

**FIRST AMENDED
PROGRAMMATIC AGREEMENT**

**BY AND AMONG
THE U.S. GENERAL SERVICES ADMINISTRATION,
THE UTAH STATE HISTORIC PRESERVATION OFFICER, AND
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING EXPANSION OF U.S. COURT FACILITIES IN SALT LAKE CITY, UTAH**

WHEREAS, the U.S. General Services Administration (GSA) proposes to construct additional U.S. District Court facilities (New District Court Facilities) on the block bounded by Market, Main, 400 South, and West Temple Streets in Salt Lake City, Utah, and rehabilitate the existing U.S. Courthouse, also called the Frank E. Moss Courthouse (Moss Courthouse), for continued use by the U.S. Courts (collectively referred to herein as the "Undertaking"), and relocate the Independent Order of Odd Fellows Hall (defined below); and

WHEREAS, GSA first contacted the Utah State Historic Preservation Officer (SHPO) in 1994 to begin informal discussions on the feasibility study prepared for this Undertaking. In June 1997, the SHPO, the National Trust for Historic Preservation (NTHP), Utah Heritage Foundation (UHF), the then holder of a historic preservation easement on the exterior of the Independent Order of Odd Fellows Hall currently located at 39 West Market Street (Odd Fellows Hall), which easement has been extinguished as described in Stipulation III.J. below, and the City of Salt Lake City (City) met with the design teams for the New District Court Facilities project prior to GSA's final selection of a project architect. GSA initiated the review of the project under Section 106 of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. § 470(f) (Section 106), and the implementing regulations at 36 C.F.R. part 800, on September 4, 1997, and worked with the consulting parties through late 1998 to identify options that could avoid, minimize, or mitigate potential adverse effects, but was unable to reach agreement. In response to historic preservation concerns, GSA abandoned the Odd Fellows Hall site in 1999 and prepared an Alternatives Analysis Report dated July 2000. This report identified a site across 400 South Street from the Moss Courthouse that would not have resulted in the demolition of any historic properties. GSA was required to reopen the site selection process in 2002, when the owner of this site refused to sell. As a result of continued discussions with the City, the consulting parties, and other members of the public, GSA identified two project site alternatives. Following the March 2002 Public Scoping Meeting, GSA concluded that the Odd Fellows Hall site best met the Undertaking's stated purpose; and

WHEREAS, pursuant to Public Law 108-7 (February 20, 2003), Congress authorized GSA to build a new stand-alone court facility west of the existing Moss Courthouse; to purchase or acquire by eminent domain or negotiation the properties known as 26 West Market Street, 30 West Market Street, 39 West Market Street, and 40 West Market Street in Salt Lake City, Utah, which constitute all remaining privately-owned properties on that block except for the Shubrick Apartment Hotel located at 68 West 400 South Street (Shubrick Building); and to acquire and relocate the historic Odd Fellows Hall to the parcels known as 26, 30 and 40 West Market Street and sell the Odd Fellows Hall once the relocation is completed; and

WHEREAS, GSA hosted a Community Design Charrette on June 2, 2003, as part of the Section 106 public participation process, to present three design concepts for the New District Court Facilities; and

WHEREAS, GSA entered into a Programmatic Agreement, dated January 26, 2004, with the SHPO, the Advisory Council on Historic Preservation (ACHP), the City, NTHP, and UHF (the "2004 PA") to address the effects of this Undertaking under Section 106; and

WHEREAS, to address heightened security requirements for the proposed Undertaking, on December 8, 2004, Congress enacted Public Law 108-447, which authorized GSA to acquire and demolish the real property, including land and improvements located at the corner of 400 South and West Temple Streets in Salt Lake City, Utah, said land and improvements commonly known as the Shubrick Building; to redesign the proposed courthouse expansion to incorporate this new site; and to initiate consultation under Section 106 to consider the effects of the modified Undertaking on historic properties; and

WHEREAS, GSA has notified the SHPO, ACHP, the City, UHF, and NTHP pursuant to Stipulation VIII.A of the 2004 PA regarding the major revisions to the Undertaking and requested that these parties (collectively, the "Consulting Parties") consult to seek agreement on amendments to the 2004 PA; and

WHEREAS, the Consulting Parties agree that the proposed modifications to the Undertaking require a full review of the 2004 PA and its replacement with this First Amended Programmatic Agreement (First Amended PA), which document, upon execution by all the Signatories, will supersede and replace in full the 2004 PA; and

WHEREAS, GSA, the SHPO, and ACHP are the only Signatories to this First Amended PA in accordance with 36 C.F.R. § 800.6(c)(1)(ii); and

WHEREAS, GSA invited the City, UHF, and NTHP to sign this First Amended PA as Concurring Parties (but not Signatories, as that term is defined and used in this First Amended PA) in accordance with 36 C.F.R. § 800.6(c)(3); and

WHEREAS, GSA previously determined, in consultation with the SHPO as part of the 2004 PA, that the Undertaking's Area of Potential Effect (APE) as defined in 36 C.F.R. § 800.16(d) is the block bounded by Market, Main, 400 South, and West Temple Streets, plus the north side of Market Street between Main and West Temple, and the east side of Main Street, Cactus Place and 400 South, and the Consulting Parties have reviewed this APE and determined that no modifications are necessary; and

WHEREAS, GSA has applied the Criteria of Adverse Effect (36 C.F.R. § 800.5(a)(1)) and finds that the Undertaking may have an effect on the following properties located in the APE that are listed in or eligible for listing in the National Register of Historic Places (the "National Register"):

- Exchange Place Historic District, between Main Street and State Street, Cactus Place and West 400 South Street
- Frank E. Moss Courthouse, 350 South Main Street (also a contributing element in the Exchange Place Historic District)
- Odd Fellows Hall, 39 West Market Street
- Shubrick Building, 68 West 400 South Street
- New York Hotel, 42 West Market Street; and

WHEREAS, GSA finds, in consultation with the SHPO, that the Undertaking may have an effect on archaeological resources yet to be identified within the APE; and

WHEREAS, GSA has provided and will continue to provide an opportunity for public involvement in the development of this project in accordance with the 2004 PA, this First Amended PA, 36 C.F.R. §§ 800.2(d) and 800.6(a)(4), and by the public participation process provided for through compliance with the National Environmental Policy Act of 1969, as amended.

NOW, THEREFORE, GSA, the SHPO, and ACHP agree that the design development and construction of the New District Court Facilities and Moss Courthouse rehabilitation project shall be implemented in accordance with the following Stipulations to take into account the effect of the Undertaking on historic properties.

