

**MEMORANDUM OF AGREEMENT
AMONG
THE NATIONAL PARK SERVICE
THE NATIONAL CAPITAL PLANNING COMMISSION
THE DISTRICT OF COLUMBIA STATE HISTORIC PRESERVATION OFFICE
AND
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING
THE SECURITY SCREENING FACILITY AT THE WASHINGTON MONUMENT
WASHINGTON, D.C.**

WHEREAS, the National Park Service (NPS) proposes to carry out the Washington Monument Security Screening Facility Project (Washington Monument Screening Facility), which includes construction of a pavilion on the Washington Monument plaza and installation of security screening equipment within the pavilion (Undertaking) as shown in Exhibit A, Washington Monument Security Screening Facility Concept Plan: Freestanding Plaza Pavilion; and

WHEREAS, the Washington Monument is listed in the National Register of Historic Places (NRHP), and its Grounds, which include the Monument itself, the Monument Lodge, the Survey Lodge, landscape features, vegetation, topography, and circulation paths, were determined eligible for the National Register through the 2009 Cultural Landscape Inventory prepared by NPS, with concurrence from the District of Columbia State Historic Preservation Officer (DC SHPO) on September 28, 2009; and

WHEREAS, the National Park Service (NPS) is the Federal agency that controls, operates, and maintains the Washington Monument and its Grounds; and

WHEREAS, the Washington Monument, the primary memorial to the nation's first president, is toured by approximately one million people annually with millions more visiting the surrounding grounds, and is one of the most prominent icons in the nation, making it a potential target for terrorist attack; and

WHEREAS, a permanent vehicular barrier system was completed with landscape improvements in 2006, and the accompanying Programmatic Agreement is now terminated; and

WHEREAS the existing temporary visitor screening facility, constructed at the Monument's base in 2001, requires replacement in order to meet the long-term security and cultural resource management requirements at the Monument; and

WHEREAS, NPS, pursuant to the regulations (36 CFR 800) implementing Section 106 of the National Historic Preservation Act (16 USC 470), issued letters dated November 2, 2010, initiating consultation with the District of Columbia State Historic Preservation Officer (DC SHPO) and inviting the Advisory Council on Historic Preservation (ACHP) to participate in the consultation; and

WHEREAS, the ACHP elected to participate in the consultation and to sign this Memorandum of Agreement (MOA); and

WHEREAS, NPS has consulted with other parties (Exhibit B) including, but not limited to, the U.S. Commission of Fine Arts (CFA), the Committee of 100 on the Federal City, the National Trust for Historic Preservation, the National Coalition to Save Our Mall, the Guild of Professional Tour Guides, the Smithsonian Institution, and the National Parks Conservation Association; and

WHEREAS, pursuant to 36 CFR 800.8(a), NPS has coordinated its Section 106 and National Environmental Policy Act (NEPA) reviews and has provided opportunities for review and comment on the Undertaking through five public meetings held from 2011 to 2013, including concept presentations at CFA and the National Capital Planning Commission (NCPC), Section 106 consulting party meetings, and a site visit for consulting parties; and

WHEREAS, NPS, in consultation with DC SHPO, ACHP, and the consulting parties, defined primary and secondary Areas of Potential Effect (APE) for the Undertaking (Exhibit C) extending beyond the project's immediate limits of construction and encompassing thirty-four (34) individually NRHP-listed historic properties, six (6) NRHP-listed historic districts, eight (8) cultural landscapes, and elements of the NRHP-listed Plan of the City of Washington; and

WHEREAS, the NPS made significant progress in avoiding, minimizing, and mitigating some adverse effects by means of the Section 106 and NEPA review processes, specifically the selection and refinement of the design that responds most directly to public comments and adheres to the *Secretary of Interior Standards for the Treatment of Historic Properties* and *The Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for the Treatment of Cultural Landscapes*; and

WHEREAS, following the Section 106 meeting on September 13, 2012, the Freestanding Plaza Pavilion was endorsed by the majority of the consulting parties; and

WHEREAS the Selected Alternative was chosen to lie lightly on the landscape and to be completely reversible should future circumstances warrant removal of security screening equipment; and

