

**MEMORANDUM OF AGREEMENT  
AMONG  
THE NATIONAL CAPITAL PLANNING COMMISSION,  
THE DISTRICT OF COLUMBIA STATE HISTORIC PRESERVATION OFFICE, AND  
THE DISTRICT OF COLUMBIA PUBLIC LIBRARY  
REGARDING  
THE MARTIN LUTHER KING, JR. MEMORIAL LIBRARY  
REHABILITATION AND MODERNIZATION PROJECT IN  
WASHINGTON, D.C.**

THIS MEMORANDUM OF AGREEMENT (“MOA” or “Agreement”) dated September 22, 2016, is made by and among the NATIONAL CAPITAL PLANNING COMMISSION (“NCPC”), the DISTRICT OF COLUMBIA STATE HISTORIC PRESERVATION OFFICE (“DCSHPO”), and the DISTRICT OF COLUMBIA PUBLIC LIBRARY (“DCPL”) pursuant to Section 106 of the National Historic Preservation Act (NHPA) (“Section 106”), 54 U.S.C. § 306108 and its implementing regulations, 36 CFR Part 800. NCPC, DCSHPO, and DCPL are collectively referred to as “Signatories” or individually as a “Signatory”; and

WHEREAS, DCPL has jurisdiction over the Martin Luther King, Jr. Memorial Library (“MLK Library”) located at 901 G Street, NW, Washington, DC (Lot 825 in Square 375); and

WHEREAS, DCPL proposes to rehabilitate and modernize MLK Library (“Project”) to provide a world-class and sustainable central library for the District of Columbia as shown in the Project plans Appendix A; and

WHEREAS, the Project includes the following: construction of a fifth-floor addition and public roof terrace; repair of the exterior building envelope and replacement of the glazing; reconfiguration of the building interior to introduce a new library program; enhancement of the exterior public space; accessibility improvements and increase visibility throughout the building; and upgrades to the building systems and equipment; and

WHEREAS, NCPC has approval authority over District of Columbia government projects located within the Central Area pursuant to the National Capital Planning Act (40 U.S.C. § 8722 b(1) and (e)); and

WHEREAS, MLK Library is located within the Central Area, as defined by NCPC and the Council of the District of Columbia, and thus an NCPC’s approval of the Project constitutes an Undertaking pursuant to Section 106 (“Undertaking”); and

WHEREAS, DCPL has participated as a consulting party in the Section 106 process pursuant to 36 CFR § 800.2(c)(4), has responsibilities for implementing stipulations under this Agreement, and accordingly, has been invited to be a Signatory to this Agreement pursuant to 36 CFR § 800.6(c)(2); and

WHEREAS, NCPC initiated Section 106 consultation with DCSHPO by letter dated September 17, 2014; and

WHEREAS, in accordance with 36 CFR § 800.2(a)(4), NCPC invited individuals and organizations with a demonstrated interest in the Undertaking and the public to participate as consulting parties in the Section 106 process. The full list of consulting parties is provided in Appendix B hereto (“Consulting Party” or “Consulting Parties”); and

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WHEREAS, NCPC notified the public and conducted a combined National Environmental Policy Act (NEPA) Scoping and Section 106 consultation meeting on October 7, 2014, in order to inform the public of the Project and the Undertaking to solicit verbal and written comments, followed by Section 106 consultation meetings held on November 14, 2014, July 14, 2015, December 16, 2015, and August 24, 2016, to provide additional opportunities for the Consulting Parties to comment on historic preservation concerns; and

WHEREAS, DCPL formed the MLK Library Advisory Panel that includes city-wide stakeholders, District of Columbia residents, and the public to provide insight and advice to DCPL in the selection of the architectural team to design the Project and DCPL has taken the comments of the panel into consideration; and

WHEREAS, NCPC and DCSHPO, together with DCPL and the Consulting Parties, established the Undertaking's area of potential effects ("APE"), as defined under 36 CFR §800.16(d). The APE is provided in Appendix C hereto; and

WHEREAS, in recognition of its significance as an example of the work of architect Ludwig Mies van der Rohe, an internationally recognized master of the Modern Movement, MLK Library was listed in the National Register of Historic Places on October 22, 2007 and DC Inventory of Historic Sites on June 28, 2007. The DC Landmark designation included the principal interior public spaces on the first floor; and

