

**REPORT TO CONGRESS  
ON A PROPOSED PHYSICAL OR MATERIAL CHANGE TO THE  
GEORGE W. BUSH PRESIDENTIAL LIBRARY AND MUSEUM**

Submitted under the Presidential Libraries Act, as amended  
44 U.S.C. § 2112

**NATIONAL ARCHIVES AND RECORDS ADMINISTRATION**

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# TAB 1

## INTRODUCTION

The National Archives and Records Administration (NARA) respectfully submits this Report to the President of the Senate and the Speaker of the House of Representatives pursuant to the Presidential Libraries Act (PLA), as amended, 44 U.S.C. § 2112.

NARA and the George W. Bush Foundation (“Bush Foundation” or “Foundation”) have mutually agreed to revert exclusive control over certain Government-controlled areas and equipment from at the George W. Bush Presidential Library and Museum (“Bush Library and Museum” or “Library and Museum”) from NARA to the Bush Foundation.

The PLA applies to the matters covered by this Report because NARA intends to stop operating the Museum Exhibit Galleries and certain other areas of the “Presidential archival depository” known as the George W. Bush Presidential Library and Museum (“Bush Library and Museum” or “Library and Museum”). Once implemented, this decision will result in a “physical or material change” to the Presidential archival depository under the PLA, because exclusive control over the affected areas and certain equipment therein will revert to the George W. Bush Foundation (“Bush Foundation” or “Foundation”). This reversion and transfer of exclusive control will occur by the express terms of the Joint Use, Operating and Transfer Agreement that NARA and the Bush Foundation executed in April 2013 (“2013 JOA”) when the Library and Museum opened. The physical or material change and the reversionary clauses in the 2013 JOA are described in greater detail in Tab 4 of this Report.

NARA also proposes to return to the Bush Foundation a *pro rata* portion of the facility operations endowment required by 44 U.S.C. § 2112(g)(2). This proposal is discussed in Tab 5 of this Report.

The 2013 JOA is the agreement that the Archivist of the United States entered into with the Bush Foundation pursuant to the PLA to establish the Bush Library and Museum. The Archivist executed the agreement in April 2013 only after submitting a report in October 2012 to both Houses of Congress on the proposed Library and Museum, 44 U.S.C. §2112(a)(3); and waiting the prescribed period during which Congress could consider and, if it chose, act on the report. 44 U.S.C. § 2112(a)(5)(B).

The 2012 report included the unsigned 2013 JOA so that Congress could review the proposed terms and conditions for the Bush Presidential archival depository. Those terms and conditions included the reversionary clauses that will apply to the areas of the depository that NARA now proposes to stop operating. The reversionary clauses in the 2013 JOA are like those used in most, if not all of the agreements governing the land, facility, and equipment of the Presidential libraries administered by NARA. The executed version of the 2013 JOA is included as Tab 10 of

this Report<sup>1</sup>, while NARA's 2012 report to Congress is listed as Tab 11 and, because of its length (229 pages), available upon request.

Congress took no action on the 2012 report during the prescribed review period and NARA established the Bush Library and Museum in April 2013.

The proposed transfer of the Museum Exhibit Galleries and other areas will not affect NARA's responsibilities under the Presidential Records Act (PRA), 44 U.S.C. § 2201 *et seq.* As addressed in Tab 6 of this Report, NARA will continue to exercise full legal control and responsibility for maintaining, processing, protecting, and making available the Bush Presidential records pursuant to the PRA. Going forward, NARA's exclusive right to use the remaining areas of what will be called the Bush Presidential Library will be governed by a new or "Future" JOA. NARA and the Foundation have executed this Future JOA, which is included as Tab 2 of this Report. Even though signed by the parties, the Future JOA does not take effect until after the congressional review period concludes or Congress otherwise approves this proposal. Section 3.a. of the Future JOA contains the Effective Date provision just described.

Tab 6 also addresses the purpose of the proposed physical or material change to the Bush Presidential archival depository. The transfer of the Museum Exhibit Galleries and other areas to the Bush Foundation will allow NARA to focus its resources on the preservation of and access to the Bush Presidential records in accordance with the PRA and the PLA, and to make the records discoverable and accessible. These changes will result in cost savings to NARA.

#### *The PLA's Requirements for Changes to Existing Presidential Archival Depositories*

The PLA requires the Archivist of the United States to submit a report "[p]rior to accepting any gift under [44 U.S.C. § 2112(a)(1)(C)] for the purpose of making any physical or material change or addition to a Presidential archival depository, or prior to implementing any provision of law requiring the making of such a change or addition." 44 U.S.C. § 2112(a)(4). Once the report is submitted, the Archivist may not implement a physical or material change to an existing Presidential archival depository "until the expiration of a period of 60 days of continuous session of Congress beginning on the date on which the Archivist transmits . . . the report required under . . . [§ 2112(a)(4)] . . . with respect to such change or addition." 44 U.S.C. § 2112(a)(5)(C).

NARA believes that a report to Congress is required in this matter even though there is no "gift" involved. First, this would be the first time that NARA returned part of an existing Presidential archival depository or the associated *pro rata* portion of the building endowment.

Second, the reversionary clauses in the 2013 JOA were a fundamental part of the agreement that NARA and the Bush Foundation reached with respect to the "land, facility, and equipment" that the Foundation would make available to NARA, without transfer of title, for NARA's use in establishing, maintaining, operating, and protecting the Bush Presidential archival depository. Therefore, a report to Congress serves Congress' intent in enacting the PLA, even if the statute does not specifically contemplate the downsizing of a Presidential archival depository.

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<sup>1</sup> The reversionary clauses are found in sections 3.b. and 18.b. of the 2013 JOA.

Finally, the proposed transfer of part of the facility operations endowment to the Bush Foundation should be part of this Report. If the Foundation were proposing to fund an addition to the Presidential archival depository, then NARA would have to certify in the report to Congress that the Foundation had transferred enough money to the National Archives Trust Fund to increase the total endowment to the amount it would have been if the addition had been included in the depository as originally constructed. *See* 44 U.S.C. § 2112(a)(4)(B).

