

PROGRAMMATIC AGREEMENT AMONG  
THE UNITED STATES GENERAL SERVICES ADMINISTRATION  
AND THE FLORIDA STATE HISTORIC PRESERVATION OFFICER  
REGARDING  
THE NEW UNITED STATES FEDERAL BUILDING AND COURTHOUSE,  
FORT LAUDERDALE, FLORIDA

This **Programmatic Agreement** ("Agreement") is made this 19<sup>th</sup> day of Nov, 2020, by and among the United States (U.S.) General Services Administration ("GSA") and the Florida State Historic Preservation Officer ("SHPO") (referred to collectively herein as the "Signatories" or individually as a "Signatory") pursuant to Section 106 of the National Historic Preservation Act ("NHPA"), 54 U.S.C. § 306108, NHPA's implementing regulations at 36 C.F.R. Part 800, and the provisions of 36 C.F.R. § 800.14(b), which authorizes the negotiation of a programmatic agreement to resolve adverse effects from certain complex project situations.

**RECITALS**

**WHEREAS**, GSA is a federal agency authorized to acquire, by purchase, condemnation, or otherwise, real estate and interests in real estate, 40 U.S.C. § 581(c); and

**WHEREAS**, pursuant to the Consolidated Appropriations Act of 2018, Division E, Title V, P.L. 115-141 (March 23, 2018), Congress appropriated \$190,000,000 to GSA's Federal Buildings Fund (FBF) for a Fort Lauderdale, Florida United States Courthouse as requested by the Federal Judiciary ("New FBCT"); and

**WHEREAS**, the U.S. Government has all right, title, and interest in the existing historic Fort Lauderdale, Florida U.S. Federal Building and Courthouse ("Historic FBCT"), located downtown at 299 East Broward Boulevard, Broward County, which currently houses the U.S. District Court for the Southern District of Florida ("Southern District"); and

**WHEREAS**, the Historic FBCT was recommended as eligible for listing in the National Register of Historic Places by GSA on May 28, 2019; and

**WHEREAS**, GSA proposes to relocate the Southern District by acquiring a real estate site for the construction of the New FBCT (the "Undertaking"), on a location yet to be determined by GSA in Broward County that will be owned by the U.S. Government and under GSA's custody and control; and

**WHEREAS** GSA is coordinating its Section 106 compliance with the applicable requirements of the National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4321-4347; and

**WHEREAS** GSA provided multiple opportunities for public involvement in the development of this Undertaking through the public participation process under NEPA including holding a public scoping meeting on February 18, 2020 to obtain public feedback on the initial three (3) short-listed sites (201 North Andrews Avenue, 633 South Federal Highway, and 477 SE 1<sup>st</sup> Avenue) evaluated under NEPA but rejected without further review due in part to public comment; and

**WHEREAS**, GSA's site selection and real estate acquisition for the New FBCT will occur on one of four (4) new sites identified by GSA through its site selection process following the February 18, 2020, public scoping meeting; and

**WHEREAS**, these four (4) sites include: the site known as the Hudson property ("Hudson Site"), located near the Tarpon River; the site known as Tri Rail Broward ("Tri Rail Broward Site"), located near the entrance-exit ramp to I-95; the site known as the County Courthouse ("County Courthouse Site"), located near the New River; and the site known as Tri Rail Cypress Creek ("Tri Rail Cypress Creek Site"), located near NW 59<sup>th</sup> Street and NW 57<sup>th</sup> Court; and

**WHEREAS** in consultation, GSA determined the Areas of Potential Effect ("APE") for these four (4) sites, as identified through separate Exhibits attached hereto, include: Exhibit 1 for the Hudson Site ("Hudson APE,"); Exhibit 2 for the Tri Rail Broward Site ("Tri Rail Broward APE"); Exhibit 3 for the County Courthouse Site ("County Courthouse APE"); and Exhibit 4 for the Tri Rail Cypress Creek Site ("Tri Rail Cypress Creek APE"); and

**WHEREAS** in consultation, GSA completed an identification and evaluation report entitled, "Cultural Resources Assessment of Four Additional Sites Proposed United States Federal Courthouse Fort Lauderdale, Florida" by S&ME dated June 2020 for each prospective site ("CRA") and determined that there are no above ground historic properties present on any of the prospective sites; and

**WHEREAS** in consultation, GSA determined that the Hudson Site and the County Courthouse Site both have potential to yield below ground historic resources and, if either site is selected for the New FBCT, will develop an investigation strategy ("Archeological Work Plan") for the selected site after purchase and prior to construction of the New FBCT; and