STIPULATIONS

Provided that GSA decides to proceed with the Undertaking, GSA shall carry out the following measures:

I. Effects of Construction of the New District Court Facilities on the Exchange Place Historic District, including the Frank E. Moss Courthouse

- A. **Design Guidelines.** GSA shall cause the New District Court Facilities to be designed so that they are compatible with the historic and architectural qualities of the Exchange Place Historic District, including the Moss Courthouse, in terms of scale, massing, color, and materials. Plans for the Undertaking will be developed in accordance with the recommended approaches set forth in the *Secretary of the Interior's Standards for Rehabilitation and Illustrated Guidelines for Rehabilitating Historic Buildings* (U.S. Department of the Interior, National Park Service, 1992) (Secretary's Standards). As required by 40 U.S.C. § 3312, GSA shall take into consideration Salt Lake City's urban design and zoning criteria in its plans for the Undertaking.
- B. **Revised Undertaking.** In response to legislation directing GSA to redesign the Undertaking to incorporate the expanded site, GSA identified three design alternatives. These alternatives were presented in a public meeting in December 2005. GSA considered comments from this meeting and notified the Consulting Parties in May 2006 that the scope of the Undertaking had been revised, and requested their review of the 100% Schematic Design dated March 2006. GSA and the project architect met with the Consulting Parties on August 3, 2006, to further explain the site plan, massing, and selection of materials.
- C. **Design Review.** In accordance with the 2004 PA, GSA provided the Consulting Parties that executed the Non-Disclosure Agreement described in Stipulation VI.E (Authorized Consulting Parties) with a 30-day review period to comment on the 100% Schematic Design dated March 2006. GSA will address comments from the August 3, 2006, meeting and the written comments provided by the Authorized Consulting Parties on the 100% Schematic Design in the design development phase plans, including the comments requesting that GSA develop additional studies for the design of the retaining wall on West 400 South; the accessibility ramp; the plaza, including the landscaping, lighting, and street furniture; and the treatment of the southwest and northwest corners

of the site. The design of the plaza will provide for a mid-block pedestrian crossing. GSA has provided the Authorized Consulting Parties with information regarding the interior layout of the proposed structure; however, it will not provide specifications or additional plans detailing the interior to the parties for review and comment unless GSA, in its sole discretion, determines that the review of such plans will help explain a design decision that may have an effect on a historic property.

- D. Review Process. GSA will allow the Authorized Consulting Parties thirty (30) calendar days from the receipt of project information and GSA's request to review and comment, in writing, on the 45% and 100% design development phase plans. The Authorized Consulting Parties will notify GSA as soon as practicable, if additional information is necessary to complete their review. GSA shall consult with the Authorized Consulting Parties to resolve any objections to the submitted plans and specifications. If any objections are not resolved through consultation, GSA shall seek resolution in accordance with Stipulation VII. If an Authorized Consulting Party does not provide written comments to GSA within thirty (30) days after receipt of the project information, GSA may assume that the party does not object to the proposed plans and specifications and may finalize the plans and specifications provided for review and proceed to the next phase of the design. The Authorized Consulting Parties shall not disapprove any plans and/or specifications, or aspects thereof, previously approved in writing or deemed approved as provided above.

II. Effects of Rehabilitation of the Moss Courthouse for Continued Use in the U.S. Courts Complex

- A. Design Guidelines. GSA will notify the Consulting Parties when funding for the rehabilitation of the Moss Courthouse (Moss Rehabilitation) has been programmed and when it intends to commence planning for this phase of the Undertaking. The rehabilitation of this National Register listed property shall be undertaken and completed in accordance with the recommended approaches in the Secretary's Standards and GSA's Historic Building Preservation Plan for the Moss Courthouse (1993), and the "Historic Zone Classification Update, Frank E. Moss Courthouse Annex and Alterations, Salt Lake City, Utah," prepared by Thomas Phifer and Partners, Architect, Naylor Wentworth Architect, and Cooper/Roberts Architects, dated March 5, 1999 (Moss HBPP). Modifications to the west façade of the Moss Courthouse that will only be visible below the plaza level are included in the plans to build the New District Court Facilities and will not adversely effect character-defining features of this historic property. Any modifications to the west façade above the plaza level that may be required to accommodate the new program for the expanded New District Court Facilities are subject to review under 36 C.F.R. part 800.
- B. Design Review. GSA shall consult with the SHPO when the scope of the proposed rehabilitation is defined to determine if this portion of the Undertaking is consistent with the recommendations set out in the Moss HBPP and if the terms of the Programmatic Agreement among GSA Region 8, the SHPO, and ACHP regarding the Preservation, Maintenance, Rehabilitation and Leasing of Historic Properties executed on April 14, 2004 (Region 8 PA), may apply. If GSA determines, in consultation with the SHPO, that the proposed rehabilitation cannot be designed to avoid adverse effects or that the scope of work exceeds the terms of the Region 8 PA, GSA will provide the Authorized Consulting Parties with plans and specifications for the Moss Rehabilitation at the preliminary concept stage of design, and at the 60% and pre-final 95% stages of design,

and will afford the Authorized Consulting Parties thirty (30) calendar days to review and comment on such plans and specifications. GSA shall consult with the Authorized Consulting Parties to resolve any objections to the submitted plans and specifications. If any objections to the plans and specifications are not resolved through consultation, GSA shall seek resolution in accordance with Stipulation VII. If an Authorized Consulting Party does not provide written comments within thirty (30) days after receipt of the plans and specifications, GSA may assume that the party does not object to the proposed plans and specifications and may finalize the plans and specifications provided for review and proceed to the next phase of the design. The Authorized Consulting Parties shall not disapprove any plans and/or specifications, or aspects thereof, previously approved in writing or deemed approved as provided above.

III. Relocation of the Odd Fellows Hall

- A. Photographic Recordation. GSA has completed the large format black-and-white photographic documentation of the interior and exterior of the Odd Fellows Hall showing its existing setting, elevations and architectural details. The photographs were taken and will be prepared to archival specifications in accordance with Historic American Buildings Survey standards for photographic documentation and will be accompanied by an Index to Photographs and a Map Key to Photographs. GSA does not anticipate that there will be alterations to the character-defining features of the Odd Fellows Hall prior to its relocation; however, GSA will include photographs of any such alterations in the photographic record described in Stipulation III.B., below.
- B. Copies of Photographic Records. GSA will provide the original negatives and one set of contact prints accompanied by an Index to Photographs and a Map Key to Photographs to the SHPO before the relocation of the Odd Fellows Hall for curation in the SHPO's official records. The SHPO may review the submitted photographic documentation to confirm that it conforms to the standards established by this First Amended PA. If the SHPO determines that the photographic documentation does not record the building on its current site adequately, the SHPO will notify GSA, in writing, and describe the deficiencies within fifteen (15) business days after receipt of the submitted documentation. GSA may consult further with the SHPO and will correct any deficiency and submit the completed documentation to the SHPO prior to the relocation of the Odd Fellows Hall. Within two (2) months of the SHPO's review and acceptance of the photographic documentation, GSA will provide copies of the contact prints, the Index to Photographs and a Map Key to Photographs to UHF, the City, and Post Office Place Associates, the former owner of the Odd Fellows Hall.
- C. Schedule and Guidelines for Relocation. GSA will develop a schedule for the relocation of the Odd Fellows Hall when the necessary funding for the relocation action has been budgeted. GSA will provide the Consulting Parties with this schedule for the relocation of the Odd Fellows Hall when key dates have been established. GSA will continue to provide schedule updates to the Consulting Parties as plans are developed further. GSA shall relocate the Odd Fellows Hall, without cost to the Consulting Parties, to certain parcels (Parcel 2 – Tax ID Number 15-01-430-006, and Parcel 3 – Tax ID Number 15-01-430-009) located across the street from its historic location on Market Street. GSA has consulted informally with the National Park Service (NPS) and determined that this proposed relocation is consistent with the standards established in National Register Bulletin 15: Criteria Consideration B: Moved Properties (U.S. Department of the Interior, National Park Service, Interagency Resources Division,

Washington, DC, 1991). GSA will notify NPS and take all steps required by NPS to update the property's National Register nomination within six (6) months of the relocation. GSA will develop plans for the relocation in accordance with the recommended approaches set forth in the Secretary's Standards and the guidance set out in "Moving Historic Buildings," John Obed Curtis, 1975, reprinted 1991 by W. Patram, for the International Association of Structural Movers.