We acknowledge that our position regarding the return of part of the Bush endowment is a legal question of first impression.

Support for our conclusion that a report to Congress is required in this instance can be found in the legislative history to the PLA's 1986 amendments, in particular the Senate report that accompanied the bill as it was eventually enacted. With respect to the reporting requirement, the Senate states:

The Act requires the Archivist to submit a library prospectus to Congress for a 60-day review period before he may act to accept responsibility to operate and maintain a library. The submission must include an estimate of all federal costs associated with the library and an estimate of the annual cost to the government for operation and maintenance.

The Act also requires all modifications to libraries be subject to similar Congressional review requirements.

S. Rep. No. 99-257, 99<sup>th</sup> Cong., 2d Sess., p. 3 (March 7, 1986), 1986 U.S.C.C.A.N. 1393, 1395 (emphasis added).

The Senate addressed the purpose of the congressional review period later in the report, stating:

The 60-day period is intended to enable Congress to hold hearings or otherwise review and examine the prospectus. The Archivist is authorized to proceed as described in the prospectus after the 60-day period has expired. The Congress may take separate legislative action to express its approval or disapproval of a proposed Presidential library during this period. Expiration of the review period is not to be interpreted to permit the Archivist to take title or make agreements for the purposes of a library facility which is different or changed from that described in the prospectus. If the arrangements of the library are to be different from that described in the required prospectus, then a new or amended prospectus would be required and a new 60-day period would have to expire before the Archivist could proceed.

*Id.* at 6, 1986 U.S.C.C.A.N. at 1398.

While this language specifically addresses the report for a new Presidential archival depository, the PLA's review period for new and modified depositories is the same. *See* 44 U.S.C. § 2112(a)(5)(B), (a)(5)(C).

### *Organization of this Report*

The PLA has six required elements for reports covering physical or material changes to existing Presidential archival depositories.

Tab 1 – This Introduction.

Tab 2 – NARA and the Foundation have negotiated and signed a Joint Use, Operating and Transfer Agreement (“Future JOA”) setting forth the terms and conditions under which NARA and the Foundation would operate the George W. Bush Presidential Library and the George W. Bush Presidential Center (“Bush Center” or “Center”), respectively, following the return of the Museum Exhibit Galleries and other areas to the Foundation.

Tab 3 – In anticipation of the return of the Museum Exhibit Galleries and other areas, NARA and the Foundation have also negotiated and signed a second agreement, styled as a Memorandum of Understanding, regarding the operation of the Museum Exhibit Galleries and the volunteer program at the Bush Library and Museum during the period covering the submission of this Report, the congressional review period specified by the PLA, and the execution and implementation of the Future JOA. The MOU is reproduced in full in this Report.

Tabs 4-9 – These Tabs address the required report elements in § 2112(a)(4) and explain the proposed changes to the Bush Library and its endowment. The PLA’s report elements do not specifically address the instant situation. Therefore, we have changed the element descriptions to reflect what each Tab addresses, while trying to retain the intent behind the element. Each Tab includes a footnote with the PLA wording of the report element being addressed.

Tab 10 – The 2013 JOA between NARA and the Bush Foundation, which remains in effect.

Tab 11 – The 2012 Report to Congress on the proposed George W. Bush Library. This Report, which is 229 pages, is not included herein, but available upon request.

**TAB 2**

**The executed “Joint Use, Operating and Transfer Agreement among the George W. Bush Foundation, the National Archives and Records Administration, and the National Archives Trust Fund Board Regarding the George W. Bush Presidential Library”**

The “Future” JOA, which NARA and the Foundation executed on April 28, 2022, is set forth in a separate file that accompanies this Report.

**TAB 3**

**The executed “Memorandum of Understanding between the George W. Bush Foundation and the National Archives and Records Administration and the National Archives Trust Fund Board Regarding the Museum Exhibit Galleries and Volunteer Program” at the George W. Bush Presidential Library and Museum**

This agreement, which NARA and the Bush Foundation executed on April 13, 2022, is set forth in a separate file that accompanies this Report.



## TAB 4

### **A description of the proposed physical or material change to the George W. Bush Presidential Library and Museum that will result from NARA's decision to stop operating the Museum and certain other areas of the Bush Presidential archival depository.<sup>2</sup>**

#### *The Bush Presidential Archival Depository Currently*

The PLA authorizes the Archivist when he “considers it to be in the public interest,” to “make agreements, upon terms and conditions the Archivist considers proper, with a . . . foundation to use as a Presidential archival depository land, a facility, and equipment . . . , to be made available by it without transfer of title to the United States; and . . . maintain, operate, and protect the depository as a part of the national archives system.” 44 U.S.C. § 2112(a)(1)(B). Pursuant to this authority and following the required congressional reporting and review period set forth in 44 U.S.C. §§ 2112(a)(3) and (a)(5)(B), NARA and the Foundation entered into the 2013 JOA<sup>3</sup> in April 2013 (Tab 10) and NARA established the Bush Library and Museum.

The Library and Museum is located on the campus of Southern Methodist University (“SMU”) in Dallas, Texas, and is physically part of a larger complex known as the George W. Bush Presidential Center (“Bush Center”). The Bush Foundation built and equipped the Library and Museum in accordance with the PLA's requirements, for example, the architectural and design standards required by 44 U.S.C. § 2112(a)(2). The Foundation owns the building (the “Center Building”) in which the Library and Museum is located, and uses the part not occupied by the Library and Museum for its administrative and charitable activities. Those activities include the George W. Bush Institute, a nonpartisan policy organization, as well as the operation of rental and program facilities, a museum store, and two retail food service operations.

The Foundation is also responsible for the operation and upkeep of the Bush Center's outdoor areas, while NARA is responsible for providing security to the entire Center. The Center complex is located on 23.2 acres that the Foundation leases from SMU. A more complete description of the SMU-Foundation lease and the Bush Center complex can be found in the Recitals to and Section 2 of the 2013 JOA (Tab 10).