**WHEREAS** in consultation, GSA reviewed the APEs for the four prospective sites, and determined that the Undertaking will have no effect on above ground historic properties adjacent to the prospective sites; and

**WHEREAS** GSA contacted the Tribal Historic Preservation Officer for the Seminole Tribe, the Advisory Council on Historic Preservation ("Council"), the Broward Trust for Historic Preservation, the Broward County Certified Local Government, and the City of Fort Lauderdale Urban Design and Planning Division, who all failed to respond and therefore declined to participate in consultation; and

**WHEREAS** GSA formally initiated consultation with the SHPO regarding the effects of this Undertaking on historic properties and elected to fulfill its Section 106 responsibilities through this Agreement; and

**NOW THEREFORE**, GSA and the SHPO agree that the Undertaking shall be implemented in accordance with the following stipulations in order to take into account the potential effect of the Undertaking on historic properties.

#### **I. STIPULATIONS**

As the lead agency, GSA shall ensure that the following measures are carried out:

- A. Professional Qualifications and Guidelines

1. For any archaeological work, GSA shall ensure that all technical work carried out pursuant to this Agreement will be done by or under the direct supervision of professionals who meet the *Secretary of the Interior's Professional Qualifications Standards* (48 Federal Register 44738-9). GSA shall ensure that consultants retained for services pursuant to the Agreement meet these standards and in addition must have knowledge of and experience in relevant urban historic archaeology in the Southeastern United States, as well as archaeological monitoring.

B. Archaeology

1. Archaeological Work Plan: Upon acquisition of the selected site ("Selected Site"), GSA will develop and implement an Archaeological Work Plan for site monitoring during ground disturbance activities developed in consultation with the SHPO. The Archaeological Work Plan shall cover Unanticipated Archaeological Discoveries pursuant to Stipulation II.F.
2. If significant cultural resources are encountered during monitoring, GSA will notify the SHPO and consult further to ensure sufficient recordation, NRHP evaluation and treatment of the cultural resources.
3. SHPO Review: The SHPO's review of the Archaeological Work Plan and subsequent reports and documents will require written comments within 30 calendar days of receipt, and, where feasible; GSA will ensure incorporation of these comments into the documentation.

C. Notices

1. GSA will provide its notifications, determinations, and formal findings in writing to the SHPO as applicable.
  - a. "Written" and "in writing" includes hardcopy letters delivered via U.S. Mail, FedEx or UPS and electronic documents transmitted via electronic mail ("email") or electronic storage device such as a CD.

D. Site Acquisition and Finding of Effect

1. If the four (4) Sites under consideration for acquisition should change, then GSA will reopen consultation and seek amendments to this Agreement pursuant to Stipulation II.D.
2. Once the Selected Site has been acquired by GSA, the SHPO will be notified of the Selected Site.
3. If the Tri Rail Broward Site or the Tri Rail Cypress Creek Site is selected, then GSA will document the finding of no effect and notify the SHPO.

4. If the Hudson Site or County Courthouse Site is selected and after archaeological fieldwork is completed, then GSA will document the finding of effect and notify the SHPO.
5. SHPO shall provide concurrence with the GSA's Finding of Effect within 30 days or the GSA may assume SHPO's concurrence. If SHPO does not concur with the GSA's Finding of Effect, SHPO and GSA shall follow the procedure described in Stipulation II.C.
6. If GSA reaches a Finding of Adverse Effect, GSA shall consult with SHPO regarding measures to avoid, minimize or mitigate the adverse effect. If mitigation is determined necessary, the mitigation measures may be carried out under the Archaeological Work Plan, following concurrence from SHPO. If necessary, GSA shall amend the Archaeological Work Plan, to detail additional archaeological requirements or other mitigation measures beyond the scope of the original Archaeological Work Plan.
  - a. GSA shall notify SHPO following completion of mitigation measures. SHPO shall concur within 30 days that mitigation measures are sufficiently completed or the GSA may assume SHPO's concurrence. If SHPO does not concur, SPO and GSA shall follow the procedure described in Stipulation II.C.

## II. STANDARD CLAUSES

### A. Public Communications

#### 1. Public Notice

- a. Public Notice: GSA will continue to coordinate NEPA and Section 106 compliance, and public participation, in accordance with 36 C.F.R. § 800.8(a).

