

**MEMORANDUM OF AGREEMENT
AMONG
THE NATIONAL PARK SERVICE,
THE NATIONAL CAPITAL PLANNING COMMISSION,
THE DISTRICT OF COLUMBIA STATE HISTORIC PRESERVATION OFFICER
REGARDING
THE FRANKLIN PARK VISION AND TRANSFORMATION PLAN PROJECT,
WASHINGTON, D.C.**

This Memorandum of Agreement (“MOA”) is made as of this 3rd day of June 2015, by and among the National Park Service (“NPS”), the National Capital Planning Commission (“NCPC”), and The District of Columbia State Historic Preservation Officer (“DC SHPO”) (all referred to collectively herein as the “Signatories”), pursuant to Section 106 and 110 of the National Historic Preservation Act (“NHPA”), 54 U.S.C. § 306108, and its implementing regulations at 36 CFR Part 800 regarding the Franklin Park Vision and Transformation Plan (“Undertaking”); and

WHEREAS, Franklin Park (“Park”) is owned by the United States government, is under the administrative jurisdiction of the NPS and occupies an entire city block of approximately 5 acres in downtown Washington, D.C. The Park is bordered by K Street NW on the north, 13th Street NW on the east, I Street NW on the south, and 14th Street NW to the west. The Park features a central fountain plaza and a historically significant statue commemorating Commodore John Barry. Trees surround the Park on all sides and are spaced throughout the Park. The Park is a contributing feature of the L’Enfant Plan of the City of Washington, a listed National Register of Historic Places (NRHP) property; and

WHEREAS, the Franklin Park Cultural Landscape, which includes landscape features, vegetation, circulation paths, a fountain, and small-scale features such as park benches and lamp posts, was determined eligible for the National Register of Historic Places (NRHP) through the 2005 Cultural Landscape Inventory prepared by NPS (and revised in 2011) (Exhibit 1), with concurrence from the DC SHPO on September 9, 2005, and;

WHEREAS, the features of Franklin Park are currently deteriorated and essential services such as adequate seating and programming are lacking; and

WHEREAS, opportunities exist to better connect Franklin Park to both its historic and current urban context; and

WHEREAS, the NPS recognizes that the Undertaking is needed to address these deficiencies and revitalize the park so that it attracts and serves all visitors; and

WHEREAS, the NPS, in collaboration with the District of Columbia Office of Planning, the Department of Parks and Recreation, and the Downtown DC Business Improvement District (DowntownDC BID), proposes to carry out the Franklin Park Vision and Transformation Plan (Exhibit 2); and

WHEREAS, the purpose of the Undertaking is to revitalize Franklin Park in a manner that respects and enhances the historic and urban qualities of the park while transforming it into an active, flexible, and sustainable park that is connected to its community; and

WHEREAS, the Undertaking includes the removal of approximately 37% of the existing tree canopy, the redesign of the central fountain and the central plaza, the construction of a pedestrian mall and café structure on the southern edge of the park, widening of pathways and the addition of a children’s garden on the east lawn of the park; and

WHEREAS, the NPS, pursuant to (36 CFR Part 800), issued letters dated September 6, 2013, initiating consultation with the DC SHPO and inviting the Advisory Council on Historic Preservation (ACHP) to participate in the consultation; and

WHEREAS, the NPS, in consultation with DC SHPO and the consulting parties, defined an Area of Potential Effects (APE) for the Undertaking (Exhibit 3) that extends a half block around the perimeter of Franklin Park and encompasses one (1) individually listed NRHP historic property and one (1) National Historic Landmark (NHL)/listed NRHP historic property; and

WHEREAS, the NPS has consulted with other consulting parties (Exhibit 4); and

WHEREAS, the NPS has provided opportunities for review and comment on the Undertaking, as its planning and design proceeded, at public meetings, consulting parties meetings, and technical advisory meetings held in 2013, 2014 and 2015; and

