

**MEMORANDUM OF AGREEMENT
BETWEEN
THE U.S. GENERAL SERVICES ADMINISTRATION
AND
THE DISTRICT OF COLUMBIA, STATE HISTORIC PRESERVATION OFFICER
REGARDING
SITE IMPROVEMENTS AT THE MARY E. SWITZER BUILDING**

This Memorandum of Agreement (MOA) is entered into as of this 7th day of April, 2011, by the United States General Services Administration (GSA), and the District of Columbia State Historic Preservation Officer (SHPO), pursuant to Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. 470f, and its implementing regulations, 36 CFR Part 800; and

WHEREAS, GSA will undertake site improvements at the Mary E. Switzer Building (Switzer Building) located at 330 C Street, SW, Washington, DC, and has entered into consultation with the SHPO to address the adverse effects of the proposed site improvements on the Switzer Building, the Wilbur J. Cohen Building (Cohen Building), and the L'Enfant Plan, properties which are listed in the National Register of Historic Places; and

WHEREAS, the Undertaking is defined as site improvements at the Switzer Building to include the elimination of onsite parking and the installation of a landscaped plaza in front of the building on C Street, the installation of perimeter security, the erection of architectural elements at the two vents on C Street, the potential installation of a public art element within the landscape plaza, and the installation of a ground source heat pump; and

WHEREAS, GSA has defined the Undertaking's Area of Potential Effects (APE)(Appendix A) as the area bounded by 6th Street, SW, to the west; north to Independence Avenue; east on Independence Avenue to 2nd Street, SW; south on 2nd Street, SW, to Virginia Avenue, SW; and northwest on Virginia Avenue, SW, to 6th Street, SW; and

WHEREAS, GSA is conducting an Environmental Assessment (EA) for the Undertaking and has coordinated its Section 106 consultation with the National Environmental Policy Act (NEPA) in accordance with 36 CFR § 800.8(a); and

WHEREAS, in consultation with the SHPO, GSA has determined that the security design placed within the public realm along D Street, SW, will have an adverse effect on the L'Enfant Plan; and that the garden wall located within the building yard on 3rd and 4th Streets, SW, will have an adverse effect on the

Switzer Building; and that the architectural and/or public art element or elements adjacent to C Street may have an adverse effect on the Switzer Building, the Cohen Building, and the L'Enfant Plan, depending on their height and mass; and

WHEREAS, in consultation with the SHPO, GSA has determined that the installation of the ground source heat pump has the potential to disturb potential archaeological resources in two locations that may be undisturbed; and

WHEREAS, GSA has identified in this consultation that there are no federally recognized Indian tribes in the District of Columbia and GSA, in consultation with the SHPO, will make a good faith effort to identify and contact other appropriate Indian tribes that may attach religious and cultural significance to any historic property that may be affected by the Undertaking; and

WHEREAS, GSA has notified the Advisory Council on Historic Preservation (ACHP) of the adverse effect determination and they have elected not to participate in the consultation; and

WHEREAS, GSA has consulted with the SHPO, the Commission of Fine Arts (CFA), the National Capital Planning Commission (NCPC), the District of Columbia Department of Transportation (DDOT) and Office of Planning and other interested parties, noted below as consulting parties, to identify alternatives that could avoid, minimize, and mitigate the adverse effects; and

WHEREAS, GSA has identified the following as consulting parties: NCPC, the Washington Design Center, the Architect of the Capitol, the International Broadcasting Bureau, the District of Columbia Office of Planning, the Dwight D. Eisenhower Memorial Commission, and the Disabled Veterans LIFE Memorial Foundation; and

WHEREAS, GSA has met with NCPC and CFA to review the Undertaking concept for the Switzer Building Site Improvements, and following the execution of this MOA and the issuance of a Finding of No Significant Impact (FONSI) in accordance with NEPA regulations, GSA will make appropriate submissions to NCPC and CFA for their independent review and anticipated approval of the Undertaking. Procedures for subsequent review by the SHPO are identified in Stipulation III, Design Review and Consultation.

NOW THEREFORE, in consideration of the terms, conditions and agreements hereinafter set forth, the Signatories hereby agree that effective upon the execution of this MOA, the Undertaking shall be implemented in accordance with

the following stipulations to take into account the effect of the Undertaking on Historic Resources.