- D. Scope of Work and Development of Plans. The Authorized Consulting Parties shall each cooperate fully with GSA to facilitate the Odd Fellows Hall relocation and conveyance. GSA identified two alternatives for positioning the Odd Fellows Hall on the relocation site in a presentation to the Consulting Parties on August 3, 2006. The Consulting Parties have confirmed through written comments responding to the plans presented at this meeting that they prefer the alternative that relocates the Odd Fellows Hall as close as possible to the east façade of the New York Hotel, allowing space for the construction of foundations and operation of equipment needed for the relocation. GSA will develop construction documents that describe the proposed relocation methods and actions that will be taken to establish, secure, and mothball the Odd Fellows Hall at the new location (Construction Documents). The Consulting Parties agree that GSA's Construction Documents for the relocation will include measures to prepare the Odd Fellows Hall for relocation; locate and construct a new foundation; move the building and secure it to its new foundation; provide limited seismic retrofitting as required by the City; construct a new stairway to the basement and the secondary exit stairs on the exterior; and secure and mothball the property, including measures to ventilate and heat the interior, all in accordance with NPS Preservation Brief 31, "Mothballing Historic Buildings." Following the relocation, GSA will inspect the Odd Fellows Hall and perform all necessary repairs to the roof so that it is watertight and to any interior damage caused by the move, repoint the damaged mortar on the primary and secondary facades, and repaint the previously painted areas.
- E. Review Process. GSA will allow the Authorized Consulting Parties thirty (30) calendar days from the receipt of project information and GSA's request to review and comment, in writing, on the Construction Documents for the relocation. The Authorized Consulting Parties will notify GSA as soon as practicable, if additional information is necessary to complete their review. GSA shall consult with the Authorized Consulting Parties to resolve any objections to the submitted plans and specifications. If any objections are not resolved through consultation, GSA shall seek resolution in accordance with Stipulation VII. If an Authorized Consulting Party does not provide written comments to GSA within thirty (30) days after receipt, GSA may assume that the party does not object to the proposed plans and specifications and may finalize the plans and specifications provided for review and proceed to the next phase of the design. The Authorized Consulting Parties shall not disapprove any plans and/or specifications, or aspects thereof, previously approved in writing or deemed approved as provided above. GSA will notify the Authorized Consulting Parties regarding the repairs it will perform to correct minor damage resulting from the move, but no review of this work is required, unless one or more of the Authorized Consulting Parties objects within fourteen (14) calendar days to GSA's characterization of the damages and requests, in writing, that the proposed repairs be reviewed under the process for repairing major damage set out in Stipulation II. H.
- F. Monitoring of Relocation. An individual or individuals meeting the Secretary of the Interior's Professional Qualifications for Historical Architect shall monitor the removal of

the Odd Fellows Hall from its original site, its move across Market Street and the building's installation on its new site.

- G. Notice of Relocation. GSA shall provide the Consulting Parties with reasonable prior notice of the anticipated date for the relocation of the Odd Fellows Hall. GSA shall require that the contractor for the relocation of the Odd Fellows Hall project fully bond the work, as well as obtain and maintain in full force and effect from the commencement of relocation activities until completion casualty insurance coverage in an amount no less than \$1,000,000.
- H. Repair of Major Damage Resulting from the Relocation. In the event of major damage to the Odd Fellows Hall resulting from or arising out of its relocation, GSA shall immediately notify the Consulting Parties to determine the appropriate remedial actions to be taken. The Consulting Parties have determined that major damage is any damage that is not readily repairable. Notice may be by e-mail or telephone and GSA will, if requested by any Consulting Party, convene an on-site meeting of the Consulting Parties and any necessary experts to examine the damage and discuss the actions to be taken. GSA shall determine, after discussions with the Consulting Parties, if and how the damage to the Odd Fellows Hall can be repaired, replaced, or replicated in accordance with the recommended approaches set forth in the Secretary's Standards. The Consulting Parties agree that this consultation may be conducted pursuant to 36 C.F.R. § 800.12(b)(1) and the parties will provide comments on GSA's proposed actions no later than forty-eight (48) hours following GSA's notification.
- I. Irreparable Damage to All, or Substantially All, of the Odd Fellows Hall. In the improbable event of damage to all, or substantially all, of the Odd Fellows Hall resulting from or arising out of the move to an extent rendering repair or reconstruction of the Odd Fellows Hall commercially impracticable as determined by GSA in its sole discretion, GSA shall donate \$400,000 to a revolving fund to be established and administered by the SHPO to be used exclusively to make loans available for preservation work on historic structures listed in the National Register that are located within the Salt Lake City Central Business District. This obligation shall only be enforceable to the extent that appropriated funds, or funds from another non-appropriated source such as insurance proceeds, are available. If establishment of the fund is necessary under this section, GSA shall use reasonable efforts to obtain appropriated funding. GSA and the SHPO, in consultation with ACHP and UHF, shall develop the administrative and funding requirements, including GSA's and/or ACHP's, or their respective designee's, audit rights, and criteria for making loans available from this revolving fund.
- J. Preservation Easement and Landmark Designation. UHF has extinguished the preservation easement on the Odd Fellows Hall in anticipation of its relocation. This action also extinguished the residual interest in the preservation easement that had been held by NTHP. UHF and GSA will consult to determine if GSA will grant UHF a new preservation easement on the relocated Odd Fellows Hall prior to GSA's conveyance of the property, or if GSA will require the new owner of the Odd Fellows Hall to grant a preservation easement to a qualified 501(c)(3) non-profit organization or a governmental entity as a condition of the conveyance. The City has informed GSA of its interest in re-listing the relocated Odd Fellows Hall in the Salt Lake City Register of Cultural Resources (City Register) in accordance with the procedures established by the Salt Lake City Historic Landmark Commission. GSA agrees not to object to a petition from the Salt Lake City Planning Commission to include the relocated Odd Fellows Hall in the

City Register; provided, however, that any such local landmark designation does not subject the property to Landmark Commission review or other local review for so long as the United States of America owns the Odd Fellows Hall.

- K. Interpretation. GSA recognizes that the relocation of the Odd Fellows Hall presents an unusual opportunity to document the process of moving a large, historically significant masonry structure. GSA has determined that some of the effects of the Undertaking on the Odd Fellows Hall and the Exchange Place Historic District can be addressed through the public interpretation of the relocation of the Odd Fellows Hall. GSA will expand the photographic documentation of the Odd Fellows Hall set out in Stipulation III.A. to include:

1. GSA will document the relocation through digital photography. GSA will consult with the SHPO, the City, and UHF to set up a web cam that will document photographically the Odd Fellows Hall as it is being moved and to identify websites that will feature real-time images of the relocation. Within one (1) month of the relocation, or as soon thereafter as is possible, GSA will condense the real-time footage into a time-lapse version and provide a copy of the time-lapse version to the SHPO and other Consulting Parties, as requested.

2. GSA will cooperate with television, radio, and print media to publicize the relocation; provided, however, that such cooperation does not require GSA to incur any out-of-pocket costs.