In addition to building and equipping the Bush Library and Museum, the Bush Foundation had to provide an endowment to be deposited in the National Archives Trust Fund. *See* 44 U.S.C. § 2112(g)(3). The purpose of the endowment is to produce income that is used annually to defray NARA's cost of operating the Library and Museum. The required endowment was calculated using the formula in section 2112(g)(3), and the Foundation transferred the necessary amount – \$9,763,162 – to the Trust Fund before the Archivist signed the 2013 JOA and “accepted” the

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<sup>2</sup> The first element of the report to Congress requires a “description” of the proposed “gift . . . for the purpose of making any physical or material change or addition to a Presidential archival depository. 44 U.S.C. § 2112(a)(4)(A).

<sup>3</sup> The 2013 JOA is included with this Report at Tab 10.

## Library and Museum.

Section 3.b. of the 2013 JOA granted NARA “the exclusive right . . . to use 89,640 gross square feet of space in the Center Building (of a total 210,864 gross square feet) and the operating equipment located therein<sup>4</sup> to establish, maintain, operate, and protect” the Bush Library and Museum. The areas of NARA’s exclusive use rights totaled 60,972 usable square feet of space. The Foundation did not transfer title to any real property to NARA, just the exclusive right to use the above-described spaces in the Center Building.

NARA also received title, not just use rights, to the “program equipment” located in the depository – i.e., the equipment and furnishings used by NARA to perform its archival, museum, and administrative functions. This transfer of title from the Foundation to NARA included the Museum’s “Permanent Exhibit” or, more accurately, the exhibit “furniture” (e.g., exhibit cases and mounts), lighting systems, hardware, software, and other components or equipment needed to present artifacts and documents as a finished, museum-quality exhibit.

As its name suggests, the Bush Library and Museum currently includes both “research facilities and museum facilities,” as permitted by the PLA. 44 U.S.C. § 2101(1). These facilities include administrative, staff, and contractor offices; public research rooms; several classrooms; archival and museum processing and storage areas, including a former Sensitive Compartmented Information Facility (SCIF) that has been decommissioned and had all classified materials removed<sup>5</sup>; the Museum Exhibit Galleries and support areas; the volunteer lounge and office; and building support spaces like elevators, restrooms, electrical, HVAC, and mechanical rooms. The areas currently comprising the Bush Library and Museum are described in detail in section 2.e. of the 2013 JOA (Tab 10).

Since April 2013, NARA has continuously used the research and museum areas to operate the Bush Library and Museum as a federal facility. NARA has exercised legal control over and responsibility for, among other things: maintaining, processing, protecting, and making available the Bush Presidential records and donated historical materials in accordance with the Presidential Records Act (PRA), 44 U.S.C. § 2201 *et seq.*, and the Federal Records Act, 44 U.S.C. chapter 21; operating a Museum, including the curation and presentation of exhibits using Bush Presidential records and historical materials, and artifacts borrowed from other institutions; developing and presenting educational programming; operating a volunteer program; and managing the physical plant for the entire Center Building (the Foundation reimburses NARA for its portion of consolidated facility management costs). NARA has performed its responsibilities using a combination of congressional appropriations, Museum admission fees and other trust and gift fund monies held by the National Archives Trust Fund for the benefit of the Bush Library and Museum, and gifts (money and in-kind) from the Bush Foundation. NARA has also used the income produced by the required facility operations endowment to defray the annual cost of facility operations, as required by 44 U.S.C. § 2112(g)(2).

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<sup>4</sup> The term “operating equipment” means the machinery, equipment, and building systems – like heating, ventilation, and air conditioning (HVAC) – that are essential to the operation of the library’s physical plant.

<sup>5</sup> All classified holdings originally stored at the Bush Library and Museum have been moved to the National Archives at College Park, Maryland.

### *The Proposed Physical or Material Change*

The Archivist has now determined that it is in the public interest to stop operating the Museum Exhibit Galleries, i.e., the Museum portion of the Bush Library and Museum. As explained below, this decision also means that NARA would stop operating the Volunteer Lounge and Office and related support areas. The Archivist has also determined that it is in the public interest for NARA to stop operating the Library and Museum's classrooms and educational support spaces, the former SCIF, and the electrical, HVAC, and mechanical rooms that support the program areas described in this paragraph and for which NARA has determined it does not require control for security purposes. The rationale for the Archivist's determinations is set forth in Tab 6 of this Report.

Once implemented, the Archivist's decision to stop operating the areas described above will result in a "physical or material change" to the Bush Presidential archival depository under the PLA, because exclusive control over the affected areas and much of the equipment and furnishings located therein will revert to the Bush Foundation by the express terms of the 2013 JOA. The Bush Foundation intends to use the Museum Exhibit Galleries and the other spaces that will revert to its control to operate, staff, and maintain, at its cost and under its sole control, a museum on the life and presidency of George W. Bush and for other purposes authorized by its charitable mission.

The 2013 JOA sets forth three reversionary clauses. The first two clauses appear in Section 3.b. and pertain to the Presidential archival depository itself:

The Foundation hereby grants to NARA, acting through the Archivist, an exclusive right, for the term and upon and under the conditions set forth in this Joint Use Agreement, to use 89,640 gross square feet of space in the Center Building (of a total 210,864 gross square feet) and the operating equipment located therein to establish, maintain, operate, and protect the Bush Library and Museum as the Presidential archival depository relating to the Presidency of George W. Bush; provided that, in the event the Archivist chooses or is otherwise compelled by presidential or congressional authority to stop operating the Museum Exhibit Galleries as part of the Bush Library, NARA's exclusive right to the Museum Exhibit Galleries (and their relevant support areas including, but without limitation the Volunteer Lounge and Office) shall revert to a non-exclusive right of access and transit in support of NARA's remaining Library operations and the Museum Exhibit Galleries shall become part of the Bush Center; provided further that NARA's exclusive rights in the remainder of the Library shall continue undisturbed until such time as NARA may cease to operate said remainder as a Presidential archival depository relating to the Presidency of George W. Bush, in which event the remaining exclusive rights granted herein shall terminate and all rights and privileges appurtenant thereto shall revert to the Foundation.