STIPULATIONS

GSA shall ensure that the following stipulations are implemented:

I. PLAZA AND SECURITY DESIGN

The Undertaking will be executed in accordance with the Plaza and Streetscape concept design attached as Appendix B. The concept is characterized by the following elements:

- a. A landscaped plaza will be installed between the north face of the building and C Street, providing a combination of planted areas and hardscape features. Surface parking will be removed from the site.
- b. Perimeter security elements will be installed on the site. All security elements on 3rd, 4th, and C Streets, SW, will be kept back from the curb and placed in the building yard to minimize adverse effects on these three contributing L'Enfant rights-of-way.
- c. Security elements on D Street, SW, will be placed between the sidewalk and the curb-line to maximize standoff due to the minimal depth of the building yard. A variety of hardened elements including benches, bollards, bike racks and lamp posts will be used to minimize the visual impact of the security features. These elements will be set at varying distances off the curb so that they can be integrated with the tree beds, minimizing the adverse effects to D Street, SW, and will be consistent with the similarly proposed security features for Federal Office Building 8, located along D Street, SW, between 3rd and 2nd Streets, SW.
- d. Architectural elements will be employed to conceal two vents on the south side of C Street, SW. An additional public art element may be located within the landscaped plaza as part of the Art in Architecture program for federal construction.

II. MITIGATION MEASURES

- a. To mitigate the adverse effect of the D Street, SW, security elements, GSA will undertake an extensive revegetation program for the building yard and the adjacent public spaces fronting the surrounding streets. The planting scheme will provide a much improved streetscape on the contributing L'Enfant Streets that border the site. In addition, sidewalks will be widened and pedestrian obstructions minimized.
- b. The plaza design calls for the removal of the existing C Street parking lot. This area will be restructured with a combination of planted areas and hardscape features. Low Impact Development (LID) measures will be incorporated into the plaza design to enhance sustainability on the site, and opportunities will be sought to educate the public about green building and site design. The landscaped plaza will provide additional seating which is currently lacking in the area.
- c. The design of the public art piece and the architectural elements on C Street, will be coordinated with NCPC, CFA, and the SHPO.
- d. The location of the ground source heat pump will be subject to phased archaeological investigation and evaluation starting with geo-archaeological consultation to determine if intact soils/deposits are present. The geo-archaeological investigation will include the collection and analysis of soil borings to determine the presence of fill and undisturbed soil locations. The investigations will be conducted by an archaeologist that meets or exceeds the pertinent qualifications in the Secretary's Professional Standards (36 CFR, part 61 [1983]). All work will proceed in accordance with the Guidelines for Archaeological Investigations in the District of Columbia (1998, as amended). Treatment of potentially eligible resources will be determined in consultation with the SHPO.

III. DESIGN REVIEW AND CONSULTATION

At present, the Commission of Fine Arts (CFA) has requested refinements to the C Street Plaza design that include an overall simplification of design features, reinforcement of the proposed oval and refinements to the canopy and seat elements at the vent enclosures. All future design submissions will be coordinated with the CFA review process. Before finalizing the design of these elements, GSA will consult with the SHPO and consulting parties in accordance with Stipulation III (a-d) of this agreement.

- a. Project Document Submission: For all outstanding design elements, GSA will prepare and submit project documents and drawings at the 65% design development stage to the SHPO and consulting parties for review and consultation.
- b. Review and Comment: The SHPO and consulting parties will review the project documents and provide comments within 15 business days of receipt of each complete submittal.
- c. Site Visits: Within 10 business days of receipt of project documents, any party may issue GSA a written request for a site visit to the Property.
- d. Consideration of Written Comments: GSA will consider written comments, as provided by the SHPO and consulting parties, received during the 15 business day review period to the fullest reasonable extent. Should GSA object to any comments, GSA will provide the SHPO and/or the consulting parties with a written explanation of its objection and will initiate consultation with the objecting party to resolve the objection. If no agreement is reached within 14 calendar days following GSA's receipt of objecting party's explanation, GSA will request that ACHP review the dispute pursuant to Stipulation VI. GSA will proceed in accordance with the project documents as finalized if no comments are received, or after GSA has resolved the objections either informally or formally through the dispute resolution process in Stipulation VI.