3. GSA will install an interpretive marker on the original site of the Odd Fellows Hall. GSA will consult with the SHPO, the City, and UHF to identify the location of this marker and to develop its design and text. GSA will allow these parties thirty (30) calendar days from the receipt of project information and GSA's request to review and comment, in writing, on the proposed marker. The parties will notify GSA as soon as practicable, if additional information is necessary to complete their review. GSA shall consult with the parties to resolve any objections. If any objections are not resolved through consultation, GSA shall seek resolution in accordance with Stipulation VII. If a party does not provide written comments to GSA within thirty (30) days after receipt, GSA may assume that the party does not object to the proposed marker and finalize the plans provided for review. The Authorized Consulting Parties shall not disapprove any plans and/or specifications for the marker, or aspects thereof, previously approved in writing or deemed approved as provided above.

- L. Mid-block Pedestrian Easement and Treatment of Relocation Site. GSA will work with the City to establish a mid-block pedestrian easement on the relocation site described in Stipulation III.C. GSA and the City will determine, prior to GSA's conveyance of the property to a non-federal party, if GSA will grant the easement to the City, or if the purchaser of the property will be required to grant the easement as a condition of the conveyance. GSA does not plan to take any steps to improve the portion of the relocation site not occupied by the Odd Fellows Hall.

IV. Effects of the Undertaking on the Shubrick Building

- A. Recordation. GSA will document photographically the interior and the exterior of the Shubrick Building with large format black-and-white photographs. GSA may also

document the property with digital photographs of the interior and exterior. Photographs will clearly show all major elevations, the existing context and surrounding streetscapes, and character-defining architectural details of the exterior and interior.

- B. Review and Curation. GSA will provide the original negatives, contact prints, and electronic copies of any digital photographs, accompanied by an Index to Photographs and a Map Key, to the SHPO for curation. The SHPO may review the submitted photographic documentation to confirm that it conforms to this First Amended PA. If the SHPO determines that the photographic documentation does not record the building adequately, the SHPO will notify GSA, in writing, and describe the deficiencies within fifteen (15) business days after receipt of the submitted documentation. GSA may consult further with the SHPO and agrees to correct any deficiency and submit the completed documentation to the SHPO prior to the demolition of the building.

V. Effects of the Undertaking on Archaeological Resources

- A. Review of Existing Records. The Consulting Parties recognize that the project site is located in an urban area and has been developed with buildings and covered with pavement since the late 19th century. GSA shall conduct a file search for each parcel to determine if there are areas within the APE that have a high probability of containing National Register eligible archaeological features that will be disturbed by any aspect of the Undertaking. GSA will review its findings with the SHPO to determine if areas of the site should be investigated in advance of construction so that any archaeological recovery efforts will not affect the project schedule. If any such areas are identified, GSA and the SHPO will consult to develop site-specific survey, evaluation, and data recovery measures that will be implemented prior to construction. GSA and the SHPO also will determine if specific areas of the site should be monitored during ground-disturbing activities.
- B. Monitoring of Ground Disturbance. GSA will require any ground disturbing activity in the high probability areas identified in consultation with the SHPO to be monitored by an archaeologist who meets the professional qualifications described in Stipulation VI.D. GSA will also include a provision in its contract documents that requires contractors to notify GSA immediately and to cease excavation in the vicinity of any archaeological deposits that are encountered. GSA may, in its sole discretion, employ spot monitoring by a qualified archaeologist to facilitate compliance with this contract provision.
- C. Treatment of Discoveries. In accordance with 36 C.F.R. § 800.13, GSA will provide for the protection, evaluation and treatment of any historic property discovered prior to or during construction. The treatment of human remains is addressed in Stipulation V.D., below. Should a discovery occur, GSA shall notify the SHPO and ACHP within two (2) calendar days in accordance with 36 C.F.R. § 800.13 to develop and implement an appropriate treatment plan prior to resuming construction operation in the vicinity of the discovery. If GSA determines that the archaeological deposit or features may be eligible for inclusion in the National Register, it will consult with the SHPO and any Indian tribe that might attach religious and/or cultural significance to the affected property. GSA may consult with the SHPO and Indian tribes, if appropriate, to apply the National Register criteria to determine if the property is eligible, or, in accordance with 36 C.F.R. § 800.13(c), GSA may assume that a newly-discovered property is eligible for listing in the National Register. In consultation with the SHPO, GSA will determine if any other parties may have an interest in the newly-discovered property, and will notify such

parties, if any, of the discovery and include them in the discussions regarding the treatment of the property. GSA will inform these parties if it is unable to avoid a National Register eligible archaeological property and will consult further to determine the appropriate treatment or mitigation.

D. Inadvertent Discovery of Human Remains.

1. In the case of inadvertent discovery of human remains on GSA property during construction activities, GSA will attempt to identify the appropriate Native American Tribe(s) or other ethnic group(s) related to the burial, and consult with them concerning the treatment of remains consistent with 43 C.F.R. § 10. All work will cease in the vicinity and monitors or construction contractors will notify GSA officials immediately. Every effort will be made to avoid further disturbance of the remains. Where avoidance is not possible, burials will be removed prior to further construction activities and re-interred or otherwise treated as agreed by GSA and the affected Tribe(s) in conformance with the Native American Graves Protection and Repatriation Act, or as otherwise agreed by GSA and the affected ethnic group(s).
2. If human remains are discovered on adjacent non-federal lands during construction activities, procedures will include notification of the Salt Lake City Police and State Archaeologists, as directed by U.C.A. § 9-9-400-406, Utah Native American Graves Protection and Repatriation Act and U.C.A. § 76-9-704, Abuse or Desecration of a Dead Human Body.

E. Archaeological Report. If GSA discovers any archaeological deposits or features that are eligible for inclusion in the National Register, it will consult with the SHPO, and any other party recommended by the SHPO, to determine appropriate mitigation options. These may include archaeological data recovery and reporting, development of popular reports, newspaper or journal articles, or website postings, as appropriate. GSA also will consult with any Indian tribe that may attach religious and/or cultural significance to the property to determine the appropriateness and scope of this report and will take any necessary steps to withhold information under Section 304 of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. § 470w-3, if public disclosure may cause a significant invasion of privacy, risk or harm to the historic property, or impede the use of a traditional religious site.

VI. Administration of this Agreement

- A. Cooperation. During the implementation of this First Amended PA, and until GSA and the SHPO agree in writing that the terms of this First Amended PA have been fulfilled, each Consulting Party agrees to cooperate with the other parties to facilitate the satisfaction of their respective obligations under this First Amended PA. The parties each agree to work in good faith with the other parties to meet their respective obligations in a timely manner.
- B. Reports. The Consulting Parties agreed at the August 3, 2006, meeting that GSA shall not be required to prepare and provide the annual report described in the 2004 PA. In lieu of this report, GSA agrees to update the parties on the project status routinely and to provide them with opportunities to work with GSA and the design team to refine the design of the Undertaking.

