



# Oregon

Theodore R. Kulongoski, Governor

## Parks and Recreation Department

State Historic Preservation Office

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February 1, 2010



Rebecca Nielsen  
U.S. General Services Administration  
400 15<sup>th</sup> Street SW  
Auburn, WA 98001-6599

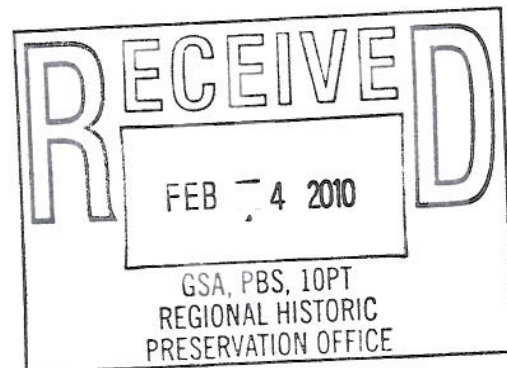
RE: Memorandum of Agreement for the U.S. Custom House, 220 NW Eighth Ave., Portland, Oregon

Dear Ms. Nielsen, *Rebecca*

Enclosed is the original copy of the Memorandum of Agreement and preservation covenant for the historic U.S. Custom House. It is signed by Tim Wood, Oregon's State Historic Preservation Officer. We look forward to receiving from GSA a copy of the documents when all signatures are complete.

Sincerely,

Chrissy Curran  
Associate Deputy  
State Historic Preservation Officer



**MEMORANDUM OF AGREEMENT**  
**BETWEEN THE UNITED STATES GENERAL SERVICES ADMINISTRATION,**  
**THE OREGON STATE HISTORIC PRESERVATION OFFICER, THE UNITED**  
**STATES DEPARTMENT OF EDUCATION, AND**  
**THE INTERNATIONAL SCHOOL REGARDING THE TRANSFER OF**  
**THE U.S. CUSTOM HOUSE PORTLAND, OREGON TO**  
**THE INTERNATIONAL SCHOOL**

This Memorandum of Agreement ("Agreement") is made as of this \_\_\_ day of \_\_\_\_\_ 2009 by and between the United States General Services Administration ("GSA"), the Oregon State Historic Preservation Officer ("SHPO"), (collectively the "Signatories" or individually as a "Signatory"), the United States Department of Education ("Department of Education" and "Grantor"), and The International School ("Grantee") (collectively the "Invited Signatories" and individually as an "Invited Signatory"), pursuant to Section 106 of the National Historic Preservation Act ("NHPA"), 16 U.S.C. 470f, and its implementing regulations at 36 C.F.R. § 800 and Section 110 of the NHPA; and

**WHEREAS**, the U.S. Custom House, Portland, Oregon, located at 220 NW Eighth Avenue, Portland, Oregon ("Property"), was listed on the National Register of Historic Places in 1974, has been designated as a City of Portland Landmark (HRI52720300800220AAAA), and was found potentially eligible for National Historic Landmark status by a National Park Service ("NPS")/GSA study in 2009; and

**WHEREAS**, GSA determined that the Property is surplus to the federal government's needs, and the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 101) requires the disposal of surplus federal real property; and

**WHEREAS**, the United States of America acting by and through the GSA and the Department of Education plans to transfer the Property to The International School, and its successors and assigns and every successor in interest thereof ("Grantee") pursuant to the Public Benefit Conveyance authority set forth in 40 U.S.C. 550(c) and the regulations promulgated thereunder; and

**WHEREAS**, due to the Public Benefit Conveyance authority and the regulations promulgated thereunder which apply to this Undertaking, prior to the transfer of the Property to the Grantee, GSA will assign the Property to the Department of Education, which will act as the grantor; and

**WHEREAS**, this Property is being conveyed to the Grantee by the Grantor subject to Public Benefit Conveyance statute, the regulations promulgated thereunder and deed restrictions. Nothing in this Agreement shall be interpreted



to conflict, abridge or interfere with Public Benefit Conveyance requirements that form the consideration for which the Property is being conveyed to the Grantee; and,

**WHEREAS**, the transfer (the "Undertaking") of this Property from the Grantor to the Grantee, a non-federal entity (the "Undertaking"), constitutes an undertaking for the purposes of Section 106 of the NHPA, and could result in adverse effects, and GSA has consulted with the Oregon State Historic Preservation Officer ("SHPO") pursuant to 36 C.F.R. § 800; and