WHEREAS, in December 2014 the NPS released the Franklin Park Vision and Transformation Environmental Assessment (EA) for a 38 day public comment period pursuant to the National Environmental Policy Act (NEPA). The EA analyzed a range of alternatives for the Undertaking and identified the Edge as the NPS preferred alternative. The design of the Edge alternative has evolved since release of the EA and the most recent drawings and plans are attached to this MOA (Exhibit 7); and

WHEREAS, the NPS completed a geoarcheological investigation of Franklin Park in March 2014 which determined that the Undertaking would not have any foreseeable effects on archeological resources (Exhibit 5); and

WHEREAS, the NPS, in consultation with DC SHPO, NCPC, and the consulting parties, determined in January 2015, that the Undertaking will have adverse effects upon the Franklin Park Cultural Landscape; and

WHEREAS, such adverse effects include, but are not limited to, the removal of components of the historic fabric including alterations to the central fountain and plaza; the widening of existing walks; the introduction of new elements such as a pedestrian mall, café structure, and a children's garden; the removal of seven historic trees; and the possible loss of small-scale features that contribute to the Cultural Landscape; and

WHEREAS, the NPS notified the DC SHPO of the determination of adverse effect on January 15, 2015 and the DC SHPO concurred with the determination; and

WHEREAS, the NPS notified the ACHP that the Undertaking would have an adverse effect on historic properties in a letter dated January 15, 2015 and the ACHP elected not to participate in the consultation; and

WHEREAS, the NPS made significant progress in avoiding and minimizing some adverse effects by means of Section 106 consultation and the NEPA review process. Such measures include retaining the original location of the Commodore Barry Statue, limiting changes to the historic circulation system, retaining the historic symmetry of the park; and retaining the fountain as the Park's focal point; and

WHEREAS, the procedures of NCPC require completion of NEPA/NHPA compliance prior to giving its legally mandated final approval to projects within the District of Columbia (National Capital Planning Act of 1952); and

WHEREAS, NCPC's approval of the Franklin Park Vision and Transformation Plan is also an undertaking subject to Section 106 of the NHPA and by entering into this MOA, NCPC designates the NPS as lead agency pursuant to 36 CFR 800.2 (a)(2); and

WHEREAS, NCPC and CFA are empowered to request design modifications after NHPA and NEPA compliance has been completed; and

NOW, THEREFORE, the NPS, DC SHPO, and NCPC agree that the Undertaking will be implemented in accordance with the 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:

I. MITIGATION MEASURES

1. Cultural Landscape Features

a. Trees and Vegetation

- i. **Tree Planting Plan:** Because the canopy density is a contributing feature to Franklin Park, the NPS will develop and implement a tree planting plan that includes procedures for the removal of trees in poor health, supports the health of trees in fair health, and plans for the addition of new trees with the purpose of maintaining a healthy canopy.
- ii. **Removal of the curvilinear planting areas and trees around center plaza:** To mitigate the removal of these features, the NPS will add a ring of trees and planting beds to the outer edge of the center plaza to recreate the feeling of intimacy that the curvilinear planting areas and trees created.
- iii. **Vegetation Design:** The NPS will plant trees, shrubs, and other plantings that acknowledge the general location and species of plantings historically located in the park, as noted in the 1936, 1942, and 1944 planting plans. Favor will be given to the selection of species that reflects and respects the design and horticultural character of these previous planting plans. The design will also take into consideration native species, maintenance, a storm water management strategy, and appropriateness to the micro-clime of their specific location within the park.
- iv. **Historic American Landscape Survey (HALS):** The NPS will complete HALS Standard Format documentation for Franklin Park. The HALS will be carried out before any work is initiated on the park. The site history and measured drawings will be submitted to HALS for accessioning to the Library of Congress.
- v. **Tree Lightning Protection Plan:** The NPS will develop and implement a lightning protection plan for the older trees within Franklin Park.

