

**MEMORANDUM OF AGREEMENT
AMONG
THE SMITHSONIAN INSTITUTION
THE DISTRICT OF COLUMBIA STATE HISTORIC PRESERVATION OFFICER
AND
THE NATIONAL CAPITAL PLANNING COMMISSION
REGARDING
THE HIRSHHORN MUSEUM ENVELOPE REPAIR PROJECT**

This Memorandum of Agreement (MOA) is made as of this 18th day of March, 2020, by and among the Smithsonian Institution (SI), the District of Columbia State Historic Preservation Officer (DC SHPO), and the National Capital Planning Commission (NCPC), (referred to collectively herein as the “Signatories” or individually as a “Signatory”), pursuant to Section 106 of the National Historic Preservation Act (NHPA), 54 U.S.C. § 306108, its implementing regulations 36 CFR Part 800 (Section 106), and Stipulation 2.C.iii of the Programmatic Agreement (PA) among the SI, DC SHPO, NCPC, the National Park Service (NPS) and the Advisory Council on Historic Preservation (ACHP) for the Smithsonian South Mall Campus Master Plan, as it relates to the Hirshhorn Museum; and

WHEREAS, the repair of the Hirshhorn Museum Envelope (Project) is an identified project under the Smithsonian South Mall Campus Master Plan; and

WHEREAS, the Hirshhorn Museum is a contributing building of the National Register of Historic Places-listed National Mall Historic District and has been determined eligible for individual listing in the National Register of Historic Places; and

WHEREAS, the Hirshhorn Museum is a cast-in-place concrete building with precast aggregate concrete cladding panels (cladding panels); and

WHEREAS, the SI has determined that all of the cladding panels must be replaced due to deteriorated anchor attachments and other widespread deteriorated conditions; and

WHEREAS, the SI has also determined that blast resistant anchorages, insulation and resistive barriers must be installed behind the cladding panels to address security concerns and meet prescriptive energy code requirements; and

WHEREAS, installation of the blast resistant anchorages, insulation and resistive barriers, will require offsetting the cladding panels by three inches (3”) beyond the historic conditions; and

WHEREAS, the Area of Potential Effect for this Project was defined in the PA; and

WHEREAS, the SI consulted with the NPS in accordance with the PA and the NPS determined that it would not participate in the development of this MOA; and

WHEREAS, the SI also consulted with the U.S. Commission of Fine Arts, Architect of the Capitol, Docomomo US/DC, District of Columbia Preservation League, National Gallery of Art, and Skidmore, Owings & Merrill, at two public consultation meetings held on April 10, 2019, and January 22, 2020. SI additionally met with Docomomo US/DC and the NCPC at a consultation meeting on October 30, 2019.

At the January 2020 meeting, physical samples and full-size mock-ups of the cladding panels were reviewed and approved as aesthetic matches to the historic cladding; and

WHEREAS, NCPC is a Signatory in the Section 106 process pursuant to 36 CFR § 800.3(f)(1), has approval authority over federal projects located within the District of Columbia pursuant to the National Capital Planning Act (40 U.S.C. § 8722(b)(1) and (d)) this approval would constitute an Undertaking as defined at 36 CFR § 800.16(y); and

WHEREAS, pursuant to Public. Law No. 108-72, 117 Stat. 888 (August 15, 2003), the SI is “deemed to be an agency for purposes of compliance with regulations promulgated by the ACHP pursuant to Section 106 of the National Historic Preservation Act” for projects in the District requiring NCPC review and approval; and

WHEREAS, the SI and NCPC have agreed that SI will be the lead agency pursuant to 36 CFR § 800.2(a)(2) for the Undertaking to fulfill their collective Section 106 responsibilities; NCPC has elected to fulfill its Section 106 responsibilities by participating in this consultation and is a Signatory to this MOA pursuant to 36 CFR § 800.6(c)(2); and

WHEREAS, the Signatories and the Consulting Parties agree that the complete removal and replacement of the historic cladding panels and the 3” dimensional offset at the exterior drum will have an adverse effect on the Hirshhorn Museum because it will replace all of the drum’s historic fabric, alter the overall dimensions of the museum, and change the visual relationship of the cladding panels to the cast-in-place concrete base of the building; and

WHEREAS, the SI notified the ACHP of the adverse effect in accordance with 36 CFR Section 800.6(a)(1) and applicable sections of the PA, and invited the ACHP to participate in the consultation to resolve adverse effects, but the ACHP declined to participate; and

NOW, THEREFORE, the Signatories agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the adverse effect of this undertaking on historic properties.

STIPULATIONS

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

1. MINIMIZATION MEASURES

A. Matching the Historic Appearance: The SI shall match the historic appearance of the Hirshhorn Museum as closely as possible by replacing the cladding panels in-kind; using the historic Swenson pink (Millennium) granite aggregate; matching the existing joint sizes of 3/8” – 5/8” inches for each new cladding panel; and by matching the concrete matrix and exposure of the cladding panel aggregate to the historic and adjacent cast-in-place concrete base of the building.

