

**MEMORANDUM OF AGREEMENT  
BETWEEN  
THE NATIONAL PARK SERVICE  
AND  
THE DISTRICT OF COLUMBIA HISTORIC PRESERVATION OFFICER  
REGARDING  
REHABILITATION OF MCPHERSON SQUARE**

**WHEREAS**, the National Park Service (NPS) has proposed to rehabilitate McPherson Square, which includes:

- Replacement in-kind of existing deteriorated sidewalk in the same alignment, width, finish and joint pattern;
- Installation of new concrete curbing to match existing per historic detail and in existing locations;
- Resetting of historic granite curbing in existing locations;
- Removal of existing non-functioning irrigation system, with the addition of six quick coupler fixtures;
- Investigation and repair of existing water line on west side to restore water pressure;
- Salvage, refurbishment, and reinstallation of 38 existing NCR-style park benches;
- Removal and re-setting of existing Victor Stanley S-35 trash receptacles and installation of additional for a total of 14 trash receptacles;
- Aeration of soil, installation of new sod throughout park;
- Installation of new black post-and-chain fencing to partially enclose eight existing lawn panels to protect tree roots and turf;
- Removal of existing streetlight standards and replacement with new Washington Globe style (14N);
- Installation of electric meter, panel board, and control box;
- Restoration and lead paint abatement of the historic fencing around the statue; and

**WHEREAS**, completion of this project will improve the condition of the McPherson Square cultural landscape from fair to good and provide for more sustainable park operations; and

**WHEREAS**, the project calls for the removal of a Chinese elm tree (*Ulmus pumila*), an exotic species located within the south center panel of McPherson Square which has been identified as a contributing element to the McPherson Square historic landscape; and

**WHEREAS**, NPS evaluated the tree and determined that retaining it would require regrading of the site or reduction of the size of the adjacent walkway; and

**WHEREAS**, the NPS Horticulturalist has determined that the Chinese elm tree already shows signs of distress and decline; and

**WHEREAS**, NPS evaluated root pruning the tree and determined that this would greatly accelerate the rate of decline; and

**WHEREAS**, regrading of the site would impact the remaining trees in the outer panels by raising the surrounding grade, rendering the existing walkway non-compliant with the Americans with Disabilities Act (ADA) and the Architectural Barriers Act (ABA); it would also be inconsistent with the historic character of the sidewalks; and

**WHEREAS**, NPS has determined that the Rehabilitation of McPherson Square constitutes an "Undertaking" subject to Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. § 470(f), and its implementing regulations, 36 C. F. R. Part 800; and

**WHEREAS**, NPS has established *Management Policies* that stipulate that every "...proposed action will be evaluated to ensure consistency or compatibility in the overall treatment of park resources. The relative importance and relationship of all values will be weighed to identify potential conflicts between and among

resource preservation goals, park management and operation goals, and park user goals. Conflicts will be considered and resolved through the planning process, which will include any consultation required by 16 USC 470f" (Chapter 5.3.5, *Treatment of Cultural Resources*); and

**WHEREAS**, NPS consulted with the District of Columbia Historic Preservation Officer (SHPO) pursuant to 36 CFR 800 regarding implementation of Section 106 of the NHPA; and

**WHEREAS**, NPS and SHPO concur that removal of the tree will have an adverse effect on the McPherson Square cultural landscape, an historic property eligible for inclusion in the National Register of Historic Places; and

**WHEREAS**, the McPherson Square rehabilitation project has been posted on the NPS *Planning, Environment, and Public Comment* (PEPC) website to inform the public of the project;

**NOW, THEREFORE**, NPS and the SHPO agree that the project shall be implemented in accordance with the following stipulations.

## **STIPULATIONS**

NPS will ensure that the following measures are carried out:

### **1) No Net Tree Loss**

As mitigation for the removal of the tree, NPS will plant two additional red oak trees (*Quercus rubra*) in McPherson Square, a native species also found in the park. The trees will be planted in locations that are consistent with the historic landscape plan as determined by the NPS Landscape Architect.

### **2) Update McPherson Square Cultural Landscape Inventory**

NPS will update the McPherson Square Cultural Landscape Inventory (CLI) to document the presence of the Chinese elm tree during the park's period of significance, and to reflect the implementation of the rehabilitation plan and mitigation of the removal of the tree through the planting of additional trees.

### **3) Dispute Resolution**

Disputes regarding the completion of the terms of this agreement shall be resolved by the signatories. If the signatories cannot agree regarding a dispute, either of the signatories may request the participation of the Advisory Council on Historic Preservation (ACHP) to assist in resolving the dispute. Any recommendation or comment provided by the ACHP will be understood to pertain only to the subject of the dispute. The Park's responsibility to carry out all actions under this agreement that are not the subjects of dispute will remain unchanged.

At any time during implementation of the measures stipulated in this agreement, should an objection to any such measure be raised by a member of the public, the Park shall take the objection into account and consult as needed with the objecting party and the SHPO.

### **4) Amendment of Agreement**

The agreement may be modified by amendment at any time by mutual concurrence of both parties. Amendment of the agreement as necessary shall be accomplished in the same manner as the original agreement. Amendments will be in writing and approved by the original signatories or their designated official.

### **5) Termination of Agreement**

Either party to this agreement may terminate it by providing thirty (30) calendar days notice to the other party,

provided that the parties will consult during the period prior to termination to seek agreements on amendments or other actions that would avoid termination. In the event of termination by the SHPO, the Park would request the comments of the ACHP, in accordance with 36 CFR Part 800.7[a].

**6) Reporting**

Within ninety (90) days after carrying out the terms of this MOA, NPS shall provide a written report to the SHPO as to the actions taken to fulfill the terms of the MOA.

**7) Terms of Agreement**

This agreement shall become effective after the date of the last signatory. The agreement shall be null and void if its terms are not carried out within two (2) years from the date of its approval by NPS and SHPO, unless the signatories agree in writing to an extension for carrying out its terms. Otherwise, this agreement shall become null and void when the project is complete, all of the above stipulations are fulfilled, and the SHPO has been provided with the aforementioned written report as to the actions taken to fulfill the terms of the agreement. The agreement and any amendments shall be binding upon the parties, their successors, and assigns.

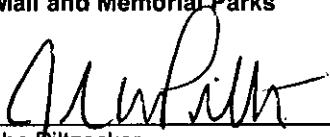
Execution of this Memorandum of Agreement by NPS and SHPO, and implementation of its terms, evidences that NPS afforded the SHPO an opportunity to comment on the project and its effects on McPherson Square, that NPS has taken into the account the effect of the project on historic properties, and that NPS has satisfied its Section 106 responsibilities for the project referenced in this agreement.

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**AUTHORIZING SIGNATURES**

**National Mall and Memorial Parks**

By:

  
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John Piltzecker  
Superintendent, National Mall and Memorial Parks

Date: 12/17/09

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District of Columbia Office of Planning

By:

  
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David Maloney  
District of Columbia State Historic Preservation Officer

Date:

Dec 17, 2009