IV. TREATMENT OF UNEXPECTED ARCHAEOLOGICAL DISCOVERIES

GSA will ensure that the following measures for the treatment of unexpected archaeological discoveries, including human remains, will be inserted into all contracts for excavation, construction, or other ground-disturbing activity resulting from the site improvements and the ground source heat pump. The Project Area for the site improvements is identified as the "Project Site" in Appendix A.

- a. In the event that a previously unidentified archaeological resource is discovered during activities in the Project Site, all ground-disturbing activities will be halted in the area of the resource and in the surrounding area where further subsurface remains can reasonably be expected to occur.
- b. The SHPO will be notified via email and by telephone immediately upon discovery of potentially significant archaeological remains. The SHPO or a representative will visit the site within 48 hours of such notification, inspect the work site, and determine the nature and extent of the affected archaeological property. Construction may then continue in the project area outside the newly established boundaries of the resource area.
- c. Within 3 working days of the original notification of discovery, GSA, in consultation with SHPO, will determine the National Register eligibility of the resource.
- d. If the resource is determined to meet the National Register criteria (36 CFR 60.6), GSA, in consultation with SHPO, 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 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.
- e. GSA shall ensure that all materials and records resulting from data recovery are curated in accordance with 36 CFR, Part 79, by an institution or organization selected by GSA in consultation with the SHPO, and that reports meet contemporary professional standards, according to the Department of the Interior's Format Standards for Final Reports of Data Recovery Programs (42 FR 5377-79) and meet the standards as set out in Guidelines for Archaeological Investigations in the District of Columbia (1998, as amended).

- f. GSA shall ensure that the SHPO and the District of Columbia Office of the Chief Medical Examiner are immediately notified if human remains are discovered during construction. If the remains are assumed to be Native American, GSA shall ensure that all ground-disturbing activities in the immediate area of the discovery ceases immediately and stays halted until the protocols of the Native American Graves Protection and Repatriation Act of 1990 (implementing regulations (62), 43 CFR, Part 10) have been carried out.

V. ADMINISTRATION

For purposes of this MOA, the term "parties to this MOA" means the Signatories, these being the U.S. General Services Administration and the DC State Historic Preservation Officer.

VI. DISPUTE RESOLUTION

Should any party to this MOA object to any action carried out or proposed by GSA with respect to the implementation of this MOA, GSA shall consult with the objecting party to resolve the objection.

If, after initiating such consultation, GSA determines that the objection cannot be resolved through consultation, GSA shall forward all documentation including without limit, documentation of GSA's responses to the objections, as submitted by the Party or Parties relevant to the objection, to the ACHP, in accordance with 36 CFR § 800.2(b)(2). Within 30 days after receipt of all adequate documentation, the ACHP shall exercise one of the following options:

- a. Upon receipt of documentation from GSA, the ACHP shall review and advise GSA on the resolution of the objection. 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 written comments to GSA 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, not subject to the dispute, will remain unchanged. GSA will notify all Parties of its decision in writing before implementing an action subject to dispute under this stipulation. GSA's decision will be final.

VII. AMENDMENTS

If any Signatory to this MOA 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 the MOA. The amendment will be effective on the date a copy signed by all of the original Signatories is filed with the ACHP. If the Signatories cannot agree to appropriate terms to amend the MOA, any Signatory may terminate the agreement in accordance with Stipulation VIII.

VIII. TERMINATION

Any Signatory may terminate this MOA by providing 30 calendar days advance written notice to any other Signatories, provided that the Signatories consult during the 30 calendar day notice period to seek agreement on amendments or other actions that would avoid termination. In the event of termination, GSA will comply with 36 CFR § 800.3 through 800.7, with regard to individual actions covered by this MOA.

IX. EXECUTION

GSA will carry out its commitments as outlined in the MOA; however, this MOA is subject to applicable laws and regulations. As to the Signatories only, fulfillment of this MOA is subject to the Anti-Deficiency Act, 31 U.S.C. 1341 et seq., to the availability of funds. This MOA is not an obligation of funds in advance of an appropriation of such funds, and it does not constitute authority for the expenditure of funds. If a Signatory does not have sufficient funds available to fulfill the stipulations of this MOA, such Signatory shall so notify the other Signatories and shall take such actions as are necessary to comply with all requirements of 36 CFR, Part 800. Nothing in this MOA shall be deemed to authorize an expenditure of funds in violation of the Anti-Deficiency Act U.S.C. 1341 et seq.