- C. Alterations to Project Documents. If, after receiving comments on any plan, scope of services or other document that has been reviewed and commented on pursuant to this First Amended PA, GSA proposes any material or substantial additions or deletions that may adversely effect any historic property, GSA shall notify the Authorized Consulting Parties, explaining the reasons for the requested material changes, additions and/or deletions, and provide plans, specifications or other documentation detailing the material changes, additions and/or deletions. GSA may consult informally with the SHPO to determine if proposed alterations to the project documents constitute a material change subject to review under this Stipulation. GSA shall provide the Authorized Consulting Parties thirty (30) days from the receipt of project information and GSA's request to review and comment, in writing, on the proposed material changes. The Authorized Consulting Parties will notify GSA as soon as practicable, if additional information is necessary to complete their review. GSA shall consult with the Authorized Consulting Parties to resolve any objections. If any objections are not resolved through consultation, GSA shall seek resolution in accordance with Stipulation VII. If an Authorized Consulting Party does not provide written comments to GSA within thirty (30) days after receipt, GSA may assume that the party does not object to the proposed project alterations and may finalize the plans, specifications and/or other documentation provided for review. The Authorized Consulting Parties shall not disapprove any plans, specifications and/or other documentation, or aspects thereof, previously approved in writing or deemed approved as provided above.
- D. Professional Qualifications. GSA shall require all historic preservation work carried out pursuant to this First Amended PA to be performed by or under the direct supervision of a person or persons meeting, at a minimum, the standards set forth in the *Secretary of the Interior's Professional Qualification Standards*, 48 FR 44716, published September 29, 1983.
- E. Security. The SHPO, ACHP, the City, UHF, and NTHP have each indicated previously their agreement to comply with GSA Order PBS 3490.1, entitled *Document Security for Sensitive But Unclassified Paper and Electronic Building Information*, dated March 8, 2002, a copy of which is attached hereto, marked Exhibit 1 and incorporated herein by reference, regarding the dissemination of "sensitive but unclassified" documents for Federal facilities only to persons on a "need to know basis," by executing a copy of the GSA Order. These parties, and any other party that subsequently indicates its agreement to comply with the terms and conditions of this GSA Order, are designated the "Authorized Consulting Parties" for purposes of this First Amended PA. GSA reserves the right to withhold, consistent with the terms of the GSA Order, any portion of the plans and specifications unrelated to the historic preservation aspects of the construction of the New District Court Facilities, the Moss Rehabilitation or the relocation of the Odd Fellows Hall, such as plans and/or specifications relating to the building's structural engineering or security, or anything unrelated to the historic character of the buildings. GSA shall provide the Authorized Consulting Parties with a list of any plans or specifications that are being withheld pursuant to this provision. To the extent that any party disagrees with GSA's decision to withhold any such documents, then the parties shall meet to try and resolve the disagreement. Each individual representing an Authorized Consulting Party will be required to execute a Non-Disclosure Agreement, a copy of which is attached hereto, marked Exhibit 2 and incorporated herein by reference, prior to being provided access to "sensitive but unclassified" documents, including, but not limited to, the plans and specifications referenced in this First Amended PA.

- F. Emergencies. Any immediate rescue or salvage operation performed by GSA to preserve life or property is exempt from the provisions of Section 106 pursuant to 36 C.F.R. § 800.12(d). GSA shall notify the Consulting Parties, if it proposes an emergency undertaking as an essential and immediate response to a disaster or another immediate threat to life or property, and afford them an opportunity to comment within seven (7) days of notification. If GSA determines that circumstances do not permit seven (7) days for comment, GSA shall notify the Consulting Parties and invite any comments within the time available. This provision only applies to emergency undertakings that will be implemented within thirty (30) days following the disaster or emergency.

VII. Dispute Resolution

- A. Should any of the Signatories object, in writing, to GSA regarding any action proposed to be or carried out with respect to the Undertaking or implementation of this First Amended PA, 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 relevant to the dispute to ACHP, including GSA's proposed response to the objection. Within thirty (30) calendar days after receipt of all pertinent documentation, ACHP shall exercise one of the following options:
1. Advise GSA that it concurs with GSA's proposed resolution of the objection;
 2. Provide GSA with recommendations, which GSA shall take into account in reaching a final decision regarding the dispute; or
 3. Notify GSA that the dispute will be referred for comment pursuant to 36 C.F.R. § 800.7(a)(4), and proceed to refer the dispute for comment. GSA shall take the resulting comment into account in accordance with 36 C.F.R. § 800.7(c)(4) and Section 110(l) of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. § 470h-2(l).
- B. Should ACHP not exercise one of the above options within thirty (30) days after receipt of all pertinent documentation, GSA may assume ACHP's concurrence in its proposed response to the objection.
- C. GSA shall take into account any ACHP recommendation or comment provided in accordance with this Stipulation with reference only to the subject of the dispute; GSA's responsibility to carry out all actions under this First Amended PA that are not the subject of the objection shall remain unchanged and in full force and effect.

VIII. Amendments and Termination

- A. Any Signatory may request that this First Amended PA be amended, whereupon the Signatories, Concurring Parties, and other consulting parties, as determined by the Signatories, will consult in accordance with 36 C.F.R. § 800.6(c)(7).
- B. Any Signatory may terminate this First Amended PA by providing thirty (30) days advance written notice to the other Signatories, provided that the Signatories, Concurring Parties, and other consulting parties, as determined by the Signatories,

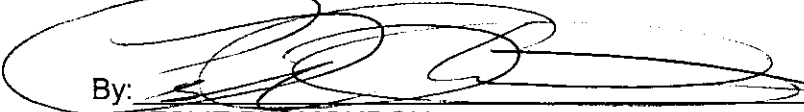
consult during the 30-day notice period to seek agreement on amendments or other actions that would avoid termination. In the event of termination, GSA will comply with 36 C.F.R. §§ 800.3 through 800.7(c)(3), with regard to individual actions covered by this First Amended PA.

IX. Counterparts. This First Amended PA may be executed in multiple original counterparts, each of which shall be deemed to be an original, and which together will constitute one and the same instrument.

Execution of this First Amended PA and implementation of its terms evidences that GSA has afforded ACHP, the SHPO, and the other Consulting Parties a reasonable opportunity to comment on GSA's proposed construction of the New District Court Facilities, the Moss Rehabilitation, and the relocation of the Odd Fellows Hall, and their effects on historic properties, and that GSA has taken into account the effects of the Undertaking on historic properties.

SIGNATORIES:

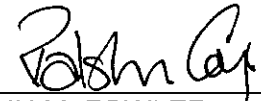
UNITED STATES GENERAL SERVICES ADMINISTRATION

By:  Date: 10/11/07
LESLIE PLOMONDON
Regional Administrator
Rocky Mountain Region

UTAH STATE HISTORIC PRESERVATION OFFICER

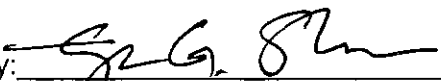
DM By:  Date: 10/18/07
WILSON G. MARTIN
Utah State Historic Preservation Officer

ADVISORY COUNCIL ON HISTORIC PRESERVATION

for By:  Date: 1/11/08
JOHN M. FOWLER
Executive Director

CONCURRING PARTIES:

SALT LAKE CITY, a municipal corporation

By:  _____ Date: 12-14-07
GEORGE SHAW
Salt Lake City Planning Director

NATIONAL TRUST FOR HISTORIC PRESERVATION, an educational and non-profit corporation established by Congress in 1949

By: _____ Date: _____
BARBARA PAHL
Director, Mountain Plains

UTAH HERITAGE FOUNDATION, a Utah non-profit corporation

By:  _____ Date: 11.5.07
KIRK HUFFAKER
Assistant Director

EXHIBIT 1

GENERAL SERVICES ADMINISTRATION
Washington, DC 20405
PBS 3490.1
March 8, 2002

GSA ORDER

SUBJECT: Document security for sensitive but unclassified paper and electronic building information

1. Purpose. This order sets forth the Public Buildings Service's (PBS's) policy on the dissemination of sensitive but unclassified (SBU) paper and electronic building information of General Services Administration's controlled space, including owned, leased, or delegated Federal facilities. A major goal of GSA and the Federal Government is the safety and security of people and facilities under the charge and control of GSA. This order outlines the PBS security procedures needed to reduce the risk that the material will be used for dangerous or illegal purposes.

