, its successors and assigns, shall provide GSA with a written summary of actions taken to implement the provisions of this MOA within one (1) year after the date of the Completion of the Development of the Property. After submission of this report, the CCAC, its successors and assigns, shall provide GSA with such other written documentation regarding the CCAC's, implementation of and compliance with the MOA as GSA reasonably requires.

F. CASUALTY DAMAGE TO THE PROPERTY AFTER COMPLETION OF THE INITIAL DEVELOPMENT

1. Immediate rescue and salvage operations are not subject to this paragraph. Subject to Stipulation F.2 below, if there is damage to the Property resulting from casualty loss after Completion of the Development of the Property, the CCAC shall repair or restore, as appropriate, the Property in compliance with the Secretary's Standards unless it is not feasible to do so because of commercial or physical infeasibility, legal requirements or other circumstances. If it is not feasible because of commercial or physical infeasibility, legal requirements or other circumstances to repair or restore the Property in compliance with the Secretary's Standards, the CCAC shall engage in Consultation with GSA on other redevelopment alternatives and modification of the Property. The CCAC's design and plans for construction of any other redevelopment alternative for the Property shall comply with Stipulation D.2 of this MOA. All cost and expense of the design and construction of any such redevelopment alternative shall be borne by the CCAC.
2. In the event of damage to the Property, whether covered by Stipulation F.1 above or by any other provision of this MOA, the CCAC shall, in addition to all other obligations of this MOA, promptly take all steps necessary to render any remains of the Property in a reasonably safe condition and promptly take all Commercially Reasonable Efforts to render any remains of the Property in secure and watertight condition and to minimize additional damage to such structure.

G. EMERGENCY AND UNANTICIPATED ADVERSE EFFECTS SITUATIONS

1. The CCAC shall ensure that any immediate rescue and salvage operations it undertakes on the Property that are:
 - i. required because of an emergency (i.e., a disaster or emergency declaration by the president, the governor, the mayor, or another threat to life or property) that adversely affects the Property; and
 - ii. necessary to preserve life or property shall be carried out in accordance with any emergency orders or citations issued by the appropriate above cited official of California or the United States, as applicable. The CCAC shall use its best efforts to notify GSA of such operations within two (2) business days after

commencement of such operations. Nothing in this deed restriction shall be deemed to prevent the CCAC from taking immediate rescue and salvage operations on the site as necessary in an emergency to prevent the loss of life or property.

2. If the CCAC proposes such an emergency undertaking, which may have an adverse effect on the Property, as an essential and immediate response to a disaster or emergency declaration by the president, the governor, or the mayor, or another threat to life or property, the CCAC shall:
 - i. Notify GSA within two (2) days and afford GSA an opportunity to comment within seven (7) business days of such notification. If the CCAC determines that circumstances do not permit seven (7) business days for comment, then the CCAC shall notify GSA and invite comments within the time available. The CCAC 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.
 - ii. 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 such disaster or emergency occurred. The CCAC may request an extension of the period of applicability from GSA prior to the expiration of the thirty (30) calendar days.
3. If unanticipated adverse effects occur to the Property prior to Completion of Development of the Property, the CCAC shall notify GSA and SHPO, and the Consulting Parties of the unanticipated adverse effect within two (2) business days (not including a federal holiday) of learning of such unanticipated adverse effect, and for any efforts in response to these unanticipated adverse effects, the CCAC shall comply with relevant stipulations of this MOA. The effect and the resulting repair/replacement or mitigation shall be documented within the corresponding semi-annual progress report required pursuant to Stipulation D.1.b of this MOA through Completion of the Property.

H. INSPECTION

Commencing with the effective date of this MOA and through the date of Completion of Development of the Property, GSA may, subject to reasonable prior notice in writing to the CCAC, periodically perform reasonable visits of the Property to ascertain whether the CCAC is complying with the conditions of this deed restriction. The CCAC and GSA shall cooperate in scheduling such visits. After Completion of Development of the Property, the CCAC shall allow GSA, at all reasonable times and upon reasonable advance written notice to the CCAC, to inspect the Property in order to ascertain whether the CCAC is complying with the conditions of this MOA.