WHEREAS, NCPC has consulted with the DCSHPO as well as the Consulting Parties and determined that the Project and the Undertaking will have adverse effects on MLK Library, as detailed in the Summary of Adverse Effects Determination in Appendix D hereto; and

WHEREAS, in accordance with 36 CFR § 800.6(a)(1), NCPC notified the Advisory Council on Historic Preservation ("ACHP") of the adverse effects determination and provided the documentation specified in 36 CFR 800.11(e). ACHP declined to participate in consultation pursuant to 36 CFR § 800.6(a)(1)(iv); and

WHEREAS, pursuant to the D.C. Historic Landmark and Historic District Protection Act of 1978, the D.C. Historic Preservation Review Board ("HPRB") recommended at its July 23, 2015, public meeting, approval of the concept plans for the Project ("Concept Plans"), with final review of the Project delegated to DCSHPO staff; and

WHEREAS, pursuant to its authorities, the U.S. Commission of Fine Arts ("CFA") recommended approval of the Concept Plans on July 16, 2015; and

WHEREAS, on January 7, 2016, in a public meeting, NCPC, in accordance with its authorities under the National Capital Planning Act, reviewed and commented on the Concept Plans; and

WHEREAS, on August 2, 2016, NCPC released for public review and comment the Martin Luther King, Jr. Memorial Library Rehabilitation and Modernization Environmental Assessment; and

WHEREAS, DCPL intends to submit the Project plans (Appendix A) for design review to NCPC; and

WHEREAS, refinements to the Project plans are anticipated after the execution of this Agreement and therefore a process for additional consultation is set forth below to take into account the effects such refinements may have on historic properties; and

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

STIPULATIONS

NCPC and DCPL shall ensure that the following measures are carried out:

I. QUALIFICATIONS

NCPC and DCPL shall ensure that all historic preservation work performed pursuant to this MOA shall be accomplished by or under the direct supervision of a person or persons who meet(s) or exceed(s) the pertinent qualifications in the Secretary of the Interior's Professional Standards formerly located at 36 CFR Part 61, and now located at [http://www.nps.gov/history/local-law/arch\\_stnds\\_9.htm](http://www.nps.gov/history/local-law/arch_stnds_9.htm).

II. DESIGN CONSULTATION

The Project plans included in Appendix A illustrate the design and site plan that are current as of the date of the last signature on this Agreement. Since refinements to the Project plans are anticipated after execution of this MOA, DCPL shall continue to consult with NCPC staff and DCSHPO to further avoid, minimize, and mitigate adverse effects. Specific outstanding design elements the consultation shall address are identified below.

- A. Outstanding Design Elements. Topics identified for additional consultation include, but are not limited to: a) building envelope and glazing treatment; b) enclosures in the west reading room and fixed furniture elements in the landmarked areas of the first floor; c) lighting design; d) landscape design; e) material finishes in interior public spaces; f) treatment of small scale features such as signage, furniture, phone booths, water fountains, clocks, metal railings, fire panels, dumbwaiters, and the pneumatic system; g) art commissions planned for the interior and exterior; h) signage; i) any elements that will affect design that are part of the mitigation such as exhibit space(s) and j) any new elements that may be designed for the first floor landmarked space.
- B. DCPL will formally request comments on the 10% and 35% construction documents from NCPC and DCSHPO. The construction documents may be provided by electronic mail.
- C. NCPC staff and DCSHPO will review the construction documents and provide written comments to DCPL within twenty (20) working days or another agreed upon timeframe. NCPC or DCSHPO may request a meeting within the review period.
- D. DCPL will consider the written comments to the fullest reasonable extent. Should DCPL object to any comments made by either DCSHPO or NCPC staff, DCPL will provide a written explanation of its objection and will consult with NCPC staff and the DCSHPO to resolve the objection. If no agreement is reached within thirty (30) calendar days following receipt of DCPL's written explanation, NCPC staff will request the ACHP to review the dispute in accordance with Stipulation VII.
- E. If NCPC staff and/or DCSHPO does not provide written comments within the agreed upon timeframe noted above, DCPL may assume NCPC staff and DCSHPO have no comments regarding the drawings or project documents and DCPL may proceed to submit the final design drawings to NCPC for the Commission's final review.

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- F. If as a result of the consultation conducted pursuant to Stipulation II, DCSHPO or NCPC identifies new adverse effects or an intensification of adverse effects previously identified, the Signatories will consult to determine if additional mitigation is required and amend this Agreement pursuant to Stipulation IX, as appropriate.