X. DURATION

This MOA will be null and void if its terms are not carried out within 7 years from the date of its execution. Prior to such time, GSA may consult with the other Signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation VII.

(Please see the following three pages for signatures)

Signatories

For the U.S. General Services Administration

By: _____

Cathleen C. Kronopolus
Regional Commissioner
Public Buildings Service
National Capital Region

_____ Date

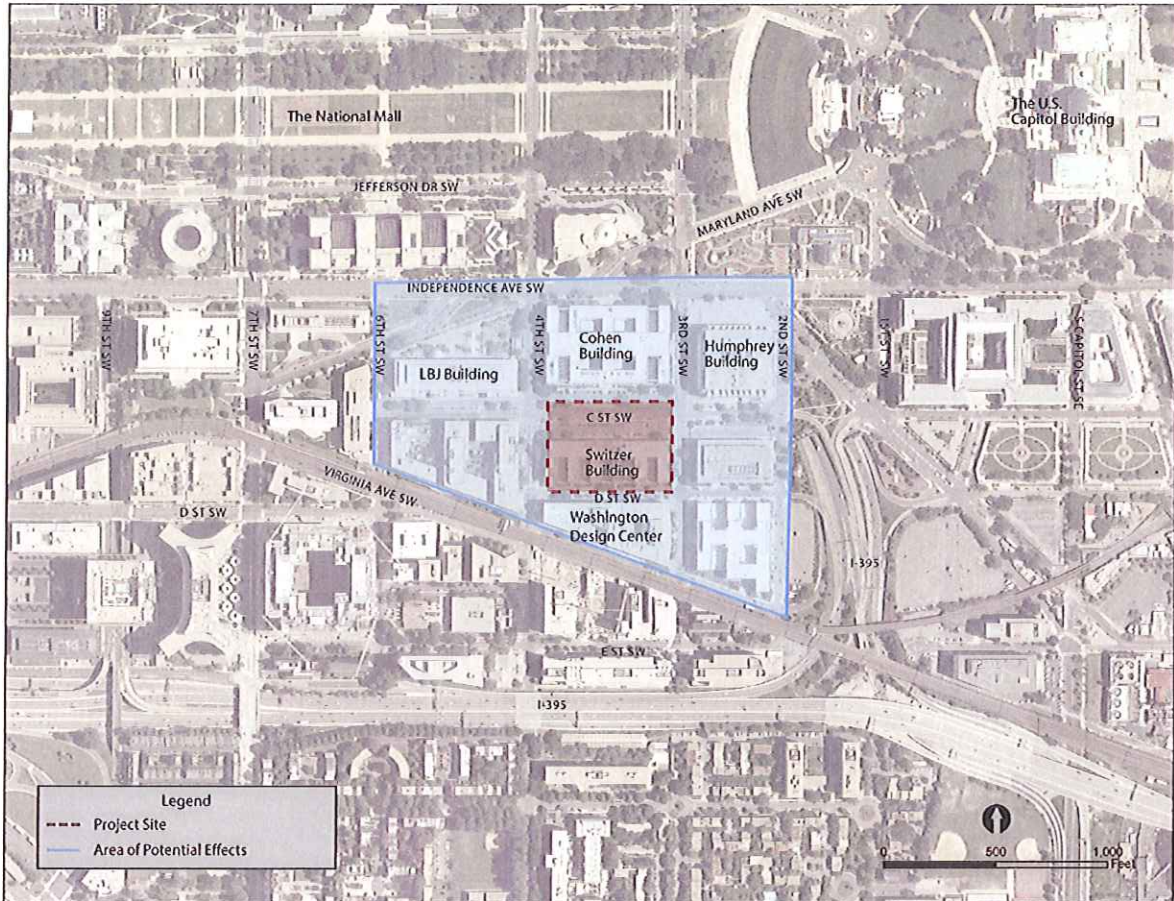
For the U.S. General Services Administration

By:  _____ Date 4/1/11
Beth L. Savage
Director, Center for Historic Buildings
Federal Preservation Officer

