



**MEMORANDUM OF AGREEMENT  
AMONG  
THE UNITED STATES GENERAL SERVICES ADMINISTRATION,  
THE DISTRICT OF COLUMBIA COURTS,  
THE UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES,  
THE DISTRICT OF COLUMBIA  
HISTORIC PRESERVATION OFFICER,  
AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,  
REGARDING THE CONSTRUCTION  
OF AN UNDERGROUND PARKING GARAGE  
AT THE SOUTHWEST CORNER OF JUDICIARY SQUARE**

**WHEREAS**, the U.S. General Services Administration (GSA), National Capital Region, in cooperation with the District of Columbia Courts (DCC) and the U.S. Court of Appeals for the Armed Forces (USCAAF), has determined that the construction of an underground parking garage for the DCC and the USCAAF, to be located at the southwest corner of Judiciary Square at the intersection of Indiana Avenue and 5<sup>th</sup> Street, N.W., Washington, D.C., may adversely affect aspects of Judiciary Square, the Old D.C. Courthouse, the U.S. Court of Appeals for the Armed Forces, the Darlington Memorial Fountain, and other historic properties that have qualified them for inclusion in the National Register of Historic Places; and

**WHEREAS**, the underground garage is being jointly funded by the DCC and the USCAAF; and

**WHEREAS**, the building in which the U.S. Court of Appeals for the Armed Forces operates is a GSA owned building, where operation and maintenance have been delegated to the Department of Defense; and

**WHEREAS**, the GSA is serving as lead agency on behalf of DCC and USCAAF for review of the project under Section 106 of the National Historic Preservation Act (16 U.S.C. 470); and

**WHEREAS**, pursuant to 36 CFR 800.6 (c)(3), the GSA has invited the Advisory Council on Historic Preservation (Council), the D.C. Historic Preservation Officer (DCHPO), DCC, and USCAAF to participate in the consultation process and to concur in this MOA, and has notified the Department of the Interior; and

**WHEREAS**, at its August 7, 2003, meeting, the National Capital Planning Commission approved elements of the Judiciary Square Master Plan that include guidelines for the treatment of these resources relating to planned open space, security, and circulation improvements to the square and new construction there; and

**WHEREAS**, in the forum of the National Capital Planning Commission, GSA has held public meetings with interested parties including the DC Preservation League and the Committee of 100 on the Federal City to discuss the historic character of the project and proposed effects to historic properties; and

**WHEREAS**, the D.C. Historic Preservation Review Board, acting in an advisory capacity to the DCHPO, reviewed and reported favorably on the plans for the undertaking at its public meeting on March 25, 2004;

**NOW, THEREFORE, GSA, DCC, USCAAF, DCHPO**, and the Council 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 until this MOA expires or is terminated.

### **STIPULATIONS**

GSA, DCC, and USCAAF shall ensure that:

- A. The structural integrity of the Old D.C. Courthouse, which is a National Historic Landmark and is listed in the National Register of Historic Places, and the U.S. Court of Appeals for the Armed Forces, which is also a National Register property, is protected during construction of the underground parking garage.
- B. Prior to the beginning of garage construction, the Joseph J. Darlington Memorial Fountain in the center of the garage site will be dismantled and the 1892 brick ventilating tower near its northeast corner will be removed intact, and both will be documented and stored in an appropriate facility until the garage's completion. Upon completion of the garage, both structures will be restored and accurately reconstructed on or near their historic locations, and the fountain will be made functional. Interim treatment, storage, restoration, and reinstallation of the fountain and the tower will be undertaken in accordance with the final drawings and specifications for this project. Drawings specifying the reactivation of the fountain and specifications for removing the tower will be issued as addenda and must be approved by the parties to this MOA before they are implemented. All drawings addressing the removal and reinstallation of the Darlington fountain and the ventilating tower may be altered in consultation with the DCHPO. The general historic character of the

landscaping of the area above the parking garage will be restored in accordance with paragraph C below.

- C. Appurtenances for the garage, including, but not limited to, vehicular and pedestrian exits and entrances, ventilating equipment, security improvements, lighting and landscaping, and pedestrian circulation will be constructed as specified in the final drawings for the garage project.

