

**MEMORANDUM OF AGREEMENT  
AMONG THE U. S. GENERAL SERVICES ADMINISTRATION,  
THE KENTUCKY HERITAGE COUNCIL AND THE LEXINGTON-FAYETTE URBAN  
COUNTY GOVERNMENT  
REGARDING SECURITY IMPROVEMENTS  
AT THE U.S. FEDERAL COURTHOUSE AND POST OFFICE, LEXINGTON, KY**

This Memorandum of Agreement (“MOA” or “Agreement”) is made as of this \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and among the U. S. General Services Administration (“GSA”), the Kentucky Heritage Council (“State Historic Preservation Office” or “SHPO”), and the Lexington-Fayette Urban County Government (“LFUCG”) referred to collectively herein as the “Signatories” or individually as a “Signatory”, pursuant to 36 C.F.R. Part 800, and regulations implementing Section 106 of the National Historic Preservation Act (“Act”) as amended, 54 U.S.C. §306108. The Signatories agree as follows:

**WHEREAS**, the GSA proposes to construct a new exterior addition on the rear elevation of the U.S. Federal Courthouse and Post Office, located at 101 Barr Street, Fayette County, in Lexington, Kentucky (“Property”), to address security deficiencies related to prisoner movement; vertical and horizontal circulation; ingress and egress; freight delivery; and associated modifications to tenant spaces and infrastructure (“Undertaking”);

**WHEREAS**, the Property is listed in the National Register of Historic Places (“NRHP”), and is considered one of Lexington’s most representative examples of 1930s Neo-Classical architecture;

**WHEREAS**, the GSA has defined the Undertaking's Area of Potential Effect (“APE”) to cover approximately seven acres to include the Property itself and adjacent historic properties listed, or eligible for listing, in the NRHP, which APE is depicted, attached hereto and incorporated by reference as Exhibit A;

**WHEREAS**, the GSA prepared a preliminary design and thereafter consulted by various means including correspondence (dated October 2, 2014, and November 20, 2014, and delivered by overnight mail service); a site visit (January 8, 2015); and various phone and online consultations;

**WHEREAS**, GSA has determined that the Undertaking poses an adverse effect on the historic Property, since the design diminishes the overall visual character and integrity by introducing elements which significantly interrupt the architectural symmetry, as depicted in the 65% design submittal (“Preliminary Elevations”, October 15, 2014) and conceptual rendering (“Architectural Concept”, February 5, 2015) attached hereto and incorporated by reference as Exhibit B-1 and Exhibit B-2, and part of Exhibit B, entitled, “Baseline Project Documents”;

**WHEREAS**, design alternatives are limited due to programmatic, economic, and site

constraints, and GSA has minimized the impact of the alterations to the degree possible, therefore GSA plans to mitigate the adverse effect by documenting the historic, architectural, and cultural values of the Property to heighten public awareness and appreciation in accordance with the Stipulations defined below;

**WHEREAS**, GSA is utilizing a design-build contracting method as authorized by Federal regulations, for design and construction of the Undertaking, and for scheduling efficiencies, GSA consulted on proceeding with interior modifications on the fourth floor, as described in letter dated March 2, 2015, and delivered via overnight mail service, and the Signatories concurred that, in light of previous extensive renovations and GSA's intent to retain historic materials to the extent possible, the proposed plan was consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties (36 C.F.R. §68) and that this component of the proposed undertaking would not compound the adverse effect determination.

**WHEREAS** pursuant to 36 C.F.R. §800.6(a)(1), prior to beginning consultation to resolve adverse effects, the GSA notified the Advisory Council on Historic Preservation ("ACHP") with documentation specified in 36 C.F.R. §800.11(e), and the ACHP has chosen not to participate as a Signatory; and the GSA consulted in accordance with 36 C.F.R. § 800.6(b)(1), entitled "Resolution without the Council";

**WHEREAS** in accordance with 36 C.F.R. § 800.6(b)(1)(iv), the GSA will submit this Agreement, along with the documentation specified in 36 C.F.R. §800.11(f), to the ACHP prior to approving the Undertaking in order to meet the requirements of section 106 and 36 C.F.R. §800.6(b)(1);