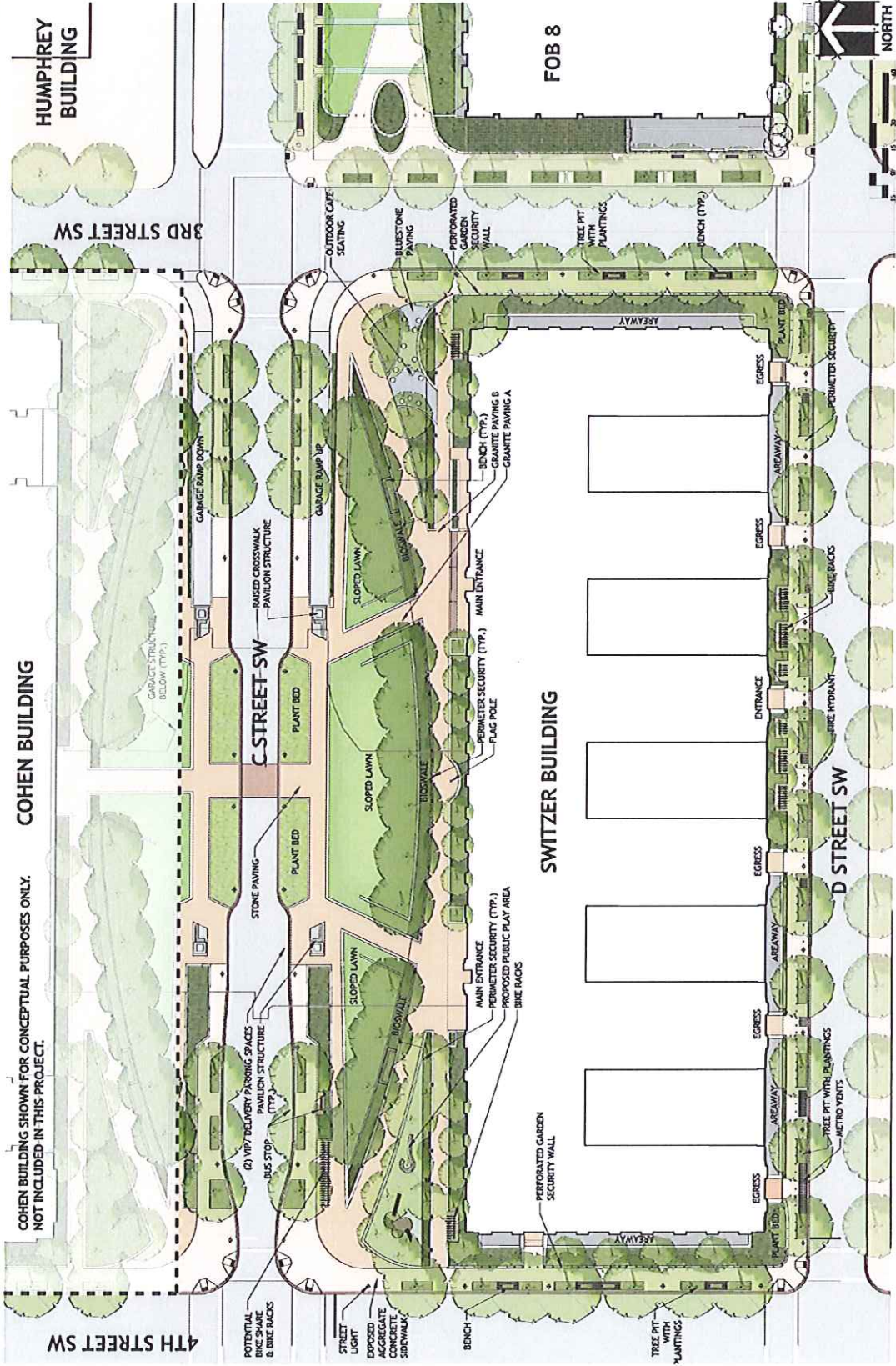
For the District of Columbia

By:  _____ Date 4/1/2011
David Maloney
DC State Historic Preservation Officer

Appendix A: Area of Potential Effects



11. PROGRAM LAYOUT



COHEN BUILDING SHOWN FOR CONCEPTUAL PURPOSES ONLY. NOT INCLUDED IN THIS PROJECT.

COHEN BUILDING

HUMPHREY BUILDING

FOB 8

SWITZER BUILDING

MARY SWITZER BUILDING SITE IMPROVEMENTS

WASHINGTON, DC | MAY 5, 2011