2. MITIGATION MEASURES

A. HABS/HALS Recordation of the Hirshhorn Museum and Sculpture Garden: The SI shall use Historic American Building Survey/Historic American Landscape Survey Level 3 standards to photograph the

exterior of the Hirshhorn Museum Building and the Sculpture Garden prior to the start of any construction activities. The SI shall submit the completed photographs to HABS/HALS for inclusion in the HABS/HALS collection.

B. Laser Scanning Documentation: Prior to removal of the existing precast panels, the General Contractor will perform a laser scan to document the location of the existing panels to +/- 1/4" accuracy. The location of the panels will be systematically recorded during removal of the panels to +/- 1/8" accuracy including the perpendicular distance from the face of the panels to the concrete substrate wall and the corner locations of all panels. Once the panels are removed, the General Contractor will perform a second laser scan to document the concrete substrate wall to +/- 1/4" accuracy. This information will supplement the historic record of the Hirshhorn and will be used to accurately replicate the panel relationships and joint conditions.

C. Retention of Historic Fabric: Two complete precast aggregate panels, one small standard and one large standard size, will be labeled and stored at the Museum Support Center in Suitland, Maryland. These panels will serve as the physical record documenting the appearance and aesthetic of the historic material.

D. Public Outreach: The SI will investigate opportunities to educate other Modern building owners about the efforts that the SI made to preserve the original cladding panels and the reasons why they ultimately had to be replaced. The goal of this outreach will be to encourage preservation of original Modern materials, whenever possible, and to propose replacement only when necessary. The products of this outreach might include, but is not necessarily limited to, conference papers, web-based articles, and/or other publications.

3. MONITORING AND REPORTING

Each year, by the anniversary date of the last signature on this MOA until it expires or is terminated, the SI shall provide the Signatories a summary report detailing work undertaken pursuant to the terms of the MOA. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes and objections received in the SI's efforts to carry out the terms of this MOA. Failure to provide such summary report may be considered noncompliance with the terms of the MOA pursuant to the Amendments and Non-Compliance stipulation of this MOA.

4. QUALIFICATIONS

SI shall ensure that all historic preservation work performed on its behalf 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 cited in the Secretary of the Interior's Professional Qualifications Standards.

5. ANTI-DEFICIENCY ACT

The SI's obligations under this MOA are subject to the availability of appropriated funds, and the stipulations of this MOA are subject to the provisions of the Anti-Deficiency Act. The SI shall make reasonable and good faith efforts to secure the necessary funds to implement its obligations under this MOA. If compliance with the Anti-Deficiency Act alters or impairs the SI's ability to implement its obligations under this MOA, the SI shall consult in accordance with the Amendments and Non-Compliance stipulation, and if necessary, the Termination stipulation.

6. AMENDMENTS AND NON-COMPLIANCE

This MOA 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 the Signatories is filed with the ACHP. The original amendment will be filed with the ACHP. If the Signatories cannot agree to appropriate terms to amend the MOA, any Signatory may terminate the MOA in accordance with the Termination stipulation of the MOA.

7. TERMINATION

If any Signatory to this MOA determines that its terms cannot or are not being properly implemented, that Signatory shall immediately consult with the other signatories to attempt to develop an amendment per Stipulation 6 above. If within thirty (30) days (or another time period agreed to by all Signatories) 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, SI must either (a) execute a new MOA pursuant to 36 CFR § 800.6 or (b) reinstate Section 106 consultation on the unfinished components of the Undertaking pursuant to 36 CFR Part 800 and applicable sections of the PA. SI shall notify the Signatories as to the course of action it will pursue.

8. ELECTRONIC COPIES

Within one week of the last signature on this MOA, the SI shall provide each Signatory with one legible, color, electronic copy of the fully executed MOA and all of its attachments fully integrated into one, single document. Internet links shall not be used as a means to provide copies of attachments since web-based information often changes. If the electronic copy is too large to send by e-mail, the SI shall provide each signatory with a copy of this MOA on a compact disc.

9. DURATION

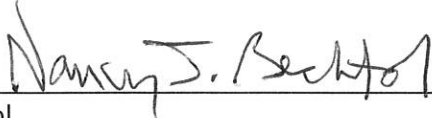
This MOA will expire if its terms are not carried out within four (4) years from the date of its execution. Prior to such time, SI may consult with the other Signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation 6.

Execution of this MOA by the Signatories, the filing of the MOA with the ACHP pursuant to 36 CFR § 800.6(b)(iv) and the implementation of its terms evidences that the SI has taken into account the effects of the Hirshhorn Envelope Repair Project on historic properties and has provided the ACHP a reasonable opportunity to comment on the Hirshhorn Museum Envelope Repair Project.

SIGNATURES FOLLOW ON SEPARATE PAGES

SIGNATURE PAGE
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FOR THE SMITHSONIAN INSTITUTION



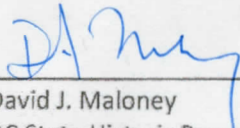
Nancy Bechtol
Director, Smithsonian Facilities

3/17/20

Date

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FOR THE DC STATE HISTORIC PRESERVATION OFFICER



David J. Maloney
DC State Historic Preservation Officer

3/18/2020

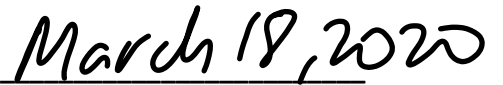
Date

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Marcel C. Acosta
Executive Director



Date