### B. Administration of Agreement: Cooperation

During the implementation of this Agreement, and until the Signatories agree in writing that the terms of the Agreement have been fulfilled, each Signatory agrees to cooperate with the other Signatory to facilitate the satisfaction of their respective obligations under this Agreement. The Signatories agree to work in good faith with each other to meet their respective obligations in a timely manner.

### C. Dispute Resolution

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

1. Forward all documentation relevant to the dispute, including the GSA's proposed resolution, to the Council. The Council shall provide GSA with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, GSA shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the Council or signatory, and provide them with a copy of this written response. GSA will then proceed according to its final decision.
2. If the Council does not provide its advice regarding the dispute within the thirty (30) day time period, GSA may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, GSA shall prepare a written response that takes into account any timely comments regarding the dispute from the signatory to the PA, and provide them and the Council with a copy of such written response.
3. GSA's responsibility to carry out all other actions subject to the terms of this PA that are not the subject of the dispute remain unchanged.

D. Amendments

This Agreement may be amended when an amendment is agreed to in writing by both Signatories. The amendment shall be effective on the date a copy signed by both of the Signatories is filed with the Council, with notification to the Signatories. This Agreement may not otherwise be amended.

E. Termination

1. Proposal to Terminate

If any Signatory to this Agreement determines that it cannot or will not fulfill its responsibilities under this Agreement, that Signatory shall immediately consult with the other Signatory in an attempt to develop an amendment per Stipulation II.D of this Agreement. If within thirty (30) days, or another time period agreed to by both Signatories in writing, an amendment cannot be reached, any Signatory may terminate this Agreement upon written notification to the other Signatory.

2. Responsibilities upon Termination

If this Agreement is terminated per Stipulation II.E, then prior to work continuing on the Undertaking, GSA must either: (a) execute a new programmatic agreement under 36 C.F.R. § 800.14(b); or (b) follow the process under 36 C.F.R. §§ 800.3 through 800.7 to individually and separately review the three actions that comprise the Undertaking.

F. Unanticipated Archaeological Discoveries

In the event that unanticipated archeological sites, features, artifacts, or human remains are discovered during surface- or ground-disturbing activities, work shall cease in the immediate vicinity, and the area shall be secured from the elements and from potential vandalism. If unmarked human remains are encountered at any time, GSA shall also ensure that the proper authorities will be notified in accordance with Section 872.05 of the Florida Statutes regarding Unmarked Human Burials. GSA shall implement the procedures outlined in the Archaeological Work Plan dealing with unanticipated archaeological discoveries.

G. Effective Date of Agreement

This Agreement shall become effective when executed by the last of the Signatories (“Effective Date”).

H. Term/Duration of Agreement

This Agreement shall remain in full force and effect for a period of ten (10) years. One year prior to its expiration, the Signatories shall consult to determine whether it should be extended through amendment per Stipulation II.D.

I. Miscellaneous

1. Other Federal Agency Section 106 Responsibilities

In the event that another Federal agency not initially a party to or subject to this Agreement receives an application for funding/license/permit for the Undertaking as described in this Agreement, that agency may fulfill its Section 106 responsibilities by stating in writing it concurs with the terms of this Agreement and notifying GSA, the relevant SHPO, and the Council that it intends to do so. Such concurrence shall be evidenced by a letter filed with the Council, copied to the Signatories and Consulting Parties.

2. Anti-Deficiency Act – Federal Parties

This Agreement is subject to applicable laws and regulations. As to the Federal Signatory only, fulfillment of this Agreement and all of the provisions herein are subject to the availability of funds, pursuant to the Anti-Deficiency Act, 31 U.S.C. § 1341 *et seq.* This Agreement 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 Federal Signatory does not have sufficient funds available to fulfill the Stipulations of this Agreement, such Signatory shall so notify the other Signatory and Consulting Parties in writing and shall take such actions as are necessary to comply with all requirements of 36 C.F.R. Part 800. Nothing in this Agreement shall be deemed to authorize an expenditure of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341 *et seq.*

GSA shall make reasonable and good faith efforts to secure the necessary funds to implement this Agreement in its entirety. If compliance with the Anti-Deficiency Act

alters or impairs GSA's ability to implement the Stipulations of this Agreement, GSA shall consult in accordance with the amendment and termination procedures found at Stipulations II.D. and II.E. of this Agreement.

3. Recitals and Exhibits

The recitals (whereas clauses) and exhibits are incorporated herein as a substantive part of this Agreement and will be maintained by GSA in the agency's project files.