**WHEREAS**, given the location and nature of the Undertaking, the GSA notified the adjacent property owners by letters dated May 19, 2015, and May 27, 2015, and delivered by overnight mail, of the general construction schedule and anticipated nominal, temporary impact on the socio-cultural and natural environment; and

**WHEREAS**, after the Stipulations are carried out, the parties will have agreed upon a set of plans for the work to be performed in accordance with this Agreement;

**NOW, THEREFORE**, the Signatories agree that the section 106 consultations for this MOA have concluded successfully and that therefore the Undertaking shall be implemented in accordance with the following Stipulations in order to take into account and mitigate the effect of the Undertaking on historic properties, and that these Stipulations shall govern the Undertaking and all of its parts until this MOA expires or is terminated.

## **STIPULATIONS**

The GSA shall ensure that the following measures I.-X. are carried out:

## I. GENERAL REQUIREMENTS

- A. The Undertaking shall be planned, developed and executed in a manner consistent with the project documents described below in Section II: Design Review and Consultation.
- B. All work shall be accomplished by or under the direct supervision of a person or persons who meet(s) or exceed(s) the Professional Qualification Standards available on the web at [http://www.nps.gov/history/local-law/arch\\_stnds\\_9.htm](http://www.nps.gov/history/local-law/arch_stnds_9.htm) in those areas in which qualifications are applicable for the specific work performed.

## II. DESIGN REVIEW AND CONSULTATION

The GSA will consult with the Signatories on an exterior design review submission package containing architectural elevations and finish specifications for masonry cladding, window, and door systems. This design review submission timeline will require written comments within thirty (30) calendar days of receipt, and where feasible, GSA will incorporate these into the final design attached hereto and incorporated by reference as Exhibit C: Approved Project Documents – Final Elevations and Architectural Finish Specifications. If the Signatories provide no comments at all by mail or email on the exterior design submission package, postmarked within the said thirty (30)-day timeframe in this Stipulation II, GSA may assume that the SHPO and/or the LFUCG do not have any comments and will proceed to execute the Undertaking in a manner consistent with the Approved Project Documents. If GSA cannot incorporate a comment from the SHPO or LFUCG that is provided to GSA within the thirty (30)-day timeframe in this Stipulation II, due, e.g. to project schedule constraints or other irreconcilable conflicts, GSA may also proceed, but GSA shall also promptly provide the SHPO and the LFUCG a written explanation of the reasons for its objection to their comment(s) and initiate informal consultation with the SHPO and LFUCG to resolve their concerns, if any, about GSA's objection, and GSA will proceed with project based on the Approved Project Documents.

## III. DOCUMENTATION, PUBLIC OUTREACH, AND INTERPRETATION

- A. Upon completion of the Undertaking, GSA will update the existing Historic Building Preservation Plan (1993) to reflect changes resulting from this Undertaking to inform future stewardship of the Property. The revised hard copy of this plan will be provided to the Signatories.
- B. Qualified professionals with GSA will conduct research at the National Archives and other sources, on the history and architectural significance of the Property and provide digital reference materials to the Signatories for distribution to various institutions including, but not limited to: the Margaret I. King Special Collections Library at the University of Kentucky, the Kentucky Room at the Lexington Public Library Central

Branch, the Kentucky Department for Libraries and Archives, and the Martin F. Schmidt Research Library at the Kentucky Historical Society.

- C. GSA will coordinate the application, research, and fabrication of an interpretive historical marker in coordination with SHPO and LFUCG through the KHS to be funded and installed by GSA at the main entrance of the Property. It is expected that the language on the sign will be based on research conducted in relation to Stipulation III.B and other resources as appropriate. The language and the sign's proposed location will be provided to SHPO and LFUCG for review and comment prior to the sign's erection and installation. GSA will coordinate an unveiling ceremony to present the new sign to the public, preferably on the day the sign is installed, and within six months of the completion of the Undertaking

#### IV. DURATION

This MOA will expire if its terms are not carried out within five (5) years from the date of its execution. Prior to such time, GSA may consult with the other Signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation VII below.

#### V. MONITORING AND REPORTING

Each year following the execution of this MOA until it expires or is terminated, GSA shall provide all Signatories to this MOA a summary report detailing work undertaken pursuant to its terms. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes and objections received GSA's efforts to carry out the terms of this MOA.