These drawings will be consistent with the plans submitted to NCPC for review on March 17, 2004, and may be altered in consultation with the DCHPO.

D. Archaeology

1. In the event that a previously unidentified archaeological resource is discovered during ground disturbing activities, all construction work involving subsurface disturbance will be halted in the area of the resource and in the surrounding area where further subsurface remains can reasonably be expected to occur.
2. The DCHPO will be notified in writing via email and by telephone immediately upon discovery of significant archaeological remains. The DCHPO or a representative will visit the site within 48 hours of such notification. The DCHPO will inspect the work site and determine the area and the nature of the affected archaeological property. Construction may then continue in the project area outside the resource area after the boundaries of the site have been determined.
3. Within ten (10) working days of the original notification of discovery, GSA, DCC, and USCAAF, in consultation with DCHPO, will determine the National Register eligibility of the resource.
4. If the resource is determined to meet the National Register criteria (36 CFR 60.6), GSA, DCC, and USCAAF 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.
5. GSA, DCC, and USCAAF 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, DCC, and USCAAF in consultation with the DCHPO, and that

reports are responsive to contemporary professional standards, according to the *Department of the Interior's Format Standards for Final Reports of Data Recovery Programs* (42 CFR 537-79) and meet the standards as set out in *Guidelines for Archaeological Investigations in the District of Columbia*.

## ADMINISTRATIVE PROVISIONS

### A. Standards

- . All cultural resource work undertaken pursuant to this agreement will be conducted by or under the direct supervision of qualified individuals meeting the qualifications presented in the Secretary of the Interior's *Standards and Guidelines for Archeology and Historic Preservation* (1983).
2. Reconstruction of historic above-ground features of the site of the parking garage will be undertaken in accordance with the Secretary of the Interior's *Standards for the Treatment of Historic Properties* (1995).
3. Analysis and conservation of archaeological artifacts recovered as a result of construction will be undertaken in accordance with the Secretary of the Interior's *Standards and Guidelines for Archeology and Historic Preservation* (1983) and *Guidelines for Archaeological Investigations in the District of Columbia*.

B. For purposes of this MOA, the term "parties to this MOA" means GSA, DCC, USCAAF, DCHPO, and the Council.

### C. Dispute Resolution:

1. Should any party to this MOA object to any action carried out or proposed by GSA, DCC, and USCAAF with respect to the implementation of this MOA, GSA, DCC, and USCAAF shall consult with the objecting party to resolve this objection.
2. If, after initiating such consultation, GSA, DCC, and USCAAF determine that the objection cannot be resolved through consultation, GSA, DCC, and USCAAF shall forward all documentation relevant to the objection to the Council, including GSA, DCC, and USCAAF's proposed response to the objection. Within 45 days after receipt of all pertinent documentation, the Council shall exercise one of the following options:

- a. Advise GSA, DCC, and USCAAF that the Council concurs in GSA, DCC, and USCAAF's proposed final decision, whereupon GSA, DCC, and USCAAF will respond to the objection accordingly;
    - b. Provide GSA, DCC, and USCAAF with recommendations, which GSA, DCC, and USCAAF shall take into account in reaching a final decision regarding its response to the objection; or
    - c. Notify GSA, DCC, and USCAAF that the objection will be referred for comment pursuant to 36 CFR 800.7(c), and proceed to refer the objection for comment. The resulting comment shall be taken into account by GSA, DCC, and USCAAF in accordance with 36 CFR 800.7(c)(4) and 110(1) of NHPA.
  3. Should the Council not exercise one of the above options within 45 days after receipt of all pertinent documentation, GSA, DCC, and USCAAF may assume the Council's concurrence in its proposed response to the objection.
  4. GSA, DCC, and USCAAF shall take into account any Council recommendation or comment provided in accordance with this stipulation with reference only to the subject of this objection; GSA, DCC, and USCAAF's responsibility to carry out all actions under this MOA that are not the subjects of the objection shall remain unchanged.
- D. At any time during implementation of the measures stipulated in this MOA, should an objection pertaining to this MOA be raised by the National Capital Planning Commission, the Commission of Fine Arts, or a member of the public, GSA, DCC, and USCAAF shall notify the parties to this MOA and take the objection into account, consulting with the objector and should the objector so request, with any of the parties to this MOA to resolve the objection.
- E. At the request of any party to this MOA, a meeting or meetings shall be held to facilitate review and comment, to resolve questions, or to resolve adverse comments.
- F. GSA, DCC, and USCAAF shall not alter any plan, scope of services, or document that has been reviewed and commented on pursuant to this MOA, except to finalize documents that have been reviewed and commented on in draft, without first affording the parties to this MOA an opportunity to review the proposed change and determine where it shall

require that this MOA be amended. If the parties to this MOA determine that an amendment is needed, they shall consult in accordance with 36 CFR 800.6(c)(7) to consider such an amendment.