**WHEREAS**, the GSA has also considered that adverse effects may include reasonably foreseeable effects caused by the Undertaking, as the Grantee is acquiring the Property to use for educational purposes and proposes to make improvements to the Property in order to adapt the Property for these purposes (36 C.F.R. § 800.5) ; and

**WHEREAS**, a preservation covenant, attached herein as Appendix A, ("Preservation Covenant") will be included by the Grantee in the transfer document and recorded by the Grantee in the permanent real estate records of Multnomah County, State of Oregon, and under the terms of this Agreement the Preservation Covenant constitutes the GSA's mitigation of adverse effects posed by the Undertaking; and

**WHEREAS**, the GSA has defined the Undertaking's area of potential effect ("APE") as the entire block bound by NW Broadway, Everett and Davis Streets and Eighth Avenue in Portland, Oregon; and

**WHEREAS**, GSA has completed a Building Preservation Plan ("BPP") for the continued stewardship of the Property, attached herein as Appendix B; and

**WHEREAS**, given the location and nature of the Property, GSA contacted Native American tribes, even though there is minimal, if any, potential for the existence of pre-historic resources, and no tribal interest in the Undertaking or the Property has been expressed to GSA; and,

**WHEREAS**, as a result of consultation, GSA has identified the City of Portland Landmarks Commission as a Consulting Party ("Consulting Party"), and has invited the Consulting Party to consult on this Agreement; and

**WHEREAS**, in accordance with 36 C.F.R. § 800.6(a)(1), GSA has 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 C.F.R. § 800.6(a)(1)(iii); and

**NOW THEREFORE**, GSA, the SHPO, the Grantor, and the Grantee 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 the Property.

## **STIPULATIONS**

GSA shall ensure that the following measures are carried out:

### **I. Recordation of the Preservation Covenant for the Property.**

- A. Prior to transfer of the Property to the Grantee, the GSA will assign the Property to the Department of Education which will act as the Grantor pursuant to Public Benefit Conveyance Authority (40 U.S.C. 550(c)) and the Grantor will require the Preservation Covenant (Appendix A), to be included in the conveyance documents to be recorded in the permanent real estate records of Multnomah County, State of Oregon, by the Grantee and that notice of the recordation be provided to GSA.
- B. The GSA's and the Grantor's requirement that the Preservation Covenant (Appendix A), be recorded as part of the conveyance documents in the permanent real estate records of Multnomah County, State of Oregon by the Grantee will constitute the GSA's mitigation of the adverse effects posed by the Undertaking.
- C. The Preservation Covenant will obligate the Grantee to follow the Secretary of Interior's Standards for the Treatment of Historic Buildings, and the Preservation Covenant includes provisions for design review by the SHPO for any proposed construction, alteration, remodeling, or any other work as defined in the Preservation Covenant.
- D. The Preservation Covenant will also account for the Grantee's plans to make improvements to the Property in order to adapt the Property for educational purposes, by obligating the Grantee to follow the rehabilitation guidelines in the Secretary of the Interior's Standards for the Treatment of Historic Buildings, with regard to proposed construction, alteration, remodeling, or any other work as defined in the Preservation Covenant, thereby mitigating reasonably foreseeable effects caused by the Undertaking.
- E. Upon notice of the Grantee's recordation of the Preservation Covenant in Multnomah County, State of Oregon, and of the Property's transfer from the Grantor to the Grantee, GSA will send the SHPO a notarized copy of the transfer document (e.g. deed) and any other papers deemed necessary by GSA.



## **II. Execution of a Memorandum of Agreement on Art in Architecture**

- A. Prior to transfer of the Property from the Grantor to the Grantee, to comply with GSA's Art in Architecture program, the GSA will execute a separate memorandum of agreement with the Grantee as it relates to the original leaded-glass untitled artwork by James Carpenter, which was installed by GSA in 1980 into the lobby at the staircase.
- B. GSA's execution of the separate memorandum of agreement with the Grantee on Art in Architecture will include provisions to ensure that the GSA is complying with their Art in Architecture program, and also for design review, thereby obligating the Grantee to follow the Secretary of the Interior's Standards for Rehabilitation, if the original leaded-glass untitled artwork by James Carpenter is removed and/or replaced for any reason.
- C. The GSA and the Grantor shall ensure that the provisions of the Art in Architecture MOA will be included in the conveyance documents for the Property.