b. Circulation

- i. Paving: The NPS will reuse existing bluestone paving in the central plaza and supplement the existing paving to include areas where existing elements will be removed. The NPS will replace all non-bluestone paving in the park with an exposed aggregate concrete that has a similar appearance to the existing asphalt paving.
- ii. Curbing: The NPS will replace existing exposed aggregate quarter round curb with smooth quarter round concrete curbing that is consistent with the curbs in other NPS National Mall and Memorial Parks areas.
- iii. Pedestrian Mall: The new pedestrian mall, which will be located along the south side of the park and will provide programmable space, should be designed in a manner sensitive to the historic circulation plan.

c. Small-Scale Features

- i. Fencing: Where new fencing is needed, the NPS will replicate the design of the historic cast-iron fencing that is located adjacent to the Commodore John Barry statue plaza to the extent possible.
- ii. Lighting: The NPS will perform a lighting study to evaluate lighting needs for the park and the NPS will replicate, to the extent possible, the Saratoga style lights that were installed in the 1936 park rehabilitation and will supplement with historically compatible fixtures to provide sufficient lighting.
- iii. Benches: The NPS will rehabilitate and reuse existing historic benches, and design a replacement bench that resembles the historic park bench, but is handicap accessible.
- iv. Squirrel basins: The NPS will evaluate the condition of the basins and will restore and reinstall all of the basins within the park in their existing locations.

d. Center Fountain

- i. The NPS will ensure that the redesign of the center fountain, including lighting, new jets and other features, will reflect the general character and retain the shape of the existing historic fountain; will maintain the fountain as a central park feature; and will reuse and incorporate the existing historic coping into the redesign of the fountain.

e. Commodore John Barry Monument and pedestal

- i. The Commodore John Barry will remain in its existing location and the NPS will preserve the statue according to the *Secretary of Interior's Standards for the Treatment of Historic Properties*.

2. Interpretation

- a. The NPS will erect interpretation (wayside exhibits) that include information about the history of the park and/or surrounding area. The waysides will follow the NPS standard design for wayside exhibits.
- b. The NPS may install a historical timeline within the pavement area of the pedestrian mall that reflects the history of the site.

3. Café Structure

The park café will be contemporary in design, but reflect the size and scale of the early twentieth-century lodge previously located in the park. The location of the café will respect the symmetry of the park design and will not obstruct important views towards the central fountain. The design of the café will focus the building towards the park while acknowledging I Street and use stone, wood, and glass as the primary materials emphasizing the building's transparency and its subordinate role within the park.

4. Children's Garden

The design of the Children's Garden area will incorporate the theme of the Potomac Watershed; be naturalistic in concept, design, materials, and palette; and integrate unobtrusive fencing where needed.

II. CURRENT PROJECT PLANS

The most recent plans for the Franklin Park Vision and Transformation Plan are attached for reference in Exhibit 7.

III. DESIGN REVIEW

In order to ensure that the mitigation measures specified in Stipulation I are carried out in accordance with *Secretary of the Interior's Standards for the Treatment of Historic Properties*, the NPS shall provide the DC SHPO with plans, drawings, renderings, narratives, and any other information necessary to fully describe the manner in which each mitigation measure is proposed for implementation at the 30%, 60% and 90% design levels. The DC SHPO shall review each submittal and provide the NPS with comments within thirty (30) days of receipt which the NPS shall incorporate into the designs to the maximum extent possible. The NPS may continue with the designs as proposed if the DC SHPO fails to provide comments within the thirty day comment period.

IV. REEVALUATION OF FINAL DESIGN

After CFA and NCPC complete their final reviews of the Franklin Park Vision and Transformation Plan Project, the NPS will evaluate the final design approved by CFA and NCPC and make a determination regarding whether any design modifications required by CFA or NCPC may result in any new or intensified adverse effects. The NPS will forward the final designs and its determination to the DC SHPO for a thirty day review. If the NPS and DC SHPO concur that no new or intensified adverse effects result, no further action will be required. If either the NPS or DC SHPO determine that a new or intensified adverse effect will result, the Signatories will consult further to determine

whether an amendment to this MOA will be necessary. Any such amendment will be addressed in accordance with the Administration Stipulation VIII-3, Amendments.