III. MINIMIZATION

- A. Architectural Salvage, Reintegration, and Preservation. Prior to the start of construction, DCPL shall develop a plan for the salvage, reintegration, and/or preservation of the Miscellaneous Specialized Components identified in the MLK Library Design Guidelines adopted by the HPRB in 2012, items listed in Stipulation II.A of this MOA, and any other small-scale features identified for removal under the proposed Project.
1. Salvaged elements will be reintegrated into the new building design to the maximum extent possible or will be labeled and retained permanently on the premises by DCPL so that the elements may be restored at some future date, if desired.
  2. DCPL will submit a draft plan to DCSHPO and NCPC within three (3) months of the execution of this agreement for review and comment. DCSHPO and NCPC will have thirty (30) calendar days to comment on the draft plan.
  3. DCPL will consider the written comments to the fullest reasonable extent. Should DCPL object to any comments made by either DCSHPO or NCPC staff, DCPL will provide a written explanation of its objection and will consult with NCPC staff and the DCSHPO to resolve the objection. If no agreement is reached within thirty (30) calendar days following receipt of DCPL's written explanation, NCPC staff will request the ACHP to review the dispute in accordance with Stipulation VIII.
  4. If DCSHPO and NCPC do not provide comments on the proposed plan within thirty (30) calendar days of receipt, DCPL may proceed with the draft plan as proposed.

IV. MITIGATION

- A. Exhibit. DCPL will incorporate a permanent interpretive exhibit into the design and construction of the MLK Library Project through the following steps:
1. Within three (3) years of signing of this Agreement, DCPL shall develop a plan for the design of the permanent exhibit to honor Martin Luther King, Jr. and his work in the District of Columbia, and Ludwig Mies van der Rohe and the building's historical and architectural significance. The plan will include the identified location(s) of the exhibits which shall be visible and accessible and a timetable for the design completion and installation of the exhibits, with installation to be completed within one (1) year after issuance by the D.C. Department of Consumer and Regulatory Affairs of a certificate of occupancy for the project. The Ludwig Mies van der Rohe exhibit will include Mies' model of the building and photographs of the library before modernization and will incorporate and interpret small scale features original to the building such as signage, furniture, phone booths, water fountains, clocks, dumbwaiters, and the pneumatic system.
  2. DCPL will submit project documents and drawings detailing the design, content, and placement of the exhibit at the thirty-five (35) and sixty-five (65) percent design

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development stages to DCSHPO and NCPC for review and consultation. DCSHPO and NCPC will provide written comments within forty-five (45) calendar days of receipt. If DCSHPO and NCPC do not provide comments on the proposed exhibit within forty-five (45) calendar days of receipt, DCPL may proceed with the exhibit plans as proposed. DCPL shall install the approved exhibit within one (1) year after issuance by the D.C. Department of Consumer and Regulatory Affairs of a certificate of occupancy for the Project.

3. Permanent shall be defined in this Agreement as the lifespan of DCPL's use and occupation of the MLK Library building. With initial consultation and input from DCSHPO and NCPC, DCPL shall assume sole responsibility for the maintenance and curation of the exhibits during the life span of the Agreement and after the terms of this Agreement expires. DCPL may alter the contents of the exhibits after this Agreement expires, but the exhibits are required to highlight the historic significance of the building as a work of Modernist architecture and Ludwig Mies van der Rohe and the legacy of Dr. Martin Luther King, Jr.
  4. As part of the permanent exhibits, DCPL will develop and maintain an online/web-based resource on the history of the MLK Library, its commemoration to Dr. Martin Luther King Jr. and its architectural significance as a work of Ludwig Mies van der Rohe. The online exhibit will be available on DCPL's website and provide interpretation on the history of the building including its original development, design, and plans for the current rehabilitation and modernization and will include a video as per Stipulation IV.B. The online/web-based resource will be complete within one (1) year after issuance by the D.C. Department of Consumer and Regulatory Affairs of a certificate of occupancy for the Project.
- B. Video Interpretation of MLK Library. DCPL will produce a video on the historic significance of the MLK Library and how the building fits into the work of Ludwig Mies van der Rohe. DCPL will make the film accessible to the public by posting it to the library's website and incorporating it into the online exhibit (Stipulation IV.A). The video will be completed within one year after issuance by the D.C. Department of Consumer and Regulatory Affairs of a certificate of occupancy for the Project.
- E. Historic American Building Survey (HABS) Documentation. Prior to the start of construction, DCPL will complete HABS Level 1 documentation on the MLK Library building. DCPL will file the HABS documentation with the National Park Service in accordance with HABS Standards and Guidelines. Within one (1) year of the completion of HABS documentation, DCPL will file and ensure acceptance of documentation by National Park Service.
- F. District of Columbia Archaeological Collections Storage and Exhibit Space.
1. DCPL and DCSHPO will prepare and agree upon a Collections Agreement Plan (CAP) to store all, or a portion of, the DCSHPO-owned and managed archaeological collection (archaeological collection) within the MLK Library. DCPL will allocate 300 square feet of their Special Collections storage space for the archaeological collection in perpetuity, or until the CAP is cancelled or amended by mutual agreement between DCPL and DCSHPO. The purpose of the CAP is to provide a plan for how the District's archaeological collection will be stored in accordance with federal curation standards. The CAP will include details on how the archaeological collection will be stored in a secure and environmentally