#### VI. DISPUTE RESOLUTION

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

- A. Forward all documentation relevant to the dispute, including GSA's proposed resolution, to the ACHP. The ACHP shall provide GSA with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, GSA shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, Signatories and Consulting Parties, and provide them with a copy of this written response. GSA will then proceed according to its final decision.

- B. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, GSA may make a final decision on the dispute and proceed

accordingly. Prior to reaching such a final decision, GSA shall prepare a written response that takes into account any timely comments regarding the dispute from the Signatories, and provide them and the ACHP with a copy of such written response.

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

## VII. AMENDMENTS

This MOA may be amended only when such an amendment is agreed to in writing by all Signatories. The amendment will be effective on the date a copy signed by all of the Signatories is filed with the ACHP.

## VIII. TERMINATION

If any Signatory to this MOA determines that its terms will not or cannot be carried out, that Signatory shall immediately consult with the other Signatories to develop an amendment per Stipulation VII. above. If within thirty (30) days (or another time period agreed to by all Signatories) an amendment cannot be reached, any Signatory may terminate the MOA upon written notification to the other Signatories. Once the MOA is terminated and prior to any work continuing on the Undertaking, GSA must either (a) execute an MOA pursuant to 36 C.F.R. § 800.6 or (b) request, take into account, and respond to the comments of the ACHP under 36 C.F.R. § 800.7. GSA will notify the Signatories as to the course of action it will pursue.

## IX. EFFECT OF AGREEMENT

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

## X. AVAILABILITY OF FUNDS

This Memorandum of Agreement is subject to applicable laws and regulations. Fulfillment of this Memorandum of Agreement by GSA is subject, pursuant to the Anti-Deficiency Act, 31 U.S.C. §§ 1341 et seq., to the availability of funds. This MOA is not an obligation of funds in advance of an appropriation of such funds, and it does not constitute authority for the expenditure of funds. If GSA does not have sufficient funds available to fulfill the stipulations of this MOA, GSA shall so notify the Signatories and ACHP and shall take such actions as are necessary to comply with all requirements of 36 CFR Part 800. Nothing in this MOA shall be deemed to authorize an expenditure of funds in violation of the Anti-Deficiency Act, 31 U.S.C. §§ 1341 et seq. GSA shall make reasonable and good faith efforts to seek funding for implementing this MOA.

XI. SIGNATURES

**IN WITNESS WHEREOF**, the Signatories have caused this MOA to be executed in their respective names and on their behalf this the \_\_\_\_ day of \_\_\_\_\_, 2016.

[signatures follow]

**SIGNATURE PAGE**

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AMONG THE U. S. GENERAL SERVICES ADMINISTRATION,  
THE KENTUCKY HERITAGE COUNCIL AND THE LEXINGTON-FAYETTE URBAN  
COUNTY GOVERNMENT  
REGARDING SECURITY IMPROVEMENTS  
AT THE U.S. FEDERAL COURTHOUSE AND POST OFFICE, LEXINGTON, KY**

**U.S. GENERAL SERVICES ADMINISTRATION**

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

Beth L. Savage  
Director, Center for Historic Buildings  
Federal Preservation Officer

**SIGNATURE PAGE**

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**U.S. GENERAL SERVICES ADMINISTRATION**

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

Michael Goodwin  
Regional Commissioner  
Public Buildings Service  
Southeast Sunbelt Region



**SIGNATURE PAGE**

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**KENTUCKY HERITAGE COUNCIL**

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

Craig A. Potts  
Executive Director and State Historic Preservation Officer

**SIGNATURE PAGE**

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**LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**