2. Cancellation. PBS-IL-01-3 is canceled.

3. Objectives. In order to reduce the exposure to possible attacks or threats to GSA controlled space, there are two principal objectives of PBS's policy regarding sensitive but unclassified (SBU) building information. These are to:

a. Diminish the potential that sensitive information about the building in either paper or electronic form will be available for use by a person or persons with an interest in causing harm to persons or property.

b. Respect GSA's legitimate business and other needs to allow access to this information to those who have a need-to-know, such as Federal agencies housed in GSA controlled space, the professional design community, contractors, and states, cities, and towns where GSA has facilities.

4. History.

a. The physical protection of Federal employees, the visiting public, and facilities has always been a priority for GSA. Environmental, fire, security, and other safety concerns have influenced how GSA builds and procures space and has impacted our construction criteria. However, after the Alfred P. Murrah Federal Building bombing, GSA and other Government agencies have made a concerted review of GSA's construction and security criteria to find ways to prevent such an occurrence in the future.

b. There is rising apprehension that if building information is not restricted it could easily fall into the hands of terrorists or other criminal elements. In addition, there is particular concern that, with Internet technology, individuals, including terrorists and criminals worldwide, could have easy access to such information and remain anonymous.

c. Counterbalancing legitimate security concerns is the reality that a "government of the people, by the people, and for the people" must be accessible to its citizens and able to perform its mission without excessive restrictions hampering competition. With certain limited exceptions, GSA is required by the Competition in Contracting Act to obtain full and open competition. Therefore, prospective offerors must have access to necessary information in competing for Government contracts. This includes interested vendors, contractors, subcontractors, manufacturers, and suppliers of our building materials, as well as providers of professional services such as building plans and security services or equipment. GSA must balance security with business requirements in a pragmatic way, without undue bureaucratic burdens on our regional offices, consultants, lessors, and contractors.

5. Application. This order applies to all SBU building information regarding PBS-controlled space or procurements to obtain PBS-controlled space, either Government owned or leased, and to all PBS employees in Central Office and the regions, and includes GSA space that is delegated to other Federal agencies. It also imposes requirements on Federal employees to ensure that authorized users, both Government and non-Government, are aware of and adhere to specific obligations with respect to SBU building information.

6. Related authorities. This order supports and supplements the implementation of GSA order, Safeguarding sensitive unclassified information (ADM 1800.3B); Instructional Letter CIO IL-99-1, Safeguarding Sensitive Unclassified Information; and the GSA Acquisition Manual (GSAM) (ADP P 2800.12B).

7. Responsibilities.

a. General. Because no policy can cover every circumstance, disseminators shall make every effort to apply the *principles* outlined in this order in those cases where circumstances require adaptation, by using good judgment, common sense, and reasonableness. The principles are:

- Only give the information to those who have a *need to know*;
- Keep records of who got the information; and
- Safeguard the information during use and destroy it properly after use.

This order describes the minimum effort required. In some cases, the disseminator should take additional precautions as circumstances dictate. It is the responsibility of those disseminating SBU building information to provide the first line of defense against misuse.

b. Assistant Regional Administrators (ARA's). PBS ARA's, or their designated Federal employee representatives (or in the case of delegated buildings, Agency officials), must ensure SBU building information is protected from unauthorized use. Federal Government employees who handle SBU building information shall have security training outlining the procedures in this order.

c. Federal Protective Service (FPS). The FPS at Central Office and in each GSA region must inform regional security personnel regarding the information contained herein. FPS, in coordination with other PBS offices, shall participate in PBS regional security training.

d. Office of the Chief Architect (PC). PC must inform the GSA regional offices responsible for managing SBU building information of the requirements contained herein. The OCA shall work with private sector architects, engineers, and contractors to ensure that these groups are aware of the requirements contained in this order, including:

(1) Labeling of information. All SBU building information, either in electronic or paper formats, shall have imprinted on **each** page of the information:

**PROPERTY OF THE UNITED STATES GOVERNMENT
FOR OFFICIAL USE ONLY
Do not remove this notice
Properly destroy documents when no longer needed**

(2) The following paragraph will be included on the **cover** page of the information (such as the cover page on the set of construction drawings and on the cover page of the specifications) and on the label of all magnetic media:

**PROPERTY OF THE UNITED STATES GOVERNMENT
COPYING, DISSEMINATION, OR DISTRIBUTION OF THESE DRAWINGS, PLANS,
OR SPECIFICATIONS TO UNAUTHORIZED USERS IS PROHIBITED
Do not remove this notice
Properly destroy documents when no longer needed**

(3) The previous two statements shall be prominently labeled in bold type in a size appropriate for the document. On a set of construction drawings, for example, the statements should be in a minimum of 14 point bold type.

e. Office of General Counsel. The Office of General Counsel must provide legal advice concerning Freedom of Information Act (FOIA) requests pertaining to SBU building information.

f. Office of Customer Service (PB). PB must ensure that all GSA customers are aware of the requirements contained in this order.

g. Office of Realty Services (PE). PE must ensure that Leasing Contracting Officers (GS-1170) and Realty Specialists (GS-1170) are aware of the requirements contained in this order.

h. Office of Portfolio Management (PT). PT must notify client agency officials of those GSA buildings delegated to them of the requirements contained in this order.

i. Office of Business Operations (PX). PX must notify all Procurement Contracting Officers (GS-1102) and Property Management personnel of the requirements contained in this order.

j. Contracting Officers (CO). The CO's must post a synopsis of the work electronically to the Government wide Point of Entry (GPE), currently FedBizOpps (<http://fedbizopps.gov/>), for all procurements containing SBU building information. For those procurements where SBU building information, such as exhibits, associated plans, specifications, etc., cannot be made available electronically on the GPE, the CO's must provide a notification as required by the GSA Acquisition Manual (APD P 2800.12B), GSAM 504.570(d).

8. Type of Information for Document Security

a. Sensitive But Unclassified (SBU) building information. Includes but is not limited to paper and/or electronic documentation of the physical facility information listed below. Building designs (such as floorplans), construction plans and specifications, renovation/alteration plans, equipment plans and locations, building operating plans, information used for building service contracts and/or contract guard services, or any other information considered a security risk, for

all GSA controlled facilities, shall be considered covered under this category. Specifically (but not exclusively), it includes:

- (1) Location of secure functions in the facility such as judges' chambers and libraries, prisoner or judges' secure circulation paths (both vertical and horizontal), cell blocks, sally ports, judges' parking, security areas, and childcare, major computer processing areas or other client sensitive processing areas (such as major photo or computer labs, etc);
- (2) Location of all utilities, such as heating, ventilation, air conditioning, information technology (IT) systems, location of air intake vents, water sources, gas lines, plumbing lines, building automation systems, power distribution systems, emergency generation equipment, uninterrupted power sources (UPS), security and fire alarm systems, routes and annunciation panels;
- (3) Location and type of structural framing for the building and any information regarding structural analysis or building security and blast mitigation analysis and counter terrorism methods taken to protect the occupants and building; and
- (4) Information regarding security systems or strategies of any kind (such as camera locations) or security guards (such as number and location).

b. Non-sensitive unclassified building information. Information regarding the building that may be made available for limited public dissemination under the following conditions:

- (1) Building elevation or other drawings of new or existing buildings shall not show or label information defined under the SBU categories in 8.a., above.
- (2) Interior photographs that are limited to publicly accessible space or have been cleared for publication by GSA or the agency responsible for the space.
- (3) Conceptual space planning drawings with floor layouts may be made available for presentations to professional designers (architect/engineers, etc.), professional schools for educational purposes, community planning groups participating in the design of new Federal space, or professional print publications *if* specific SBU building information (structural columns, utilities, etc.) is not shown and judges' chambers, secure circulation routes, secure elevator locations, etc. are shown as generic space with no wall partitions (such as a block of unpartitioned space labeled "Judicial Space"). Generic concept (bubble) diagrams may be shown to convey information for a non-specific building.