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controlled storage space and will include stipulations for establishment, use, maintenance, access, and operation of the storage space and archaeological collection. As part of the development of the initial CAP, DCPL and DCSHPO will agree upon a process for the review and revision of the document to include but not be limited to a process for dispute resolution should the parties be unable to agree once the plan has been adopted. A portion of the CAP will also include a process to resolve any space limitations which may result from the growth of either the DCPL or DCSHPO collections. The initial CAP will be prepared within the duration of this Agreement and will be complete by 12/31/2019. DCPL will provide a copy of the initial CAP to NCPC. Following the expiration of this Agreement, DCPL and DCSHPO will be responsible for all subsequent revisions and implementation of the CAP.

2. DCPL, to the extent feasible, will utilize a portion of the MLK Library exhibit spaces to create temporary exhibits utilizing a portion of the DCHPO's archaeological collections. The temporary exhibits are intended to make District of Columbia history and archaeology more visible and accessible to District of Columbia residents. The DCSHPO Archaeologist will provide guidance and expertise for creating each temporary exhibit and will work with DCPL and exhibit professionals, to the extent funding allows, for execution of the exhibit, including planning, research, fabrication, installation, and breakdown. Any RFPs prepared for exhibit production will be prepared in consultation with the DCSHPO.

V. ARCHAEOLOGY AND UNANTICIPATED DISCOVERIES

- A. Post Review Discovery of Historic Properties. Should historic properties including archaeological resources be unexpectedly identified during the implementation of the Project or any actions taken pursuant to this MOA, DCPL shall immediately stop work in the location and contact NCPC and DCSHPO to report the discovery. DCPL will consult with NCPC and DCSHPO to ensure that reasonable efforts are made to avoid, minimize or mitigate adverse effects to such properties. DCPL shall ensure that any resulting cultural resources work is accomplished in accordance with the relevant performance standards in Stipulation I, including the District of Columbia's Guidelines for Archaeological Investigations, applicable Secretary of Interior's Standards, and following appropriate ACHP guidance. Any dispute on the treatment of resources will be handled in accordance with Stipulation VIII, Dispute Resolution.
- B. Treatment of Human Remains. In the event that human remains, burials, or funerary objects are discovered during construction of the Project or any action taken pursuant to this MOA, DCPL shall immediately halt subsurface construction disturbance in the area of the discovery and in the surrounding area where additional remains can reasonably be expected to occur and shall immediately notify NCPC, DCSHPO and the District of Columbia Chief Medical Examiner ("CME") of the discovery under DC Code Section 5-1406 and other applicable laws and regulations.
  1. If the CME determines that the human remains are not subject to a criminal investigation by federal or local authorities, DCPL shall comply with the applicable federal or local laws and regulations governing the discovery and disposition of human remains and consider the ACHP's Policy Statement Regarding Treatment of Burial Sites, Human Remains, and Funerary Objects (2007).
  2. For actions involving Native American human remains or burials, DCPL shall comply with applicable laws in accordance with provisions of the Native American Graves

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Protection and Repatriation Act, as amended (Public Law 101-601, 25 USC 3001 et seq)  
and regulations of the Secretary of the Interior at 43 CFR Part 10.

VI. DURATION

This Agreement will expire if its terms are not carried out within seven (7) years from the date it its execution. Prior to such time, NCPC may consult with the Signatories to reconsider the terms of this Agreement and amend it in accordance with Stipulation IX below.