V. ARCHEOLOGICAL RESOURCES

1. Unanticipated Discoveries

The NPS will include the following provisions to this effect in the construction permits for the treatment of unanticipated archeological discoveries, including human remains, during excavation, construction, or other ground-disturbing activity resulting from improvements made to Franklin Park.

- a. In the event that a previously unidentified archeological resource is discovered during project activities, the NPS will immediately halt all ground-disturbing activities in the area of the resources and in the surrounding area where further subsurface remains can reasonably be expected to occur.
- b. The NPS will notify the DC SHPO immediately upon discovery of previously unidentified archeological resources. The NPS and the SHPO will visit the site within 48 hours of such notification, inspect the work site, and determine the nature and extend of the affected archeological property and establish a resource area. Construction may then continue in the project area outside the established boundaries of the resource area.
- c. Within three (3) working days of the original notification of discovery, the NPS, in consultation with the SHPO, will determine the National Register eligibility of the resources.
- d. The NPS, in consultation with the DC SHPO, will ensure compliance with 36 CFR §800.13. Work in the resource area shall not proceed until either a) the development and implementation of an appropriate data recovery or other recommended mitigation procedures; or b) the determination is made that the located archeological remains are not eligible for including in the National Register of Historic Places.
- e. If human remains are discovered during construction, NPS shall immediately notify the US Park Police (USPP) and shall ensure that all ground-disturbing activities in the immediate area of the discovery ceases immediately and stays halted in accordance with the protocols established by the USPP and the District of Columbia Metropolitan Police Department. The NPS shall also ensure that the Secretary of Interior's guidelines on human remains are followed. If the remains are assumed to be Native American, the Native American Graves Protection and Repatriation Act of 1990 through the implementing regulations at 43 CFR Part 10 will govern the NPS procedures and outcomes, including consultation with appropriate tribal representatives.

VI. PROJECT FUNDING

The NPS shall seek funding to ensure that the stipulations of this MOA are carried out. If funding identified for this proposed Undertaking is a result of a partnership between NPS and another entity, this MOA shall be amended to reflect the roles and responsibilities of the financial partner(s) in implementing the terms of the MOA.

VII. ELECTRONIC COPIES

Within one week of the last signature on this MOA, the NPS shall provide each Signatory with one legible, color, electronic copy of this fully-executed MOA and all of its attachments. If the electronic copy is too large to send by e-mail, the NPS shall provide each signatory with a copy of this MOA on a compact disc.

VIII. ADMINISTRATION

1. Dispute Resolution

Should any signatory or consulting party to this MOA object in writing to the NPS regarding any action carried out in accordance with this MOA, the signatories shall consult to resolve the objection as expeditiously as possible. Should the signatories be unable to resolve the disagreement, the NPS shall forward its proposed resolution of the dispute and any other documentation relevant to the dispute to the ACHP. Within thirty (30) days after receipt of all pertinent documentation, the ACHP will either:

- a. Provide the NPS with recommendations, which the NPS will take into account in reaching a final decision regarding the dispute; or
- b. Notify the NPS that it will comment pursuant to 36 CFR 800.7(c), and proceed to comment. Any ACHP comment provided in response to such a request shall be taken into account by the NPS in accordance with 36 CFR 800.7(c) (4) with reference to the subject of the dispute. Any ACHP recommendation or comment will be understood to pertain only to the subject of the dispute; NPS's responsibility to carry out all actions under this MOA that are not subjects of the dispute will remain unchanged.

2. Duration

This MOA shall be valid for a period of five (5) years from the date of the last signature.