WHEREAS, the NPS, in consultation with DC SHPO, NCPC, ACHP and the consulting parties, determined that the Undertaking will have adverse effects upon historic properties and that such adverse effects include the construction of an entrance pavilion in the historically open space of the Monument plaza; alteration of the simplicity of the existing relationships between the Monument, plaza, and surrounding landscape; alteration of several significant views, including views of the Monument from the Monument grounds, the Mall, and the air, and panoramic views from the Monument to the east, north, and south (Exhibit D); and

WHEREAS, the November 8, 2010, National Mall Plan Programmatic Agreement among the National Park Service, the DCSHPO, and ACHP, provided mitigation for adverse effects on historic properties within the Plan boundaries, including the Washington Monument and its Grounds and these mitigation measures, which will be carried out by NPS, include:

- An update to the National Mall National Register Historic District Nomination;
- Identification of all contributing and non-contributing properties and National Historic Landmarks within the boundaries of the updated National Register nomination; and
- An assessment and consideration of National Historic Landmark nominations, based upon the information gathered; and

WHEREAS, the September 30, 2011, National Museum of African American History and Culture Programmatic Agreement among the Smithsonian Institution, the DCSHPO, NCPC, the National Park Service, and ACHP, provided mitigation for adverse effects to be carried out by the Smithsonian Institution that included the following stipulations related to the Washington Monument and its Grounds:

- Compilation of extensive baseline information to document pre-construction conditions and development and implementation of a Monitoring Plan that requires SI to install, prior to the

testing phase, vibration and monitoring devices to be used during testing and through all phases of construction;

- Funding for the NPS to complete the unfinished tree plantings specified in the NCPC and NPS-approved Olin Design landscape plan for the Washington Monument Grounds;
- Consultation with the NPS to identify and funding for the research necessary for a qualified consultant to update the National Register Nomination for the Washington Monument Grounds.
- Development and implementation of a Protection Plan for the Bulfinch Gate Post at the southeast corner of 15th Street and Constitution Avenue, NW;
- Completion of an amendment for the existing National Register Nomination for the Bulfinch Gate Posts and Gate Houses;
- Development of a Treatment Plan for the Bulfinch Gate Post at the southeast corner of 15th Street and Constitution Avenue, NW;
- Photo documentation of the Monument Site prior to construction of the NMAAHC using Historic American Building Survey/Historic American Landscape Survey (HABS/HALS) standards;
- Notification of the DC SHPO and the NPS of the approximate date that the abandoned subterranean Water Intake Tunnel that crosses the site and connects the Tidal Basin to Constitution Avenue will be unearthed; inspection of the tunnel and evaluation of its historic significance by DC SHPO; photography and documentation of the tunnel in accordance with DC SHPO recommendations prior to removing the tunnel from the site; and continued research on the history of the Monument Site including as it pertains to the African American heritage of Washington, DC.

WHEREAS, NCPC is required to review the Undertaking under the National Capital Planning Act and has designated NPS lead agency pursuant to 36 CFR 800.2 (a)(2) to fulfill its Section 106 obligations; and

WHEREAS, since NCPC and CFA may request further revisions to the design of the Security Screening Facility after the Section 106 and NEPA reviews have been completed, this MOA provides a process to address any new or intensified adverse effects that may result from subsequent design changes;

NOW, THEREFORE, NPS, DC SHPO, NCPC and ACHP agree that the Undertaking will be carried out in accordance with following stipulations in order to take into account the effects of the undertaking on historic properties.

STIPULATIONS

The NPS shall ensure that the following measures are carried out:

1. Design Review

- a. All design elements of the security screening facility will conform to Washington Monument Security Screening Facility Project Concept Plan: Freestanding Plaza Pavilion, National Park Service (Exhibit A), with the understanding that the concept plan will be further developed as the project is funded.
- b. Following concept review at CFA and preliminary review at NCPC, NPS shall submit 35% and 60% level plans directly to the Signatories. The Signatories shall have thirty (30) days from the receipt to provide comments to the NPS. If the Signatories do not provide comments within the specified time period, NPS may move forward to the next step in the design process or implement the plans, as appropriate. If after reviewing the 60% design documents,