Note: It is the responsibility of the disseminator to use good judgment and to apply the principle that *the more open the forum, the more generic/conceptual the information must be.*

- (4) Detailed floor layout drawings of any kind for specific buildings shall not be made available over the public internet or in public presentations or print media, such as brochures, magazines, books, etc.

9. Reasonable care for dissemination of sensitive but unclassified (SBU) building information. Those who are disseminating SBU building information (which includes flowdown dissemination by prime/general contractors, subcontractors, suppliers, architects/engineers, Federal Agencies, lessors, private sector planrooms, state and local governments, print shops/reprographic firms,

etc.) must obtain a signed copy of the Document Security Notice (attached) by authorized users of SBU building information that they will exercise *reasonable care* when handling SBU building documents. "Reasonable care" is defined as:

a. Limiting dissemination to authorized users. Dissemination of information shall only be made upon determination that the recipient is *authorized* to receive it. The criterion to determine authorization is *need-to-know*. Those with a *need-to-know* are other Federal Government agencies (who shall make requests through their agency management), and non-Government entities that are specifically granted access for the conduct of business on behalf of or with GSA. This includes those necessary to do work at the request of the Government, such as architects and engineers, consultants, contractors, subcontractors, suppliers, planrooms, and others that the contractor deems necessary in order to submit an offer/bid or to complete the work or contract, as well as maintenance and repair contractors and equipment service contractors.

Note: It is the responsibility of the person or firm disseminating the information to assure that the recipient is an authorized user and to keep the Document Security Notice records of recipients.

Authorized users shall provide identification as set forth below:

(1) Valid identification for Federal Government users. Valid identification of authorized Government users receiving SBU building information shall be verification of Government employment.

(2) Valid identification for non-Government users. Authorized non-Government users shall provide valid identification to receive SBU building information. Valid identification shall be all items I through III, and including item IV, as necessary:

I. A copy of a valid business license or other documentation granted by the state or local jurisdiction to conduct business. The license at a minimum shall provide the name, address, phone number of the company, state of incorporation, and the name of the individual legally authorized to act for the company. The business must be of the type required to do the work. A general contractor's license may be substituted for the business license in states that issue such licenses. In the rare cases where a business license is not available from the jurisdiction, the information shall be provided and testified to by the submitter; and

II. Verification of a valid DUNS Number against the company name listed on the business license or certification. Verification may be obtained through <http://www.fpdcc.gov>, or by calling Dun & Bradstreet at 703-807-5078 to set up an account; and

III. A Valid IRS Tax ID Number of the company requesting the information; and, as necessary,

IV. A Valid picture state driver's license shall be required of person(s) picking up SBU documents. Phone verification must be made to a previously validated authorized user that the individual(s) picking up the documentation is/are authorized to do so by the company obtaining the documents. SBU documents will not be released to any individual or firm who has not, either previously or at the time of pickup, supplied the required documentation as outlined in paragraphs I through III, above.

b. Record keeping. Those who disseminate SBU building information must require a signed Document Security Notice from those who receive the information. Records of the signed Document Security Notices shall be maintained by the disseminator pursuant to the GSA system of keeping long-term records and plans. At the completion of work, secondary and other disseminators shall be required to turn over their Document Security Notice dissemination records to GSA to be kept with the permanent files.

c. Retaining and destroying documents. The efforts required above shall continue throughout the entire term of contract and for whatever specific time thereafter as may be necessary. Necessary record copies for legal purposes (such as those retained by the architect, engineer, or contractor) must be safeguarded against unauthorized use for the term of retention. Documents no longer needed shall be destroyed (such as after contract award, after completion of any appeals process, or completion of the work). Destruction shall be done by burning or shredding hardcopy, and/or physically destroying CD's, deleting and removing files from the electronic recycling bins, and removing material from computer hard drives using a permanent erase utility or similar software.

d. Notice of disposal. For all contracts using SBU building information, the contractor shall notify the GSA contracting officer that he and his subcontractors have properly disposed of the SBU building documents, with the exception of the contractor's record copy, at the time of Release of Claims to obtain final payment.

10. Miscellaneous.

a. State and local governments. In order to comply with local regulations, GSA must provide localities with documents to issue building permits and to approve code requirements. Public safety entities such as fire departments and utility departments require unlimited access on a need-to-know basis. These authorities must be informed at the time they receive the documents that the information requires restricted access from the general public. When these documents are retired to local archives, they should be stored in restricted access areas. *This order will not preclude the dissemination of information to those public safety entities.*

b. Electronic transfer and dissemination. Transfer and dissemination of SBU information beyond the GSA intranet (internet or extranet, modem, DSL, wireless, etc.) must use at least 128 bit symmetric key encryption following NIST Special Publication 800-21 *Guideline For Implementing Cryptography in the Federal Government*. All transfers must use standard commercial products (such as PGP and Secret Agent) with encryption algorithms that are at least 128 bit symmetric (3DES, AES, RC4, IDEA, etc.), and follow the instructions outlined in this order. Authorized users that use project extranets for electronic project management during design or after construction contract award to transfer SBU building information are responsible for verifying and certifying to the Government contracting officer that project extranets meet applicable physical and technical GSA security requirements as determined by the PBS Chief Information Officer (CIO). Access to the sites shall be password protected and access shall be granted only on a need-to-know basis. A record of those individuals who have had electronic access shall be maintained by the contracting officer or other disseminator in accordance with the GSA system of keeping long-term records.

c. Appropriate levels of security. GSA intends to meet project security requirements as defined by our client agencies. This order is meant to define the minimum security requirements of GSA for SBU building information. A client agency may define an individual project requiring additional security over that outlined in this order. Any information classified for national security purposes shall be handled according to the DOD 5220.22-M National Industrial Security Program Operating Manual (NISPOM) and other appropriate national security directives.

d. Freedom of Information Act (FOIA) requests. Because of the sensitive nature of SBU building information from a security standpoint, it shall not be disclosed pursuant to a FOIA request without a thorough analysis of the security implications and any potentially applicable

exemptions under the FOIA. Any determination to disclose SBU building information pursuant to a FOIA request must be made by the PBS ARA or the PBS Deputy Commissioner, after consultation with the servicing legal office and the servicing FPS office.

e. Proprietary information owned by Architect/Engineers. All professional services consultants shall sign the Document Security Notice that documents containing SBU building information created under contract to the Federal Government shall be handled according to the procedures under this order.

f. Private sector planrooms. Numerous private sector businesses provide planrooms, which provide access to construction plans and specifications for bidding purposes as a service to construction contractors and subcontractors. Before receiving GSA SBU building information from any source for dissemination, the private sector planroom shall demonstrate to GSA that they can and will adhere to the procedures outlined in this order, and sign the Document Security Notice.

g. Reporting incidents of concern. Any concern of a significant security risk should be reported immediately to the FPS Megacenter or to the FPS Investigation Section at (202) 501-0793 and any other security agencies as deemed appropriate.