Emphasis added.

The Bush Foundation's retention of a reversionary interest in the areas comprising the Bush Presidential archival depository is not unique. Almost all of the deeds or agreements transferring title to or exclusive use rights in the other Presidential archival depositories that NARA operates contain similar provisions.

The third reversionary clause addresses "program equipment" made available by the Bush Foundation in 2013 for NARA's use in operating the Bush Library and Museum. The term "program equipment" means equipment that directly supports the core archival functions of a Presidential archival depository and includes personal property like office furnishings, exhibit furniture, and other items that support NARA's performance of archival, museum, and administrative functions. The reversionary clause that pertains to program equipment appears in section 18.b. of the 2013 JOA and it states that:

The Foundation hereby gives, donates, and conveys to the United States all right, title, and interest it may have in the program equipment made available under this Joint Use Agreement for NARA's use in maintaining, operating, and protecting the Bush Library, provided that, in the event NARA ceases to operate and maintain the Bush Library and Museum, title to any program equipment conveyed by the Foundation shall revert to the Foundation. It is also NARA's intent, in the event of a reversion of some or all of the Library, to dispose of any program equipment that NARA has purchased to replace equipment donated by the Foundation by giving it to the Foundation. The Foundation acknowledges that NARA may only dispose of personal property like the program equipment it purchases in accordance with federal law and regulation (e.g., the Federal Management Regulation, 41 CFR part 102). In addition, NARA will work with the Foundation to obtain the necessary authority to donate to the Foundation any program equipment that NARA has purchased to replace equipment donated by the Foundation.<sup>6</sup>

The areas that would revert to the Bush Foundation's control under the terms of section 3.b. of the 2013 JOA total 28,286 usable square feet out of a current total for the Presidential archival depository of 60,972 usable square feet, or 46.39 per cent of the current depository. As stated above in section 3.b., NARA's exclusive right to use the operating equipment supporting these areas will also revert to the Bush Foundation. Finally, title to any program equipment that the Bush Foundation made available for use in the affected areas in 2013 that has not been replaced by NARA will revert to the Foundation pursuant to section 18.b. of the 2013 JOA.

### *The Future Bush Presidential Archival Depository*

NARA would retain the exclusive right to use 32,686 usable square feet of space in the Center Building if the proposed reversion of the Museum Exhibit Galleries and other areas occurs.

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<sup>6</sup> The reversionary clause in section 18.b. of the 2013 JOA is unique to the Bush Library and Museum. The "program equipment" that NARA requires be provided with a new Presidential archival depository is usually purpose built for that depository. Given this substantial monetary outlay, the Bush Foundation negotiated the reversionary clause in section 18.b. to ensure that it would be able to use the program equipment in the event NARA stopped operating the Museum Exhibit Galleries or other areas.

These spaces comprise the archival operations portion of the current Bush Presidential archival depository and NARA intends to continue conducting all of the activities and functions in those areas that it currently performs. The areas that are not affected by the proposed reversion include the public research rooms; the archival, artifact, and audiovisual processing and storage areas; staff offices and a conference room; the main security room; and the electrical, HVAC, and mechanical rooms that NARA has determined must be controlled for security purposes. A more complete description of the spaces that NARA will continue to control if the proposed physical or material change occurs can be found in section 3.f. of the “Future JOA” in Tab 2.

The proposed transfer of the Museum Exhibit Galleries and other areas will not affect NARA’s responsibilities under the PRA. As addressed in Tab 6 of this Report, NARA will continue to exercise full legal control and responsibility for maintaining, processing, protecting, and making available the Bush Presidential records pursuant to the PRA. This includes providing security to the entire Bush Center, including the Presidential archival depository, at NARA’s expense.

NARA has agreed to make Bush Presidential records and other presidential historical materials – e.g., museum artifacts – available to the Bush Foundation for use in the exhibits that it will present in the Museum Exhibit Galleries following reversion. As described in section 11.c. of the Future JOA (Tab 2), “[a]ll loans will be documented in loan agreements that meet the requirements of Federal law and NARA’s policy and rules regarding the loaning of NARA holdings to external organizations.”

Overall, NARA’s exclusive right to use the areas of what will be called the Bush Presidential Library will be governed by a new or “Future” JOA, which is included as Tab 2 of this Report.

## TAB 5

**A statement specifying the estimated total cost to NARA of the proposed physical or material change to the Bush Presidential archival depository and the effect of said change on the amount of the endowment established in the National Archives Trust Fund pursuant to 44 U.S.C. § 2112 (g) for the depository.<sup>7</sup>**

NARA does not expect to incur any increase in direct costs to the Government as a result of the proposed physical or material change to the Bush Presidential archival depository. To the contrary and as discussed in Tab 8 of this Report, NARA estimates that the proposed reversion of the Museum Exhibit Galleries and other areas will reduce the U.S. Government's share of annual operating costs by approximately \$450 thousand in the first fiscal year following the reversion.

The National Archives Trust Fund will stop receiving a share of Museum admission fees once the reversion occurs. In 2019, the last full year of Museum operations prior to the pandemic's onset, NARA's share of Museum admission fees was approximately \$492 thousand. Proceeds from admissions fees support a variety of Library programs, but are primarily used to offset the costs of collecting admissions and to provide for the expenses of renovating the museum exhibit. If the proposed reversion is approved, NARA would no longer be responsible for these expenses.

In addition to the return of the Museum Exhibit Galleries and other areas, and the return of related equipment, NARA proposes to return a portion of the endowment required by 44 U.S.C. § 2112(g)(3) to the Bush Foundation, in an amount equivalent to the percentage reduction in Usable Square Feet (USF) of the Bush Library and Museum. Congress' stated purpose in amending the Presidential Libraries Act in 1986 was to control the size and cost of operating Presidential libraries and museums. *See, e.g.*, S. Rep. No. 99-257 at 2, 1986 U.S.C.C.A.N. at 1394 ("Legislation amending the Presidential Libraries Act is needed to reduce the taxpayer costs associated with Presidential libraries and to strengthen the role to be played by the Archivist of the United States in preserving, protecting, and sharing our nation's heritage.")