- the Signatories determine that it will be appropriate to review design documents at the 90% level, the Signatories shall request such a review in writing and the NPS shall provide the 90% design documents to the Signatories for an additional thirty (30) day review and comment period.
- c. Prior to submitting to CFA and NCPC for final approval, the NPS shall consider any requested modifications received through the consultation process outlined in Stipulation 1.b, revise the plans and assess whether any proposed changes have contributed to the avoidance, minimization, or mitigation of adverse effects; created new adverse effects; or intensified previously identified adverse effects. NPS shall then submit its determination along with supporting documentation in writing and via email to the Signatories and to the public and consulting parties by posting on PEPC.
 - d. Within twenty (20) business days of receipt of the documentation specified in Stipulation 1(c), the Signatories shall notify NPS in writing of their concurrence or non-concurrence with NPS's determination. NPS may assume concurrence on the part of the Signatories if any party fails to respond within the specified review and comment period.
 - e. If NPS and the Signatories determine that there will be new adverse effects or that previously identified adverse effects will be intensified, NPS shall notify the Signatories through email and the public and consulting parties via email and a posting on PEPC and shall consult with the Signatories and consulting parties within ten (10) business days to identify additional means to avoid, minimize, or mitigate the adverse effects and to determine how the resolution of adverse effects will be documented, including a possible amendment in accordance with Stipulation 6 (Amendments) of this MOA.
 - f. If the Signatories are unable to identify ways to avoid, minimize, or mitigate the intensified or new adverse effects, the NPS shall resolve the dispute in accordance with Stipulation 4 (Dispute Resolution) of this MOA.

3. Mitigation Plan

The NPS shall carry out the following mitigation measures.

- a. The NPS shall prepare public interpretation and education materials that broadly address the historical development of the Washington Monument and its Grounds. Public interpretation and historical education media may include, but not be limited to wayside exhibits, reconstruction drawings, NPS-style brochures and internet-based content. The type of materials produced and their method of distribution shall be determined by the Interpretation and Education Division of the National Mall and Memorial Parks. NPS shall include "What's Going On?" informational signs to place on construction fencing for the duration of construction.
- b. NPS will establish and implement a long-term monitoring plan for the monument within a year of the project start and will make this information available to the public.
- c. NPS shall implement measures to protect the integrity of the Washington Monument during construction.

4. Dispute Resolution

A. For Signatories

1. **Objection:** In the event of any dispute under this Agreement, any of the Signatories to this Agreement may object in writing to NPS regarding any action proposed to be carried out with respect to the Undertaking or implementation of this Agreement. The written notice of dispute (“Notice of Dispute”) shall state with reasonable specificity the provisions of this Agreement under which such dispute is claimed to arise, and the manner in which the dispute may be satisfactorily cured. Upon receipt of such Notice of Dispute, NPS shall immediately notify the Signatories in writing of the Notice of Dispute as well as provide a copy of the Notice of Dispute and consult to resolve the objection, including any required modifications to the Final Design or construction. If, after initiating such consultation, NPS determines that the objection cannot be resolved through consultation, NPS shall forward all documentation relevant to the dispute to the ACHP, including NPS’s proposed response to the objection. Within fourteen (14) calendar days or within an agreed upon timeframe, the ACHP shall:
 - a. Advise NPS that the ACHP concurs with NPS’s proposed response to the objection, whereupon NPS shall respond to the objection accordingly;
 - b. Provide NPS with recommendations. Such recommendations must be considered by NPS, but are not binding. Once NPS takes these recommendations into account and responds, NPS can proceed to make a final decision regarding the dispute; or
 - c. Refer the dispute to ACHP membership for comment pursuant to 36 CFR § 800.7(c), and shall notify NPS in writing of such referral. The resulting comment must be considered by NPS, but is not binding. NPS shall take into account, and respond to, the resulting comment in accordance with 36 CFR § 800.7(c) and Section 110(l) of the NHPA, and then proceed to make a final decision regarding the dispute.
2. **Failure to Comment:** Should the ACHP fail to exercise one of the above options within fourteen (14) calendar days or agreed upon timeframe, NPS may proceed with its proposed response to the objection, and shall forward such response in writing to the Signatories.
3. **Subject of Dispute:** NPS shall take into account any ACHP recommendation or comment provided in accordance with this Stipulation with reference only to the subject of the dispute; NPS’s responsibility to carry out all actions under this Agreement that are not the subject of the objection shall remain unchanged and in full force and effect.
4. **If Signatories and NPS resolve the dispute set forth in the Notice of Dispute in a manner that requires NPS to take specified actions (“Cure”),** NPS shall commence such actions within a reasonable period of time, not to exceed sixty (60) business days or other such timeframe agreed upon in writing by the Signatories and NPS (the “Cure Period”), and shall thereafter diligently pursue such Cure to completion. If at the end of any Cure period, there is no longer a breach of this Agreement, or NPS is diligently working toward completion of the Cure, NPS’s RHPO shall issue to the

Signatories a written acknowledgement of the Cure of the matter that was the subject of the Notice of Dispute.