I. DISPUTE RESOLUTION

Should any signatory or concurring party to the MOA object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, GSA shall consult with such party to resolve the objection. If GSA determines that such objection cannot be resolved, GSA will:

1. Forward all documentation relevant to the dispute, including GSA's proposed resolution, to the ACHP. The ACHP shall provide GSA with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. 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 ACHP, signatories, and concurring parties, and provide them with a copy of this written response. GSA will then proceed according to its final decision.
2. 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 and concurring parties to the MOA, and provide them and the ACHP with a copy of such written response.
3. The CCAC's responsibility to carry out all other actions subject to the terms of this MOA are not the subject of the dispute remain unchanged.

J. SUCCESSORS AND ASSIGNS

This MOA shall be binding on the CCAC, its successors and assigns, and every successor-in-interest, to the Property or any part thereof. The restrictions, and stipulations contained herein shall be inserted by the CCAC, its successors and assigns, and every successor-in-interest to the Property or part thereof conveyed by express reference in any deed or other legal instrument by which it divests itself of either the fee simple title or any lesser estate in the Property, or any part thereof.

K. MISCELLANEOUS

1. Communication: 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 requested, or by overnight delivery service with confirmed receipt, addressed as follows:
 - a. In the case of a notice or communication to GSA:

U.S. General Services Administration
450 Golden Gate Avenue, 3W
San Francisco, CA 94102
Attn: Regional Historic Preservation Officer
 - b. With courtesy copies to:

U.S. General Services Administration
450 Golden Gate Avenue, 5W
San Francisco, CA 94102
Attn: Regional Counsel

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

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

Physical Address

State of California
State Historic Preservation Officer
Office of Historic Preservation
1416 – 9th Street, Room 1442-7
Sacramento, CA 95814

Regular Mail Address

State of California
State Historic Preservation Officer
Office of Historic Preservation
P.O. Box 942896
Sacramento, CA 94296

d. 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, D.C. 20004-2501
Attn: Executive Director

e. In the case of a notice or communication to the CCAC

Calexico Community Action Council, Inc.
2320 M. L. King Avenue
Calexico, CA 92231
Attn: Executive Director

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

2. Professional Qualifications Standards: All historical, archaeological, architectural history, architectural, and historic architectural work carried out pursuant to this deed restriction shall be conducted by or under the direct supervision of an individual or individuals who meets, at a minimum, the applicable Secretary of the Interior's Professional Qualifications Standards for conducting the appropriate work (48 FR 44738-9, September 29, 1983).
3. All periods for performance specified in this deed restriction in terms of days shall be calendar days, and not business days, unless otherwise expressly provided in this

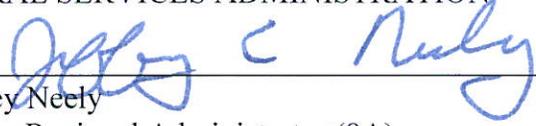
Covenant. A performance date that falls on a Saturday, Sunday or federal holiday is deemed extended to the next working day.

4. In the event that any party to this MOA shall at any time or times waive any condition, requirement, or breach of this MOA by the other, such waiver shall not constitute a waiver of any other or succeeding condition, requirement, or breach of this MOA, whether of the same or other covenant, condition or obligation. Waiver shall not be deemed effective until and unless signed by the waiving party.
5. Alterations to non-historic portions of the interior of the property need to be considered for their potential to affect historic portions.
6. Amendment: This MOA may be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date a copy signed by all of the signatories is filed with the ACHP.
7. This MOA shall take effect upon the date of conveyance of the Property to the CCAC.

Execution of the 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.

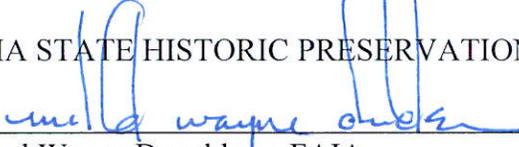
The parties hereto execute this MOA on the dates hereinafter identified.

U.S. GENERAL SERVICES ADMINISTRATION

By: 
Jeffrey Neely
Acting Regional Administrator (9A)

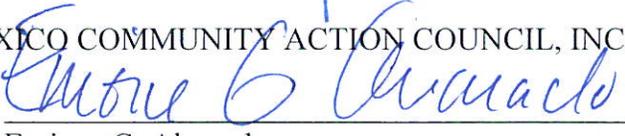
Date: 4/20/09

CALIFORNIA STATE HISTORIC PRESERVATION OFFICER

By: 
Milford Wayne Donaldson, FAIA

Date: 5 MAY 2009

CALEXICO COMMUNITY ACTION COUNCIL, INC.

By: 
Enrique G. Alvarado
Executive Director

Date: 4/23/09