3. 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. At any time in the six-month period prior to expiration of the MOA, the signatories may mutually agree to extend the MOA with or without amendments.

4. 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 amendment of the MOA. If within fourteen (14) days 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 work continuing on the Undertaking, the 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. The NPS will notify the signatories as to the course of action it will pursue.

IX. ANTI-DEFICIENCY ACT

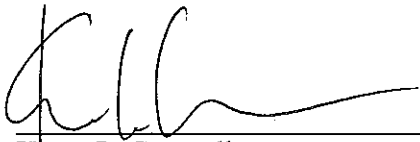
This MOA is subject to applicable laws and regulations. As to the Signatories only, fulfillment of this MOA and all of the provisions herein are subject, pursuant to the Anti-Deficiency Act, 31 U.S.C. § 1341 et seq., to the availability of funds. This MOA is not an obligation of funds in advance of an appropriation of such funds, and it does not constitute authority for the expenditure of funds. If a Signatory does not have sufficient funds available to fulfill the Stipulations of this MOA, such Signatory shall so notify the other Signatories and shall take such actions as are necessary to otherwise comply with 36 C.F.R. Part 800. NPS shall make reasonable and good faith efforts to seek funding for implementing this MOA.

X. SIGNATURES

Execution and of this MOA and implementation of its terms, evidences that NPS and the Signatories with Section 106 responsibilities have afforded the ACHP an opportunity to comment on the Undertaking and taken into account the effects of the Undertaking on historic properties

[Signatures Follow On Separate Pages]

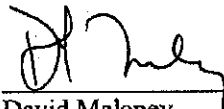
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Karen L. Cucurullo
Acting Superintendent
National Mall and Memorial Parks
National Park Service

5/21/2015
Date

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David Maloney
District of Columbia State Historic Preservation Officer

6/3/2015

Date

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Marcel C. Acosta
Executive Director
National Capital Planning Commission



Date

EXHIBIT LIST

- Exhibit 1 2011 Cultural Landscape Inventory: document available at www.parkplanning.nps.gov/FranklinPark
- Exhibit 2 December 2014 Franklin Park Vision and Transformation Environmental Assessment: available at www.parkplanning.nps.gov/FranklinPark
- Exhibit 3 Franklin Park Plan APE
- Exhibit 4 List of Consulting Parties
- Exhibit 5 March 2014 Franklin Park Geoarcheological Investigation Report: available at www.parkplanning.nps.gov/FranklinPark
- Exhibit 6 April 29, 2015 Ruth Troccoli, Ph.D., City Archaeologist, email concurring with Geoarcheological Investigation Report
- Exhibit 7 Most recent project plans see March 24, 2015 Consulting Parties Meeting Presentation: available at www.parkplanning.nps.gov/FranklinPark