Congress also required that any gift of a Presidential archival depository to NARA be supported by an endowment, beginning with "any President who takes the oath of office as President for the first time on or after January 20, 1985." 44 U.S.C. § 2112 *note*). Income earned from the endowment may only be used "to cover the cost of facility operations, but shall not be available for the performance of archival functions [by NARA]." 44 U.S.C. § 2112(g)(2).

NARA believes the return of a proportional amount of the current endowment balance is a reasonable reading of what Congress intended by requiring an endowment, even if the PLA amendments of 1986 do not specifically contemplate the downsizing of a Presidential archival depository. The current endowment for the Bush Presidential archival depository reflects the

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<sup>7</sup> The second element of the report to Congress requires "a statement specifying the estimated total cost of the proposed physical or material change or addition and the amount of the deposit in an endowment for the depository required pursuant to subsection (g) of this section in order to meet the cost of such change or addition." 44 U.S.C. 2112(a)(4)(B).

2013 agreement between NARA and the Bush Foundation as to the cost of the depository. The parties are now proposing to change the fundamental terms of the 2013 agreement. If that change were to be an addition to the Presidential archival depository, the Foundation would have to increase the total endowment amount pursuant to 44 U.S.C. § 2112(a)(4)(B) in order to lessen the cost – somewhat – to the taxpayer of operating the added space.

By contrast, a reduction in the size of the Presidential archival depository will mean removing altogether the cost of operating the affected areas, even if some of the endowment is also returned to the Foundation. The costs that would no longer have to be paid include not only the costs for the regular cleaning and maintenance of the affected areas, but future, unforeseen capital costs, as well. This change will benefit the taxpayer, as the PLA intends.

The amount of the endowment that is required for a new Presidential archival depository is calculated based on the total cost of acquisition, construction, and improvements to the property and the installation of equipment in the depository. *See* 44 U.S.C. § 2112(g)(3). Since the enactment of the 1986 PLA amendments, and in the case of the Presidential Libraries of George H.W. Bush, William Clinton, and George W. Bush, NARA has accepted transfer of and has occupied a portion of a larger facility that includes other, non-Federal space and functions. Pursuant to its architectural and design standards for Presidential archival depositories, NARA has calculated the amount of the baseline acquisition, construction, and improvement cost of the Presidential archival depository (necessary to determine the amount of the endowment) as a percentage of total cost of the entire facility, where that percentage is the proportion of USF occupied by NARA as a percentage of total USF. *See* 36 C.F.R. § 1281.14(f).

The 2013 JOA for the Bush Library and Museum provides for NARA's exclusive use of 60,972 Usable Square Feet (USF) in the "Center Building" out of a total of 140,941 USF. The agency now proposes to return part of the facility and equipment that comprises the Presidential archival depository to the Bush Foundation's control. If implemented, the reversion of space covered by this report would transfer use and control of 28,286 USF of space in the Center Building to the Bush Foundation. NARA and the Foundation retained the Camden Design Group, a third-party vendor, to specifically measure the usable square feet of each listed space. **Exhibit A** of this Tab 5 outlines the specific spaces included.

On and after the effective date of the proposed Future JOA, NARA would retain exclusive use of 32,686 USF (60,972 USF *minus* 28,286 USF) of the Center Building to continue operations of the Bush Presidential archival depository. The resulting allocation of 32,686 USF is a reduction of 46.39% from the original allocation of 60,972 USF.

In 2013, pursuant to 44 U.S.C. § 2112(g)(3), the Foundation transferred the required endowment amount of \$9,763,162 to NARA to help defray NARA's cost of operating the Bush Library and Museum. The subject reversion, if approved, would reduce the size of the Presidential archival depository by 28,286 USF (or 46.39%). As a result, NARA intends to return an amount equal to 46.39% of the current endowment balance to the Foundation.

NARA proposes, and the Foundation has agreed, to accept an amount equivalent to 46.39% of the endowment balance *as of the effective date of the transfer* of control over physical space.

NARA uses a third-party capital management firm to manage its endowments, as authorized by 44 U.S.C. § 2306, to ensure a consistent income to offset the operations and maintenance costs of each covered Presidential archival depository. Each endowment is managed as a separate investment account. NARA endowments, including the endowment for the Bush Presidential archival depository are invested in bonds whose value may fluctuate with demand in the marketplace. NARA and the Foundation recognize that the current value of the endowment for the Bush Presidential archival depository is not the same as the original transfer and that the balance as of the effective date of the transfer of physical space may not be the same as either the original or the current balance.



**Exhibit A**

<b>National Archives Space (NARA)</b>	
<b>NARA USF Beginning Balance</b>	<b>60,972</b>
Permanent Exhibit Gallery (110)	(15,437)
Special Exhibit Gallery (107)	(4,670)
<i>Museum Exhibit Galleries</i>	<i>(20,107)</i>
Exhibit Production Space (084)	(675)
Paint Booth (085)	(64)
Exhibit Design Space (086)	(944)
<i>Museum Support Spaces</i>	<i>(1,682)</i>
Volunteer Lounge (130)	(679)
Volunteer Coordinator Office (131)	(128)
<i>Volunteer Program Space</i>	<i>(808)</i>
Classroom (113)	(1,264)
Classroom Storage (113B)	(117)
Situation Room (114)	(324)
Education Storage (118)	(132)
<i>Education Program Space</i>	<i>(1,837)</i>
Facility Manager's Office (080)	(243)
Assistant Facility Manager's Office (081)	(166)
CFM Contractor Office (082)	(168)
Management Suite (079)	(202)
Contractor Lunch Room (089)	(145)
<i>Building Management Space</i>	<i>(924)</i>
SCIF Processing (067)	(659)
SCIF Research (069)	(144)
SCIF Vestibule (066)	(159)
SCIF Holdings (070)	(1,967)
<i>Miscellaneous</i>	<i>(2,929)</i>
<b>NARA USF Ending Balance</b>	<b>32,686</b>
<b>NARA Change in USF</b>	<b>(28,286)</b>

