

MEMORANDUM OF AGREEMENT
BETWEEN
THE JOHN F. KENNEDY CENTER FOR THE PERFORMING ARTS,
WASHINGTON DC
AND
THE DEPARTMENT OF THE ARMY

ARTICLE I. PURPOSE AND AUTHORITY

This Memorandum of Agreement (MOA) is entered into by and between the John F. Kennedy Center for the Performing Arts, Washington D.C. (Kennedy Center) and the United States Department of the Army (DA) ("the parties") for the purpose of establishing a mutual framework governing the respective responsibilities of the parties for ordering and delivering technical assistance, engineering and construction contract(s) management, source selection for minor 8A housekeeping operation and maintenance (O&M) contracts, contract reviews for legal sufficiency, and other related services. The assistance related to the implementation of the Comprehensive Building Plan ("the program"), mandated by the John F. Kennedy Center Act Amendments of 1994, will, in an annual implementation, repair and maintain the deteriorated and often technically-obsolescent 25 year old facility known as the Kennedy Center building. The "Preliminary Report on Comprehensive Building Plan" is APPENDIX A to this MOA. This MOA is entered into pursuant to the Economy in Government Act (31 U.S.C. § 1535) and 20 U.S.C. §§ 76 j(a)(2)(A) and (C).

ARTICLE II. SCOPE OF SERVICES

Goods and services which the DA may provide under this MOA include technical support services, including but not limited to Architect-Engineer (AE) contract(s) management, design reviews, advertising, awarding and managing construction contract(s), source selection for O&M contracts and such other related services as may be agreed upon in the future to support the program outlined in APPENDIX A.

Nothing in this MOA is intended to affect independent arrangements between the parties. Nothing in this MOA shall be construed to require the Kennedy Center to use the services of the DA, or to require the DA to provide any goods or services to the Kennedy Center. The MOA signed on 15 and 27 June 1995, respectively, between the Kennedy Center and the US Army Corps of Engineers, Baltimore District, is incorporated herein by reference. In the event of conflict between that MOA and this MOA, this MOA shall control.

ARTICLE III. INTERAGENCY COMMUNICATIONS

To provide for consistent and effective communications between the Kennedy Center and the DA, each shall appoint in writing a Principal Representative to serve as its central point of contact on matters relating to this MOA. Additional representatives may also be appointed to serve as points of contact on WOs.

The U.S. Army Corps of Engineers, Baltimore District, will serve as the point of contact for the DA on all matters relating to this MOA.

ARTICLE IV. WORK ORDERS AND IMPLEMENTING ARRANGEMENTS

In response to requests from the Kennedy Center for DA assistance under this MOA, the Kennedy Center and the DA shall conclude mutually-agreed-upon written WOs, which shall include the following:

- A detailed scope-of-work statement;
- Schedule(s);
- Funding arrangements, including statement that payments shall be made by reimbursement;
- The amount of funds required and available to accomplish the scope of work, as stated above;
- The Kennedy Center's fund citation and the date upon which the cited funds

- The DA shall advise the Kennedy Center concerning compliance with applicable statutes and regulations;
- The DA shall provide technical recommendations for the efficient execution and completion of the WOs;
- The DA shall, upon execution of a MOA between the Kennedy Center and the U.S. Army Corps of Engineers Board of Contract Appeals, facilitate and assist in the litigation of appeals arising under contracts let by the Kennedy Center; and
- The DA shall review contract packages, perform source selection and award contracts for Kennedy Center O&M services. The DA shall invite the Kennedy Center to participate in the source selection process for these services.

ARTICLE VI. FUNDING

The Kennedy Center shall fund all costs of assistance provided under this MOA. The Kennedy Center shall provide a reimbursable order in advance of the commencement of work or the issuance of any obligation of the DA for any task assigned. The Kennedy Center shall provide the DA the full amount of estimated expenses by delivering a certified reimbursable order (ENG FORM 4914-R), US Army Corps of Engineers Interagency Agreement, or a Kennedy Center equivalent, acceptable to the DA, prior to the start of each WO. If the actual cost to the DA is forecast to exceed the amount of funds available, the DA shall promptly notify the Kennedy Center of the amount of the additional funds necessary to pay for the required goods and services. The Kennedy Center shall either provide the additional funds to the DA, require that the scope of the assistance be limited to that which can be financed by the available funds or direct termination of the work under that WO. If the Kennedy Center directs to proceed, the Kennedy Center shall provide the DA the full amount of the additional funds within fifteen (15) calendar days thereafter.

The DA will utilize the funds issued by the Kennedy Center to cover all the DA expenses including, but not limited to, contracts, salaries, travel, per diem, administrative overhead, and indirect costs pursuant to this MOA and the WOs negotiated under this MOA. Established US Army Corps of Engineers accounting procedures will be used for

may make public announcements and respond to all inquiries relating to the ordinary procurement and contract award and administration process. The Kennedy Center or the DA shall make its best effort to give the other party advance notice before making any public statement regarding work contemplated, undertaken, or completed pursuant to WOs under this MOA.

Justification and explanation of the Kennedy Center programs before Congress and other agencies, departments, and offices of the federal Executive Branch shall be the responsibility of the Kennedy Center. The DA may provide, upon request, any assistance necessary to support the Kennedy Center's justification or explanations of the Kennedy Center's programs conducted under this MOA.

ARTICLE XII. MISCELLANEOUS

Other relationships or obligations: This MOA shall not affect any independent relationships or obligations between the Kennedy Center and the DA.

Survival: The provisions of this MOA which require performance after the expiration or termination of this MOA shall remain in force notwithstanding the expiration or termination of this MOA.

Severability: If any provision of this MOA is determined to be invalid or unenforceable, the remaining provisions shall remain in force and unaffected to the fullest extent permitted by law and regulation.

Work Review: On a triennial basis, the parties shall review the work executed under this MOA.

ARTICLE XIII. AMENDMENT, MODIFICATION AND TERMINATION

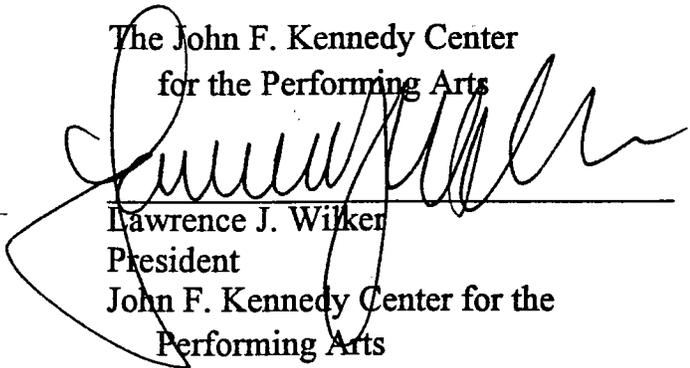
This MOA may be modified or amended only by written, mutual agreement of the

parties. Either party may terminate this MOA by providing written notice to the other party. The termination shall be effective upon the sixtieth calendar day following notice, unless a later date is set forth. In the event of termination of this MOA or a WO hereunder, the Kennedy Center shall continue to be responsible for all costs the DA incurs under this MOA or the terminated WO and for the costs of closing out or transferring any ongoing contracts.

ARTICLE XIV. EFFECTIVE DATE

This MOA shall become effective when signed by both the Kennedy Center and the Department of the Army.

The John F. Kennedy Center
for the Performing Arts



Lawrence J. Wilker
President
John F. Kennedy Center for the
Performing Arts

U.S. Department of the Army



John H. Zirschky
Acting Assistant Secretary of the Army
(Civil Works)

Date: 11/30/95

Date: 11/22/95