F. JOSEPH MORAVEC
Commissioner
Public Buildings Service

Request for Construction Documents Exhibit _____
Attachment _____
Solicitation _____

DOCUMENT SECURITY NOTICE TO PROSPECTIVE BIDDERS/OFFERORS

This solicitation includes Sensitive But Unclassified (SBU) building information. SBU documents provided under this solicitation are intended for use by authorized users only. In support of this requirement, GSA requires bidders/offerors to exercise reasonable care when handling documents relating to SBU building information per the solicitation.

REASONABLE CARE:

1. Limiting dissemination to authorized users. Dissemination of information shall only be made upon determination that the recipient is *authorized* to receive it. The criterion to determine authorization is *need-to-know*. Those with a *need-to-know* are those who are specifically granted access for the conduct of business on behalf of or with GSA. This includes all persons or firms necessary to do work at the request of the Government, such as architects and engineers, consultants, contractors, sub-contractors, suppliers, and others that the contractor deems necessary in order to submit an offer/bid or to complete the work or contract, as well as maintenance and repair contractors and equipment service contractors.

Note: It is the responsibility of the person or firm disseminating the information to assure that the recipient is an authorized user and to keep records of recipients.

Authorized users shall provide identification as set forth below:

Valid identification for non-Government users. Authorized non-Government users shall provide valid identification to receive SBU building information. The identification shall be presented and verified for each dissemination. Valid identification shall be all items (a) through (c), below, and including item (d), as necessary:

- (a) **A copy of a valid business license or other documentation granted by the state or local jurisdiction to conduct business.** The license at a minimum shall provide the name, address, phone number of the company, state of incorporation, and the name of the individual legally authorized to act for the company. The business must be of the type required to do the work. A general contractor's license may be substituted for the business license in states that issue such licenses. In the rare cases where a business license is not available from the jurisdiction, the information shall be provided and testified to by the submitter; and
- (b) **Verification of a valid DUNS Number** against the company name listed on the business license or certification. Verification may be obtained through <http://www.fpdc.gov>, or by calling Dun & Bradstreet at 703-807-5078 to set up an account; and
- (c) **A Valid IRS Tax ID Number** of the company requesting the information; and, as necessary,
- (d) **A Valid picture state driver's license** shall be required of person(s) picking up SBU documents. Phone verification must be made to a previously validated authorized user that the individual(s) picking up the documentation is authorized to do so by the company obtaining the documents. SBU documents will not be released to any individual or firm who has not, either previously or at the time of pickup, supplied the required documentation as outlined in paragraphs (a) through (c), above.

2. Retaining and destroying documents. The efforts required above shall continue throughout the

entire term of the contract and for whatever specific time thereafter as may be necessary. Necessary record copies for legal purposes (such as those retained by the architect, engineer, or contractor) must be safeguarded against unauthorized use for the term of retention. Documents no longer needed shall be destroyed (such as after contract award, after completion of any appeals process or completion of the work). Destruction shall be done by burning or shredding hardcopy, and/or physically destroying CD's, deleting and removing files from the electronic recycling bins, and removing material from computer hard drives using a permanent erase utility or similar software.

3. Term of Effectiveness. The efforts required above shall continue throughout the entire term of contract and for what specific time thereafter as may be necessary, as determined by the Government. Necessary record copies for legal purposes (such as those retained by the architect, engineer, or contractor) must be safeguarded against unauthorized use for the term of retention.

4. Written agreement of disposal. For all contracts using SBU building information, the contractor shall provide a written statement that he and his subcontractors have properly disposed of the SBU building documents, with the exception of the contractor's record copy, at the time of Release of Claims to obtain final payment. Documents no longer needed shall be destroyed (such as after contract award, after completion of any appeals process or completion of the work). Destruction shall be done by burning or shredding hardcopy, and/or physically destroying CDs, deleting and removing files from the electronic recycling bins, and removing material from computer hard drives using a permanent erase utility or similar software.

The recipient acknowledges the requirement to use reasonable care, as outlined above, to safeguard the documents and, if not awarded, the contract (and at the completion of any protest/appeal process) will make every reasonable and prudent effort to destroy or render useless all SBU information received during the solicitation.

I agree that I will abide by this agreement and will only disseminate Sensitive But Unclassified (SBU) building information to other authorized users under the conditions set forth above.

Signature: _____

Title: _____

Date: _____

Copy of business license attached

DUNS Number: _____

Verified: Yes No

IRS Tax ID Number _____

▶ Validation

EXHIBIT 2

NON-DISCLOSURE AGREEMENT

Consulting Parties to the original Programmatic Agreement and the First Amended Programmatic Agreement (collectively, the "First Amended PA") for the Salt Lake City Courthouse Project acknowledge and understand that they will be given access to Sensitive But Unclassified ("SBU") building information to complete any reviews mandated by the First Amended PA if, and only if, they have first executed this Non-Disclosure Agreement ("Agreement"). Those representatives of Consulting Parties that execute this Agreement shall be considered an "Authorized Consulting Party." Each Authorized Consulting Party acknowledges, understands and agrees that any SBU documents are for use by the Authorized Consulting Party only for the purposes described in the First Amended PA. In support of this requirement, GSA requires that each Authorized Consulting Party exercise best efforts when handling documents relating to SBU building information in accordance with the following procedures.

1. Prohibition on Disclosure and Copying of SBU Information. Each Authorized Consulting Party hereby agrees not to disclose the contents of SBU information to anyone (including co-workers) unless that person has a need-to-know and previously has provided GSA with an executed Agreement. Each Authorized Consulting Party further agrees not to make copies of any portion of the SBU Information.

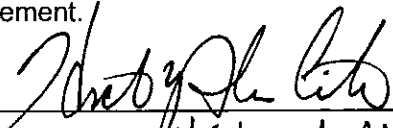
2. Destruction of Documents. The requirement of this Agreement shall continue throughout the entire term of the First Amended PA and for whatever period of time that SBU documents continue to exist. All documents shall be destroyed at the expiration of the First Amended PA or sooner, if no longer needed.

3. Written confirmation of disposal and/or return of Documents to GSA. When the review process is complete, each Authorized Consulting Party shall provide GSA with a written statement that all SBU documents have been properly destroyed. In lieu of destroying the documents, the Authorized Consulting Party may return the SBU documents to GSA for destruction.

4. Best Efforts. Each Authorized Consulting Party further agrees to use best efforts to safeguard the documents to prevent unauthorized access by unauthorized individuals. In the event that the Authorized Consulting Party becomes aware of an unauthorized disclosure of SBU information, then the Authorized Consulting Party immediately shall report the disclosure to GSA.

5. Valid Identification. The Authorized Consulting Party hereby represents that a true and correct copy of the Authorized Consulting Party's valid state picture driver's license is attached to the Agreement.

The undersigned hereby commits to the United States of America to comply with the terms of this Agreement.

By:  Date: 1.9.08
Print Name: Héctor M. Abreu-Cintrón
Title: GSA Liaison
Name of Organization: ACHP