## TAB 6

**A statement of the purpose of the proposed physical or material change to the Bush Presidential archival depository and a description of how the physical or material change will affect NARA's statutory responsibilities regarding the Presidential records and other historical materials of George W. Bush.<sup>8</sup>**

The transfer of the Museum Exhibit Galleries, the docent program, and supporting spaces will allow NARA to focus its resources on the preservation of and access to the Bush Presidential records in accordance with the PRA and the PLA, and to make the records discoverable and accessible. The same is true with respect to the transfer of the former SCIF and the educational spaces now located in the Bush Presidential archival depository. The overall changes will result in cost savings to NARA. As discussed in Tab 5, a core purpose of the PLA is “to reduce the taxpayer costs associated with Presidential libraries and to strengthen the role to be played by the Archivist of the United States in preserving, protecting, and sharing our nation’s heritage. *See, e.g., S. Rep. No. 99-257 at 2, 1986 U.S.C.C.A.N. at 1394.*

The physical or material change will have no effect on NARA’s statutory responsibilities regarding the Presidential records and other historical materials of George W. Bush. NARA will continue to exercise full legal control and responsibility for maintaining, processing, protecting, and making available the Bush Presidential records pursuant to the Presidential Records Act (PRA). NARA also will continue to administer other holdings, including donated papers and museum artifacts, in accordance with the PRA, the Federal Records Act, 44 U.S.C. chapter 21, or other applicable legal authority. NARA will exercise this full legal control and responsibility in the areas of the Presidential archival depository that will not revert to the Bush Foundation. In short, the depository will continue to operate as a federal facility under NARA’s control.

NARA will continue to exercise exclusive physical and legal control of and responsibility for the areas of the Presidential archival depository that will not revert to the Bush Foundation. These include archival and artifact storage and processing areas for all current holdings of the Bush Library and Museum; staff offices and work areas; a research room open to the general public; and the main security room for the entire 23.2 acre facility. A more complete description of what areas will comprise the Bush Presidential archival depository after the physical or material change can be found in section 3.f. of the Future JOA (Tab 10).

NARA will also continue to be solely responsible for providing trained security guards and a security system for the entire premises of the Bush Center, including the Bush presidential archival depository. NARA is retaining this responsibility – and the cost of same – because it is statutorily responsible for protecting the Bush presidential records and other Library holdings pursuant to the PRA and FRA. 44 U.S.C. §§ 2112(a)(1)(B)(ii), 2202, 2203. The Bush Presidential archival depository and the Bush Center are located on land owned by SMU.

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<sup>8</sup> The third element of the report to Congress requires “a statement of the purpose of the proposed change or addition and a general description of any papers, documents, or historical materials proposed to be deposited in the depository as a result of such change or addition.” 44 U.S.C. § 2112(a)(4)(C).

Therefore, as is the case currently, NARA will continue procuring security guard services from SMU that is negotiated, awarded, and administered pursuant to the Federal Acquisition Regulation (FAR), Title 48, Code of Federal Regulations.

If the proposed physical or material change occurs, the way in which consolidated facility management (CFM) services are procured for the Bush Presidential archival depository will change. Per the discussion below, NARA and the Foundation will each separately procure consolidated facility management (CFM) services from a single vendor.

Under the 2013 JOA, NARA currently provides for CFM services for the entire Center Building and the Foundation reimburses NARA for its portion of the CFM services received. In this case, CFM includes janitorial services and facility maintenance and operation services. As provided in the 2013 JOA, each party pays the full cost of any services received that are attributable to the space under that party's control and/or exclusively benefits that party. However, the majority of facility operation costs are not directly attributable in this way. NARA and the Foundation have agreed, in those cases, to share the common costs of facility operations based on the percentage of Usable Square Feet (USF) occupied by each party as a percentage of the total USF in the facility. As described in sections 20 and 22 of the 2013 JOA (Tab 10), this means NARA pays for 43.26 per cent of the facility operations and maintenance costs that cannot be directly assigned or apportioned to either party. The remaining amount is reimbursed by the Foundation. Similarly, the Foundation contracts for utilities (gas, water, and electricity) for the entire facility, and NARA reimburses the Foundation for its share, or 43.26 per cent of the total charge. The allocation used in each case is based on the current allocation of USF in the facility: NARA occupies and controls 60,972 USF out of 140,941 total USF, which is 43.26 per cent of the total.

If the proposed reversion occurs, the Bush Foundation will select a CFM vendor for the entire Center Building and the Foundation and NARA will each enter into separate contracts with that vendor for CFM services. NARA's contract would be awarded on a sole source basis consistent with FAR requirements. NARA and the Foundation have agreed that, under the proposed reversion, NARA's financial responsibilities for common, shared CFM services and utilities would be reduced from 43.26 per cent to 23.19 per cent of annual costs. Costs that can be attributed to or would exclusively benefit one of the parties would still be specifically assigned to that party under its contract with the CFM vendor and would not be apportioned or allocated.

Under the proposed reversion, the Bush Foundation would be responsible for over 75 percent of the facility, as well as its grounds. It would be more efficient and effective for the Bush Foundation to contract for CFM services independently of NARA. However, NARA must contract for CFM services for its portion of the facility under the rules and terms of the FAR. NARA and the Foundation have agreed that the Foundation will exercise its own authority to select the vendor for CFM services and that the Foundation will require that its vendor(s) and any subcontractors be registered on the federal government's System for Award Management so that NARA may properly contract with the vendor. NARA will enter into a FAR sole source contract with the same vendor for CFM services for NARA's portion of the facility.

The Foundation and NARA would consult on the statements of work for the CFM contract prior to the commencement of individual procurement actions and a NARA representative would be

included in the Foundation's discussions with a prospective vendor. NARA would also have a reasonable amount of time to review and comment on the terms of the proposed final contract, as well as the qualifications of the subcontractors. During the term of the contracts, the parties would consult on material changes to the statement of work and issues like the level, quality, and cost of the CFM services, and the need to terminate the vendor. However, because NARA will contract directly with the vendor, the agency will retain all the rights and remedies that the FAR accords the Government.