## **III. Dispute Resolution.**

If any Signatory or Invited Signatory, objects at any time to any actions proposed or the manner in which the terms of this Agreement are implemented over the duration of this Agreement or until the Property is transferred from the Grantor to the Grantee, whichever occurs first, GSA shall consult with such party to resolve the objection. If GSA determines that such objection cannot be resolved, GSA will:

- A. Forward all documentation relevant to the dispute, including the 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, the Signatories, the Invited Signatories, and the Consulting Party, and provide them with a copy of this written response. GSA will then proceed according to its final decision.
- B. 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,

Invited Signatories, and Consulting Party to the Agreement, and provide them and the ACHP with a copy of such written response.

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

**IV. Duration.**

This Agreement shall expire if its terms are not carried out within one (1) year from the date of its execution. Prior to such time, GSA may consult with the other Signatories and Invited Signatories to reconsider the terms of the Agreement and amend it in accordance with Stipulation V. below.

**V. Amendments.**

This Agreement may be amended when such an amendment is agreed to in writing by the Signatories, the Invited Signatories that have signed the Agreement, subject to compliance with the terms and conditions of the conveyance instrument (i.e., deed). The amendment will be effective on the date a copy, signed by all of the Signatories, and the Invited Signatories that have signed the Agreement, is filed with the ACHP.

**VI. Termination.**

If any Signatory to this Agreement, or the Invited Signatories that have signed this Agreement, determines that the Agreement's terms will not or cannot be carried out, that party shall immediately consult with the other Signatories, and the Invited Signatories that have signed the Agreement, to attempt to develop an amendment per Stipulation V., above. If within thirty (30) days (or another time period agreed to by all Signatories and the Invited Signatories that have signed the Agreement) an amendment cannot be reached, any Signatory or the Invited Signatories that have signed the Agreement may terminate the Agreement, upon written notification to the other Signatories and the Invited Signatories.

Once the Agreement is terminated, and prior to work continuing on the Undertaking, GSA must either (a) execute an agreement pursuant to 36 CFR § 800.6 or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. GSA shall notify the Signatories, the Invited Signatories, and the Consulting Party as to the course of action it will pursue.

This Agreement shall become effective immediately upon signature of all Signatories, and a copy filed with ACHP. GSA shall provide all Signatories, the Invited Signatories, and the Consulting Party with a complete copy of this Agreement, including original signature pages, within fourteen (14) days of execution.



Execution of this Agreement by the Signatories, and implementation of its terms evidence that GSA has taken into account the effects of this Undertaking on historic properties and afforded the ACHP an opportunity to comment.

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

**SIGNATORIES**

**U.S. GENERAL SERVICES ADMINISTRATION**

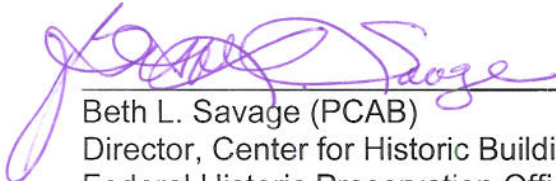
  
\_\_\_\_\_  
Robin G. Graf (10A)  
Acting Regional Administrator

Date: 1/25/10


**CONCURRENCE:**

  
\_\_\_\_\_  
B. Story Swett (10P2PCP)  
Chief Regional Architect &  
Regional Historic Preservation Officer

Date: Jan 21, 2010

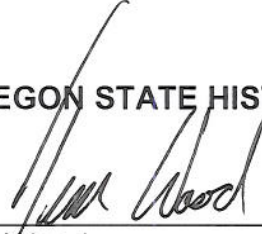
  
\_\_\_\_\_  
Beth L. Savage (PCAB)  
Director, Center for Historic Buildings  
Federal Historic Preservation Officer

Date: 1-14-10

  
\_\_\_\_\_  
Iain B. Hastings (LDR/FAC)  
Real Property Utilization and Disposal Field Office Manager