- G. If GSA, DCC, and USCAAF determine that the terms of this MOA cannot be implemented, or if the DCHPO or Council determine that the MOA is not being properly implemented, GSA, DCC, USCAAF, the DCHPO, or the Council may propose to the other parties to this MOA that it be terminated.
1. The party proposing to terminate this MOA shall so notify all parties to this MOA, explaining the reasons for termination and affording the parties to this MOA at least thirty (30) days to consult and seek alternatives to termination.
  2. Should such consultation fail and this MOA be terminated, GSA, DCC, and USCAAF shall either:
    - a. Consult in accordance with 36 CFR 800.6(c)(8) to develop a new MOA; or
    - b. Request the comments of the Council pursuant to 36 CFR 800.7(a).
- H. Execution of this MOA by GSA, DCC, USCAAF, and the DCHPO, its subsequent acceptance by the Council, and implementation of its terms, evidence that GSA, DCC, and USCAAF have afforded the Council an opportunity to comment on GSA, DCC, and USCAAF's construction of the underground parking garage and that GSA, DCSC, and USCAAF have taken into account the effects of this construction on the historically and architecturally significant properties associated with it.


This MOA will continue in full force and effect for five years. At any time in the six-month period prior to expiration of the MOA, GSA, the DCC, the USCAAF, the DCHPO, and the Council may mutually agree to extend this agreement with or without amendments.

- J. Execution and implementation of this agreement by the Parties, and implementation of its terms, evidence that GSA, DCC and USCAAF have taken into account the effects of the undertaking on historic properties, and that GSA has complied with Section 106.

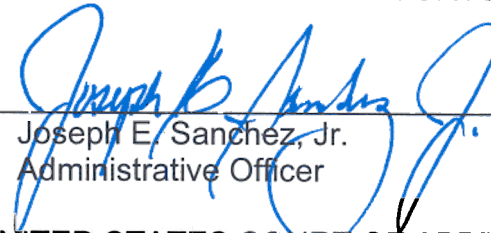
#### K. Signatures

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

FOR THE GENERAL SERVICES ADMINISTRATION

By:  Date: 22 APR 2004  
Anthony E. Costa  
Assistant Regional Administrator  
Public Building Service

FOR THE DISTRICT OF COLUMBIA COURTS

By:  Date: April 23, 2004  
Joseph E. Sanchez, Jr.  
Administrative Officer


FOR THE UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES

By: \_\_\_\_\_ Date: \_\_\_\_\_  
William A. DeCicco, Clerk of the Court  
United States Court of Appeals for the Armed Forces

FOR THE DISTRICT OF COLUMBIA HISTORIC PRESERVATION OFFICER

By:  Date: 4/23/04  
Lisa Burcham  
State Historic Preservation Officer

FOR THE ADVISORY COUNCIL ON HISTORIC PRESERVATION

By:  Date: 5/6/04  
John M. Fowler  
Executive Director

FOR THE GENERAL SERVICES ADMINISTRATION

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Anthony E. Costa  
Assistant Regional Administrator  
Public Building Service

FOR THE DISTRICT OF COLUMBIA COURTS

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Joseph E. Sanchez, Jr.  
Administrative Officer

FOR THE UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES

By: William A. DeCicco Date: April 22, 2004  
William A. DeCicco, Clerk of the Court  
United States Court of Appeals for the Armed Forces

FOR THE DISTRICT OF COLUMBIA HISTORIC PRESERVATION OFFICER

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Lisa Burcham  
State Historic Preservation Officer

FOR THE ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: \_\_\_\_\_ Date: \_\_\_\_\_  
John M. Fowler  
Executive Director