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

The Honorable Jim Gray  
Mayor of Lexington

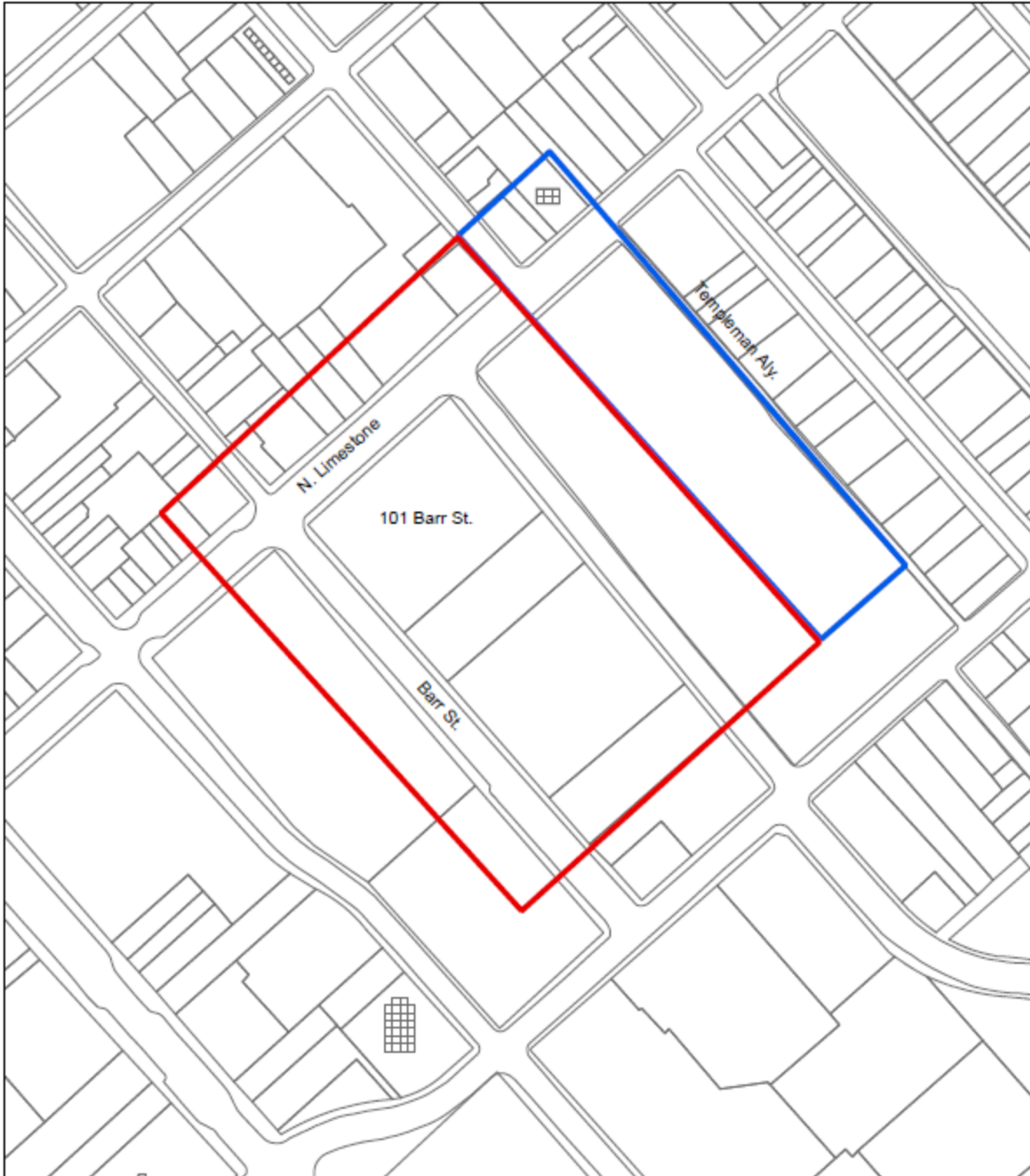
## EXHIBITS


The following Exhibits are attached hereto and made a part of this Agreement:



- A – Area of Potential Effect
- B – Baseline Project Documents
  - B-1 – Preliminary Elevations (65% Design Submittal, October 15, 2014)
  - B-2 – Architectural Concept (Phone Consultation, February 5, 2015)
- C – Approved Project Documents – Final Elevations and Architectural Finish Specifications


# Exhibit A


Area of Potential Effect  
(Expanded APE Boundary)



 **101 Barr Street**  
Lexington, Kentucky

 Existing APE Boundary  
 Expanded APE Boundary



 LPL/CS 2015

**Exhibit B**

Baseline Project Documents



**Exhibit B-2**  
Architectural Concept  
Phone Consultation, 2/5/15



**Exhibit C**

Approved Project Documents – Final Elevations and Architectural Finish Specifications

(to be inserted)