VII. MONITORING AND REPORTING

Annually following the effective date of this Agreement until it expires or is terminated, NCPC shall provide DCSHPO a summary report detailing work undertaken pursuant to its terms. DCPL will assist NCPC in preparing the report and provide information NCPC requests. Such report shall include a summary of NCPC and DCPL's efforts to carry out the terms of this Agreement, any scheduling changes proposed, the overall status of the Project, and any disputes and objections received by NCPC on this Agreement. The Report will be distributed via electronic media. Consulting Parties may request a copy of the summary report from NCPC in writing.

VIII. DISPUTE RESOLUTION

Should any Signatory object in writing to the NCPC regarding any action carried out in accordance with this Agreement, the Signatories shall consult to resolve the objection. Should the Signatories be unable to resolve the objection, NCPC shall forward documentation on the objection, as well as its proposed resolution, to ACHP. Within forty-five (45) days after receipt of the documentation, ACHP shall either (i) provide NCPC with written recommendations, which NCPC shall take into account in reaching a final decision regarding the objection, or (ii) notify NCPC that ACHP shall comment pursuant to 36 CFR 800.7(c). NCPC shall take the ACHP comments into account, in accordance with 36 CFR 800.7(c)(4). Any ACHP recommendation or comment shall pertain only to the subject matter of the objection; NCPC's responsibility to carry out all actions under this Agreement that are not subject of the objection shall remain unchanged.

IX. AMENDMENTS

This Agreement may be amended 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.

X. TERMINATION

If any Signatory to this Agreement determines that the terms of the Agreement cannot be or are not being carried out, that Signatory shall so notify the other Signatories in writing and consult with them to seek resolution or amendment of the Agreement. If within sixty (60) days a resolution or Amendment cannot be reached, any Signatory may terminate the Agreement upon written notification to the other Signatories. Once the Agreement is terminated, and prior to DCPL continuing to implement the Project, NCPC must either execute a new Agreement or request, take into account, and respond to the comments of the ACHP per 36 CFR 800.7. NCPC will notify DCPL and DCSHPO as to the course of action it will pursue.

XI. AVAILABILITY OF FUNDS

The obligations of federal agencies under this Agreement are pursuant to the Anti-Deficiency Act, 31 U.S.C. § 1341(a)(1), therefore nothing in this Agreement shall be construed as binding the United States

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to expend in any one fiscal year any sum in excess of appropriations made by Congress for this purpose, or to involve the United States in any contract or obligation for the further expenditure of money in excess of such appropriations.

The terms outlined in this Agreement must fall within the funding allocated to DCPL.

XII. ATTACHMENTS

The following documents are appended to this Agreement:

- Appendix A: Project Plans, August 2016
- Appendix B: List of Consulting Parties
- Appendix C: Area of Potential Effects
- Appendix D: Summary of Adverse Effects

XIII. SIGNATURES AND EFFECTIVE DATE

- A. Effective Date. This Agreement shall take effect on the last day it is executed by a Signatory, who shall insert such date in the first paragraph on the first page of this Agreement.
- B. Electronic Copies. Within one week after the last date on which this Agreement is executed by a Signatory, NCPC shall provide each Signatory with a legible, color, electronic copy of the fully-executed Agreement and all of its attachments.
- C. Counterparts. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

Execution of this MOA by NCPC, DCPL and the DCSHPO, and implementation of its terms evidence that NCPC has taken into account the effect of the Undertaking on historic properties and afforded the ACHP a reasonable opportunity to comment, and thereby satisfied its Section 106 responsibilities.

[Signature Pages Follow]

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NATIONAL CAPITAL PLANNING COMMISSION

//ORIGINAL SIGNED//

9/22/16

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BY: Marcel Acosta, Executive Director

Date

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DISTRICT OF COLUMBIA STATE HISTORIC PRESERVATION OFFICE

//ORIGINAL SIGNED//

9/15/2016

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BY: David Maloney, State Historic Preservation Officer

Date

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DISTRICT OF COLUMBIA PUBLIC LIBRARY

//ORIGINAL SIGNED//

9/20/2016

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BY: Richard Reyes-Gavilan, Executive Director

Date

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DISTRICT OF COLUMBIA PUBLIC LIBRARY

//ORIGINAL SIGNED//

9/20/2016

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BY: Gregory M. McCarthy, President of the Board of Library Trustees

Date