Date: 1-21-10

**OREGON STATE HISTORIC PRESERVATION OFFICER**

  
\_\_\_\_\_  
Tim Wood  
State Historic Preservation Officer

Date: 2/1/10

**INVITED SIGNATORIES**

**U.S. DEPARTMENT OF EDUCATION**

\_\_\_\_\_  
Name & Title

Date: \_\_\_\_\_

**THE INTERNATIONAL SCHOOL**

\_\_\_\_\_  
Name & Title

Date: \_\_\_\_\_

**CONSULTING PARTY**

**CITY OF PORTLAND, HISTORIC LANDMARKS COMMISSION**

\_\_\_\_\_  
Name & Title

Date: \_\_\_\_\_

**APPENDIX A: HISTORIC COVENANT**

**APPENDIX B: BPP**



## APPENDIX A

### Preservation Covenant for the U.S. Custom House, Portland, OR

Property, Grantor, Grantee, SHPO, Standards. In consideration of the conveyance from the United States of America ("the Grantor") of the U.S. Custom House, located in the City of Portland, County of Multnomah, State of Oregon, which is more fully described on the attached legal description ("Property"), and which was listed on the National Register of Historic Places in 1974, designated a City of Portland Landmark, and was found potentially eligible for National Historic Landmark status by a National Park Service/GSA study in 2009, The Grantee hereby covenants on behalf of his/herself/themselves, his/her/their/its heirs, successors, and assigns ("Grantee") at all times to the Oregon State Historic Preservation Officer ("SHPO") to preserve, maintain, and rehabilitate the Property in accordance with the recommended approaches in The Secretary of Interior's Standards for the Treatment of Historic Properties ("Standards") (National Park Service, U.S. Department of Interior, 1992). **This Property is being conveyed to the Grantee by the Grantor subject to Public Benefit Conveyance statute (40 U.S.C. 550(c)), the regulations promulgated thereunder, and deed restrictions. Nothing in this Preservation Covenant shall be interpreted to conflict, abridge or interfere with Public Benefit Conveyance requirements that form the consideration for which the Property is being conveyed to the Grantee.**

- I. Work, Reviews, Inspection. No construction, alteration, remodeling or any other work ("Work") shall be undertaken or permitted to be undertaken on the Property within the Preservation Zone or Rehabilitation Zone (See II below.), other than minor repairs and routine maintenance without the express prior written permission of the Oregon SHPO. Unless an alternative review process is agreed upon in writing by both the Grantee and the SHPO, preliminary plans for such Work will be submitted in writing by the Grantee to the SHPO for thirty (30) days of review for consistency with the Standards. If a decision is not provided to Grantee in writing within thirty (30) days, it will be understood that SHPO does not have any comments. A final set of plans shall be provided by the Grantee to SHPO evidencing any requested revisions to the design for a second thirty (30) day review prior to construction commencement in the affected area. This review will be separate from any local design review process to which the Property may be subject. The SHPO, or a fully authorized representative thereof, shall be permitted at all reasonable times to inspect the Property in order to ascertain if the above conditions are being observed. Proposed Work in areas within the Free Zone (See III. below.) will not require consultation with the SHPO, provided that such proposed Work does not have potential to cause an adverse effect, as reasonably determined in accordance with 36 C.F.R. 800.5, to adjoining areas designated as a Preservation Zone or a Rehabilitation Zone in the attached BPP Diagram.



- II. Character Defining Elements. Those character defining features, spaces, materials, finishes, construction techniques and examples of craftsmanship ("Character Defining Elements") that make the Property eligible for inclusion in the National Register of Historic Places must be preserved or rehabilitated in accordance with the Standards. A Building Preservation Plan diagram ("BPP Diagram"), attached, prioritizes areas within the Property, referred to as either a "Preservation Zone", a "Rehabilitation Zone", or a "Free Zone", and provides guidance to the Grantee for their preparation of preliminary submissions to the SHPO (See I. above.).

The Property's Preservation Zone ("Preservation Zone") exhibits unique or distinctive qualities, original materials or elements; or represents examples of skilled craftsmanship or work of a known architect. The character and qualities of this Preservation Zone should be maintained and preserved as the highest priority. Of primary concern are the areas within the Preservation Zone identified on the attached BPP Diagram including:

- The exterior of the building including the courtyard and APE
- The vestibule and main stair
- Lobbies on floors one through four
- Marble restrooms, public and private, floors 1-4

The Property's Rehabilitation Zone ("Rehabilitation Zone") is of secondary importance. This area is of modest nature, void of highly significant features, material or conditions, but which may be original and maintained at an acceptable level. Undertake all work in this zone as sensitively as possible; however, contemporary methods, materials, and designs may be selectively incorporated. The attached BPP Diagram identifies the following Rehabilitation Zone:

- General office space

The Property's Free Zone ("Free Zone") is an area that is not subject to the above categories and whose modification would not represent loss of character, code violation or intrusion to an otherwise historically significant structure. Treatments in this zone, while sympathetic to the historic qualities and character of the building, may incorporate extensive changes or total replacement through the introduction of contemporary methods, materials and designs. The attached BPP Diagram identifies the following areas as a Free Zone:

- The attic
- The basement
- The main floor east entrance area which was the former loading dock.