NARA currently has sole-source FAR contracts for CFM and/or security services with the University of Texas at Austin (Lyndon B. Johnson Library), the University of Michigan (Gerald R. Ford Library), and the Texas A&M University (George H.W. Bush Library). These contracts all stem from the unusual nature of the PLA, specifically the authority it gives to the Archivist to enter into agreements, without transfer of title, to use land, a facility, and equipment for a Presidential archival depository. Historically, NARA has chosen to enter into joint use agreements like the 2013 JOA rather than landlord-tenant relationships with a co-located foundation or university. We propose to follow the same model here with respect to the CFM contract for the Center Building.

## TAB 7

### **A statement of any additional improvements or equipment for the Bush Presidential archival depository associated with the proposed physical or material change.<sup>9</sup>**

Neither NARA nor the Bush Foundation propose any additional improvements or equipment for the Bush Presidential archival depository because of the proposed physical or material change. As discussed in Tab 6 of this Report, the purpose of the proposed reversion of the Museum Exhibit Galleries and other affected areas of the Bush Library and Museum is to reduce the cost to NARA of maintaining and operating the Presidential archival depository.

NARA does not expect to gain any equipment for the Bush Presidential archival depository. Instead, the agency proposes to return or transfer to the Bush Foundation as much of the “program equipment” as is legally permissible in the areas that would revert because of the proposed physical or material change to the depository. As explained in Tab 4, program equipment is equipment that directly supports the core archival functions of a Presidential archival depository and includes personal property like office furnishings, exhibit furniture, and other items that support NARA’s performance of archival, museum, and administrative functions. Because the bulk of the areas that are subject to reversion comprise the Museum Exhibit Galleries and the Permanent Exhibit located therein, much of the program equipment at issue is exhibit furniture and other equipment and furnishings used in these areas and the Volunteer’s Office.

The program equipment at issue falls into two categories. The first category includes program equipment in the reversionary areas that the Bush Foundation purchased and gave to NARA when it entered into the 2013 JOA that established the Bush Presidential archival depository. Title to any such program equipment reverts to the Foundation pursuant to section 18.b. of the 2013 JOA in the event NARA stops operating the depository or parts thereof. The full reversionary clause for program equipment is set forth in Tab 4 of this Report.

The second category of program equipment includes items that NARA has purchased since April 2013 either to replace equipment in the reversionary areas that the Bush Foundation originally provided; or, in connection with, for example, changes to the exhibits that NARA has presented in the Museum Exhibit Galleries. NARA may not simply give the equipment in this category to the Foundation in the event the proposed physical or material change to the Presidential archival depository takes place. Both the 2013 JOA and the Future JOA recognize this fact. Section 18.b. of the 2013 JOA states, in pertinent part, that:

It is also NARA’s intent, in the event of a reversion of some or all of the Library, to dispose of any program equipment that NARA has purchased to replace equipment donated by the Foundation by giving it to the Foundation. The Foundation acknowledges that NARA may only dispose of personal property like

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<sup>9</sup> The fourth element of the report to Congress requires “a statement of any additional improvements or equipment for the depository associated with such change or addition.” 44 U.S.C. § 2112(a)(4)(D).

the program equipment it purchases in accordance with federal law and regulation (e.g., the Federal Management Regulation, 41 CFR part 102). In addition, NARA will work with the Foundation to obtain the necessary authority to donate to the Foundation any program equipment that NARA has purchased to replace equipment donated by the Foundation.

This language, which Congress had the opportunity to review before NARA and the Bush Foundation signed the 2013 JOA, reflects the fact that the “program equipment” that NARA requires be provided with a new Presidential archival depository, is usually purpose built for the specific depository. The Bush Foundation paid for the design, fabrication, and installation of the Bush Library and Museum’s “permanent” exhibit, which included the purchase of program equipment supporting the exhibit. Given this investment, the Foundation negotiated the reversionary clause in section 18.b. to demonstrate its continuing interest in the program equipment in the event NARA stopped operating the Museum Exhibit Galleries or other areas.

NARA and the Bush Foundation also addressed the disposition of program equipment in the Future JOA, which will take effect if the reversion of the Museum Exhibit Galleries and other areas occurs. For example, section 15.b. of the Future JOA (Tab 2) states in pertinent part that:

The Foundation also gave NARA all right, title, and interest it had in the program equipment it purchased and installed in the Museum and other Foundation Reversionary Spaces for NARA’s use. This donation of program equipment was subject to a possibility of reverter under the conditions described in Section 18.b. of the [2013 JOA]. Pursuant to Section 4.b. of this Joint Use Agreement, title to all Program Equipment located in the Museum and other Foundation Reversionary Spaces will, as of the Effective Date of this Agreement, either revert to the Foundation (as the original owner); be donated to the Foundation (if purchased by NARA and permitted by federal property disposal authorities); or otherwise be disposed of in accordance with federal property disposal authorities.

NARA would have to satisfy the statutory and regulatory requirements for donating personal property before it could donate to the Bush Foundation program equipment that it bought for the reversionary areas. Those requirements are set forth in detail in title 40, U.S.C. starting at section 541, and the Federal Management Regulation (FMR), title 41, Code of Federal Regulations (C.F.R.) part 102-37, Donation of Surplus Personal Property. If NARA can meet these requirements, both the statute and the FMR authorize donations of personal property to, among other groups, nonprofit museums. *See* 40 U.S.C. § 549(c)(3)(B)(vii).

Finally, NARA will continue to have access to and use the facilities in the George W. Bush Presidential Center. Like the 2013 JOA, the Future JOA addresses the fact that two organizations will be operating on the Bush Center premises. Sections 5 and 6 contain detailed provisions outlining the parties’ respective rights, both exclusive and non-exclusive, to use the Presidential archival depository and the Bush Center. In addition, section 5.g. states that: “The Foundation shall not permit or create, or cause to be permitted or created, any continuing event or condition that prevents, restricts, or otherwise materially interferes with NARA’s use and enjoyment of its rights under this Section 5 or this Joint Use Agreement.”