4. Authority of Signers

Each Signatory hereto represents that the person or persons executing this Agreement on behalf of such Signatory has full legal authority to do so.

5. Severability

If any provision of this Agreement, or its applications to any person or circumstance, is held invalid by any court, the invalidity or inapplicability of such provision shall not affect any other provision of this Agreement or the application of such provision to any other person or circumstance, and the remaining portions of this Agreement shall continue in full force and effect.

6. Non-Waiver

No waiver made by any Signatory with respect to the performance, or manner or time of performance, of any obligation of the other Signatory, or any condition to its own obligation under this Agreement, will be considered a waiver with respect to the particular obligation of the other Signatory or condition to its own obligation beyond those expressly waived.

7. Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Agreement.

8. Electronic Copies

Within one (1) week of the last signature on this Agreement, GSA shall provide each Signatory with one (1), legible, full-color, electronic copy of this fully executed Agreement and all of its exhibits.

9. Signatures

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

[signatures follow]



**SIGNATURE PAGE  
PROGRAMMATIC AGREEMENT  
REGARDING THE NEW UNITED STATES FEDERAL BUILDING AND COURTHOUSE,  
FORT LAUDERDALE, FLORIDA**

U.S. GENERAL SERVICES ADMINISTRATION

**KEVIN KERNS** Digitally signed by KEVIN KERNS  
Date: 2020.10.30 16:18:35 -04'00'

By:

Kevin Kerns  
Regional Commissioner  
Public Buildings Service  
U.S. General Services Administration

Date:

U.S. GENERAL SERVICES ADMINISTRATION

**BETH SAVAGE** Digitally signed by BETH SAVAGE  
DN: cn=BETH SAVAGE, o=U.S. Government, ou=General Services Administration,  
c=US, email=BETH.SAVAGE@GSA.GOV, serial=1144730100016549  
Reason: I am the author of this document  
Location: your signing location here  
Date: 2020-10-30 14:28:15

By:

Beth L. Savage  
Director, Center for Historic Buildings  
Federal Preservation Officer  
U.S. General Services Administration

Date:

FLORIDA STATE HISTORIC PRESERVATION OFFICER

By:

  
Timothy A. Parsons, Ph.D.  
State Historic Preservation Officer

11/19/2020  
Date:

**EXHIBIT LIST**  
**REGARDING THE NEW UNITED STATES FEDERAL BUILDING AND COURTHOUSE,**  
**FORT LAUDERDALE, FLORIDA**

- Exhibit 1 Hudson Site Area of Potential Effect (APE)
- Exhibit 2 Tri Rail Broward Area of Potential Effect (APE)
- Exhibit 3 County Courthouse Area of Potential Effect (APE)
- Exhibit 4 Tri Rail Cypress Creek Area of Potential Effect (APE)
- Exhibit 5 Archaeological Work Plan (to be added following GSA's acquisition of the selected site and contract with the design builder)

THE NEW UNITED STATES FEDERAL BUILDING AND COURTHOUSE,  
FORT LAUDERDALE, FLORIDA

Exhibit 1: Hudson Site Area of Potential Effect



THE NEW UNITED STATES FEDERAL BUILDING AND COURTHOUSE,  
FORT LAUDERDALE, FLORIDA

Exhibit 2: Tri Rail Broward Site Area of Potential Effect



THE NEW UNITED STATES FEDERAL BUILDING AND COURTHOUSE,  
FORT LAUDERDALE, FLORIDA

Exhibit 3: County Courthouse Site Area of Potential Effect



THE NEW UNITED STATES FEDERAL BUILDING AND COURTHOUSE,  
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Exhibit 4: Tri Rail Cypress Creek Site Area of Potential Effect



THE NEW UNITED STATES FEDERAL BUILDING AND COURTHOUSE,  
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Exhibit 1: Hudson Site Area of Potential Effect



THE NEW UNITED STATES FEDERAL BUILDING AND COURTHOUSE,  
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Exhibit 2: Tri Rail Broward Site Area of Potential Effect





THE NEW UNITED STATES FEDERAL BUILDING AND COURTHOUSE,  
FORT LAUDERDALE, FLORIDA

Exhibit 3: County Courthouse Site Area of Potential Effect



THE NEW UNITED STATES FEDERAL BUILDING AND COURTHOUSE,  
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Exhibit 4: Tri Rail Cypress Creek Site Area of Potential Effect