- III. Interim Measures, Mothballing. At all times, the Grantee shall keep the Property secure from vandalism, and all systems in good working order (including but not limited to the boilers, sump pumps, air compressors, exterior gutters, plumbing and backflow devices, air handlers, elevators, and fire sprinklers), or if the Property is



mothballed, the Grantee shall do so in accordance with guidance from the National Park Service, "Mothballing Historic Buildings", Preservation Brief 31, Sharon Park, AIA, National Park Service, US Department of Interior, 1993.

- IV. Emergencies. The Grantee shall ensure that, in the case of an immediate rescue and salvage operation on the Property that is required because of a disaster or emergency declaration by the President, Governor of Oregon, or the Mayor of Portland, or another threat to life or property ("Emergency") that may adversely affect the Property, the Grantee shall use its best efforts to notify the SHPO of such operations within two (2) business days (not including a state holiday) after the commencement of such Emergency operations. If the Grantee determines that such Emergency operations, which have the potential to adversely affect the Property and/or the Character Defining Elements, as reasonably determined in accordance with 36 C.F.R. 800.5,, must be undertaken as an essential and immediate response to a Emergency declaration, the Grantee shall notify the SHPO and afford the SHPO an opportunity to comment within seven (7) business days (not including a state holiday) of receipt of such notification. If the Grantee, determines that circumstances do not permit seven (7) business days for comment, then the Grantee shall notify the SHPO and invite comments within the time available. The Grantee 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 operations. These Emergency provisions apply only to operations that will be implemented at the Property within thirty (30) calendar days after the Emergency occurs. The Grantee may request an extension of the period of applicability from the SHPO prior to the expiration of the thirty (30) calendar days. Nothing in this Covenant shall be deemed to prevent the Grantee from taking immediate rescue and salvage operations to preserve life or property.
- V. Waiver. The failure of the SHPO to exercise any right or remedy granted under this Covenant shall not have the effect of waiving or limiting the exercise of any other right or remedy or the use of such right or remedy at any other time.
- VI. Amendment. Grantee and SHPO may amend this Covenant by mutual written agreement and approved by Grantor subject to compliance with the terms and conditions of the conveyance instrument (i.e., deed), provided the amendment shall be consistent with the purpose of this Covenant, and shall not reduce its duration. Any such amendment shall not be effective unless it is executed in the same manner of this Covenant, refers expressly to this Covenant, and is recorded in the real estate records of Multnomah County, State of Oregon.
- VII. Remedies. In the event of a violation of this Covenant as determined by the SHPO, in the SHPO's sole and complete discretion, the SHPO may, in addition to any remedy now or thereafter provided by law and following reasonable (not to exceed 30 days) written notice to the Grantee, require the Grantee to remedy the violation or institute suit to enjoin said violation. Notwithstanding any provision or requirement to the contrary, the Grantee has an affirmative duty and independent

obligation to ensure full compliance with all provisions of this Covenant and shall promptly remedy any and all violations of the Covenant with or without prior notice from SHPO. In any litigation, arbitration or any other proceeding where the SHPO seeks to enforce any provision of this Covenant, or seeks a declaration of the rights and obligation of the parties, the prevailing party shall be awarded reasonable attorney's fees, together with any costs and expenses incurred to resolve the dispute and to enforce any provision of this Covenant.

VIII. Duration. This covenant is binding on the Grantee in perpetuity. Restrictions, stipulations, and covenants contained herein shall be incorporated verbatim or by express reference in any deed or other legal instrument by which she/he/they/it divests her/him/itself/themselves of either the fee simple title or any other lesser estate in the Property or any part thereof.

This Covenant shall be a binding servitude upon the real property that includes the Property and shall be deemed to run with the land.