Section 12 of the Future JOA details the joint use by the Foundation and NARA of certain spaces currently controlled by NARA that will transition to the Foundation when the Future JOA becomes effective. For example, sections 5.d. and 12 of the Future JOA specifically contemplates that NARA may continue to use Bush Center space for its educational and public programming. The opening words of Section 12 set the overall expectation, to wit: “It is the Foundation’s and NARA’s desire that they work together on an ongoing basis to use the Bush Center public areas for meetings, conferences, and other public programs and activities that mutually benefit the public and their respective missions and goals.” Section 12 then details how the use by NARA and the Foundation of the applicable spaces will be shared.

## TAB 8

### **An estimate of how the proposed physical or material change will affect the total annual cost to the United States of maintaining, operating, and protecting the Bush Presidential archival depository.<sup>10</sup>**

Under the 2013 JOA and as discussed above in Tab 6, NARA currently provides CFM services for the entire Center Building and the Foundation reimburses NARA for its portion of the CFM services received. As provided in the 2013 JOA, each party pays the full cost of any services received that are attributable to the space under that party's control and/or exclusively benefits that party. However, the majority of facility operation costs are not directly attributable in this way. NARA and the Foundation have agreed, in those cases, to share the common costs of facility operations based on the percentage of Usable Square Feet (USF) occupied by each party as a percentage of the total USF in the facility. Under this arrangement, NARA pays for 43.26 per cent of the CFM costs that cannot be directly assigned or apportioned to either party. The remaining amount is reimbursed by the Foundation. Similarly, the Foundation contracts for utilities (gas, water, and electricity) for the entire facility, and NARA reimburses the Foundation for its share, or 43.26 per cent of the total charge. The allocation used in each case is based on the current allocation of USF in the facility: NARA occupies and controls 60,972 USF out of 140,941 total USF, which is 43.26 per cent of the total.

NARA now proposes to return operational control and ownership of 28,286 USF from NARA to the Foundation. NARA would retain ownership and control of 32,686 USF, which is 23.19 per cent of total USF. NARA and the Foundation have agreed that, under the proposed reversion, NARA's financial responsibilities for common, shared CFM services and utilities would be reduced from 43.26 per cent to 23.19 per cent of annual costs. Costs that can be attributed to or would exclusively benefit one of the parties would still be specifically assigned to that party and would not be apportioned or allocated.

NARA estimates that the proposed reversion would reduce the U.S. Government's share of annual operating costs by approximately \$450 thousand. In FY 2021, NARA obligated \$961 thousand for the costs of contracted CFM services and utilities at the Bush Presidential archival depository. This amount is net of reimbursements from the Bush Foundation for its share of common CFM costs and only includes NARA's share of expenditures for utilities. If NARA had allocated expenses according to the proposed post-reversion allocation, NARA's net obligation in FY 2021 would have been \$515 thousand, a reduction of \$446 thousand. Because of annual cost escalations, NARA expects that potential cost savings will approach or exceed \$450 thousand per year once the reversion is implemented.

NARA also anticipates that the proposed reversion will reduce future outlays for capital improvements to the reversionary space. In addition to operating expenses, NARA is also

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<sup>10</sup> The fifth element of the report to Congress requires "an estimate of the increase in the total annual cost to the United States of maintaining, operating, and protecting the depository that will result from such change or addition." 44 U.S.C. § 2112(a)(4)(E).



responsible for the repair, renovation, and capital improvements to the Bush Library and the associated facility operating equipment. NARA expects that the proposed reversion would significantly reduce future outlays for capital improvements and would also eliminate future liabilities for deferred maintenance.

NARA cannot speculate as to the exact savings in future capital needs that might result from the proposed reversion. The Bush Library is NARA's newest facility and, at less than ten years old, has not yet required significant capital improvements and does not have any deferred maintenance items. However, as the facility continues to age, it will become more likely that the facility will require more frequent and more substantial repairs and that NARA may not be able to immediately address all non-critical repair needs, which would create new items on NARA's deferred maintenance list. As a point of reference, NARA obligated more than \$6.5 million in capital expenses for our inventory of 17 NARA-owned Federal buildings (including the Bush Library) in FY 2021, and started FY 2022 with a deferred maintenance backlog of \$76 million.

TAB 9

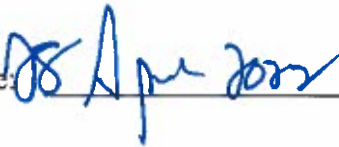
**A certification that the Presidential archival depository resulting from the proposed physical or material change will, after such change or addition, comply with the Architectural and Design Standards for Presidential Libraries that NARA has promulgated pursuant to 44 U.S.C. § 2112(a)(2).<sup>11</sup>**

**ARCHIVIST'S CERTIFICATION STATEMENT**

I hereby certify that the facility and equipment comprising the George W. Bush Presidential Library will, following the proposed physical or material change, meet the architectural and design standards for Presidential libraries that were in effect during the Library's design and construction. In the future, all repairs to and renovations of the Library, whether interior or exterior, shall conform to the architectural and design standards promulgated by NARA for Presidential libraries and in effect as of the commencement of the work being done.



\_\_\_\_\_  
DAVID S. FERRIERO  
Archivist of the United States

Date:  \_\_\_\_\_

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<sup>11</sup> The sixth and last element of the report to Congress requires "a certification that the depository, and the equipment therein will, after such change or addition, comply with the standards promulgated by the Archivist pursuant to paragraph (2) of this subsection.

**TAB 10**

**The 2013 Joint Use, Operating, and Transfer Agreement between the George W. Bush Foundation and the National Archives and Records Administration Regarding the George W. Bush Presidential Library and Museum.**

The 2013 JOA is set forth in a separate file that accompanies this Report.

TAB 11

**The 2012 Report to Congress on the Proposed George W. Bush Library.**

The 2012 Report to Congress is not included as a separate file to this Report because it is 229 pages in length. NARA will provide the 2012 Report upon request if Congress wishes to review it.