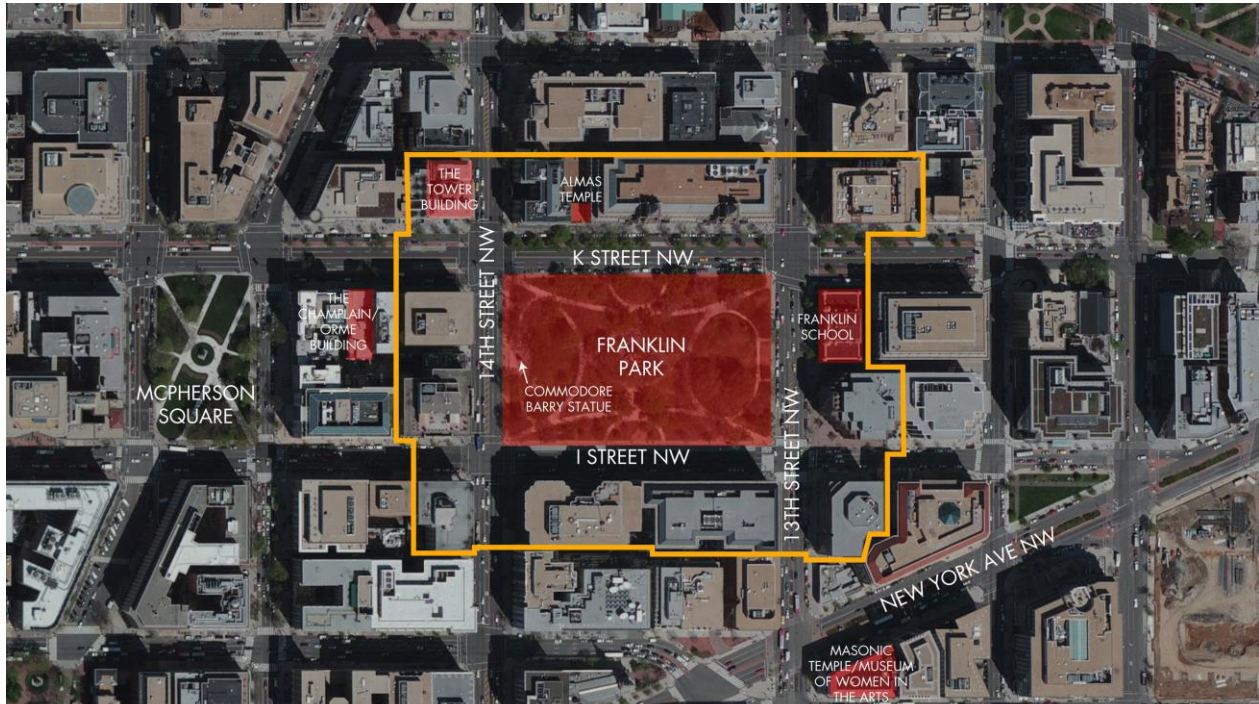
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Exhibit 3 Franklin Park Plan APE (attached)

Exhibit 3

AREA OF POTENTIAL EFFECT



LEGEND

 Area of Potential Effect (APE)

NORTH



Exhibit 4 List of Consulting Parties (attached)

Exhibit 4 - List of Consulting Parties

Name	Organization	Email Address
Eliza Voigt	National Mall/NPS	eliza_voigt@nps.gov
Catherine Dewey	National Mall/NPS	catherine_dewey@nps.gov
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Robin Nixon	National Mall/NPS	robin_nixon@nps.gov
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Joe Steinbo	Tour Guide Guild	jsteinbo@yahoo.com
		alabrador@hksinc.com

Exhibit 5 March 2014 Franklin Park Geoarcheological Investigation Report: available at
www.parkplanning.nps.gov/FranklinPark

Exhibit 6 April 29, 2015 Ruth Trocolli, Ph.D., City Archaeologist, email concurring with
Geoarcheological Investigation Report (attached)



Voigt, Eliza <eliza_voigt@nps.gov>

Fwd: Franklin Park

1 message

Dewey, Catherine <catherine_dewey@nps.gov>
To: Eliza Voigt <eliza_voigt@nps.gov>

Mon, May 18, 2015 at 11:22 AM

Catherine Dewey
National Park Service
Chief of Resource Management
National Mall and Memorial Parks
900 Ohio Drive, SW
Washington, DC 20024
202-245-4711 office
202-510-1117 cell



**Centennial Goal: Connect with and
create the next generation of park
visitors, supporters, and advocates.**

On Wed, Apr 29, 2015 at 9:07 PM, Trocolli, Ruth (OP) <Ruth.Trocolli@dc.gov> wrote:

Hi Catherine-

I read the report and concur with the conclusions and recommendations for archaeology.

Cheers-

Ruth

Ruth Trocolli, Ph.D., City Archaeologist

DC Historic Preservation Office

Office of Planning

1100 4th St. SW, Suite E650

Washington, D.C. 20024

202-442-8836

Exhibit 7 Most recent project plans see March 24, 2015 Consulting Parties Meeting Presentation:
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