B. For Concurring Parties

1. Objection: A Concurring Party may object in writing to NPS, with copies to the other Signatories and Concurring Parties regarding any action proposed to be carried out with respect to the Undertaking or implementation of this Agreement. NPS shall take such an objection into account and may consult about it with the objecting party, other Concurring Parties and Signatories as NPS deems appropriate. NPS shall then respond to the objecting party in writing, with copies to the Signatories. If NPS subsequently determines that the objection cannot be resolved through consultation, NPS shall notify the objecting party, the DC SHPO, and ACHP in writing which of the following options it shall exercise:
 - a. Seek the assistance of the ACHP in resolving the objection, pursuant to Stipulation 4.A above; or
 - b. Provide a formal written response to the objection within thirty (30) calendar days of notice to the objecting party.
2. Resolution of Dispute. If the NPS resolves the dispute set forth in the Notice of Dispute in a manner that requires the NPS to take specified actions (“Cure”), NPS shall commence such actions within a reasonable period of time, not to exceed sixty (60) business days or other such timeframe agreed upon in writing by NPS (the “Cure Period”), and shall thereafter diligently pursue such Cure to completion. If at the end of any Cure period, NPS determines that there is no longer a breach of this Agreement, or NPS is diligently working toward completion of the Cure, NPS’s RHPO shall issue to Trump and to the Signatories a written acknowledgement of the Cure of the matter that was the subject of the Notice of Dispute.

5. Duration

This MOA shall be valid for a period of ten (10) years from the date of the last signature.

6. Amendments

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

7. Termination

If any signatory to this MOA determines that the terms of the MOA cannot or are not being carried out, that objecting party shall so notify the other Signatories in writing and consult with them to seek corrective action or amendment of the MOA. If within fourteen (14) days an agreement or 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 work continuing on the Undertaking, NPS must (a) either execute a new MOA or (b) request, take into account,

and respond to the comments of the ACHP per 36 CFR Section 800.7. NPS will notify the Signatories as to the course of action it will pursue.

8. Anti-Deficiency Act

Any requirement for the payment or obligation of funds by the Government established by the terms of this MOA shall be subject to availability of appropriated funds. No provision in this MOA shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 USC Section 1341. If the availability of funds and compliance with the Anti-Deficiency Act impair the NPS' ability to perform under this MOA, then the NPS shall consult in accordance with Stipulation 6 of this MOA.

9. **Exhibits Attached:**

- A. Washington Monument Security Screening Facility Concept Plan: Freestanding Plaza Pavilion
- B. List of Consulting Parties
- C. Washington Monument Security Screening Facility Project Areas of Potential Effect (APE) and National Register or National Register-Eligible Properties
- D. Summary of Adverse Effects

Execution of this Memorandum of Agreement and implementation of its terms evidences that NPS has taken into account the effects of the Undertaking on historic properties and afforded ACHP a reasonable opportunity to comment.

SIGNATURES FOLLOW ON SEPARATE PAGES

**MEMORANDUM OF AGREEMENT SIGNATORY PAGE
SECURITY SCREENING FACILITY AT THE WASHINGTON MONUMENT**

Steve Whitesell
Regional Director, National Capital Region, NPS

Date

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**MEMORANDUM OF AGREEMENT SIGNATORY PAGE
SECURITY SCREENING FACILITY AT THE WASHINGTON MONUMENT**

David Maloney
District of Columbia State Historic Preservation Officer

Date

DRAFT

**MEMORANDUM OF AGREEMENT SIGNATORY PAGE
SECURITY SCREENING FACILITY AT THE WASHINGTON MONUMENT**

Marcel C. Acosta
Executive Director
National Capital Planning Commission

Date

DRAFT

**MEMORANDUM OF AGREEMENT SIGNATORY PAGE
SECURITY SCREENING FACILITY AT THE WASHINGTON MONUMENT**

John M. Fowler
Executive Director,
Advisory Council on Historic Preservation

Date

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