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2
3 **PROGRAMMATIC AGREEMENT**
4 **AMONG**
5 **THE NATIONAL PARK SERVICE, AMERICAN BATTLEFIELD PROTECTION PROGRAM**
6 **AND**
7 **THE NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION OFFICERS**
8 **AND**
9 **THE ADVISORY COUNCIL ON HISTORIC PRESERVATION**
10 **REGARDING THE AMERICAN BATTLEFIELD PROTECTION PROGRAM'S**
11 **BATTLEFIELD PRESERVATION PLANNING GRANTS AND**
12 **BATTLEFIELD LAND ACQUISITION GRANTS**
13

14 **WHEREAS**, the National Park Service (NPS)'s American Battlefield Protection Program
15 (ABPP) promotes the preservation of significant historic battlefields associated with wars on American
16 soil. The goals of the program are 1) to protect battlefields and sites associated with armed conflicts that
17 influenced the course of our history, 2) to encourage and assist all Americans in planning for the
18 preservation, management, and interpretation of these sites, and 3) to raise awareness of the importance of
19 preserving battlefields and related sites for future generations. The ABPP focuses primarily on land use,
20 cultural resource and site management planning, and public education; and

21 **WHEREAS**, the ABPP was initially created by the Secretary of the Interior in 1991. In 1996
22 Congress signed into law the American Battlefield Protection Act (Public Law 104-333), which officially
23 authorized the ABPP as a program within the NPS; and

24 **WHEREAS**, the NPS ABPP administers financial assistance to non-Federal entities in multiple
25 states through two grant programs, the Battlefield Preservation Planning Grants (PLANNING GRANTS),
26 and Battlefield Land Acquisition Grants (BLAG), that support projects that lead to the preservation,
27 protection, and interpretation of battlefield land and sites associated with wars fought on American soil
28 such as, but not limited to, the American Revolution, War of 1812, Indian Wars, American Civil War,
29 Mexican-American War and World War II; and

30 **WHEREAS**, as authorized by Congress most recently through the Omnibus Public Land
31 Management Act of 2009, as amended (P.L. 111-11, 54 U.S.C. § 308102, including notes), monies are
32 made available to NPS ABPP to fund its PLANNING GRANTS, which provide financial assistance to
33 encourage, support, assist, recognize, and work in partnership with citizens, Federal, State, local, and
34 tribal governments, other public entities, educational institutions, and private nonprofit organizations in
35 identifying, researching, evaluating, interpreting, and protecting historic battlefields and associated sites
36 on a national, State, and local level. Congress authorized the appropriation of \$3,000,000 for each fiscal
37 year with the funds remaining available until expended; and

38 **WHEREAS**, the NPS ABPP invites eligible applicants to submit applications annually for
39 PLANNING GRANTS; and

40 **WHEREAS**, PLANNING GRANTS proposed project areas must be on American (U.S.) soil
41 and/or within U.S. territorial waters; and

42 **WHEREAS**, as authorized by Congress through the Omnibus Public Land Management Act of
43 2009, as amended (P. L. 111–11), and most recently reauthorized through FY 2021 by the National
44 Defense Authorization Act, 2015 (P.L. 113-291, 54 U.S.C. § 308103 Battlefield Acquisition Grant
45 Program, including notes), a portion of the Land and Water Conservation Fund (LWCF) monies are made
46 available to NPS ABPP to fund its BLAG Program, which assists States and local communities to acquire
47 and preserve threatened Revolutionary War, War of 1812 and Civil War battlefield lands through a
48 competitive process. Congress authorized the appropriation of \$10,000,000 to the Secretary of the
49 Interior, acting through the NPS ABPP, for each fiscal year through 2021, with the funds remaining
50 available until expended; and

51 **WHEREAS**, the NPS ABPP invites eligible applicants to submit applications for BLAG
52 throughout the year as funding is available; and

53 **WHEREAS**, land at Revolutionary War, War of 1812, and Civil War battlefields eligible for
54 BLAGs are located in only 38 states and include those listed in the Civil War Sites Advisory Council’s
55 1993 *Report on the Nation’s Civil War Battlefields* and NPS ABPP’s 2007 *Report to Congress on the*
56 *Historic Preservation of Revolutionary War and War of 1812 Sites in the United States* (collectively, the
57 *Battlefields Reports*); and

58 **WHEREAS**, at the request of Congress, the Battlefield Reports identify Revolutionary War, War
59 of 1812, and Civil War battlefield priorities reflecting the most effective sequence of preservation to
60 achieve maximum overall battlefield protection, ranging from Priority I through Priority IV, and it is NPS
61 ABPP intent to assure that Priority I and Priority II projects are reviewed as quickly and efficiently as
62 possible; and

63 **WHEREAS**, the NPS ABPP grant funding is for the purpose of preservation of historic
64 battlefields, and these grant funds shall not be used for any work or activity that does not conform to the
65 grant guidelines and/or manual for each NPS ABPP Grant Program and terms and conditions of the NPS
66 ABPP Grant Agreement, including adherence to the appropriate Secretary of the Interior’s *Standards and*
67 *Guidelines*, and the approved studies, scope of work, plans, or easement; and

68 **WHEREAS**, the NPS ABPP has determined that the implementation of these grant programs
69 may affect properties included in or eligible for the National Register of Historic Places (NRHP) and has
70 consulted with the National Conference of State Historic Preservation Officers (NCSHPO) and the
71 Advisory Council on Historic Preservation (ACHP) pursuant to the regulation 36 CFR Part 800,
72 implementing section 106 and 110(f) of National Historic Preservation Act (NHPA), 54 U.S.C. § 300101
73 et seq.; and

74 **WHEREAS**, the NPS ABPP recognizes that the preservation activities it funds are not intended
75 to result in Adverse Effects to historic properties and that efforts are made for No Adverse Effect or No
76 Adverse Effect, with conditions, determinations; however, the program is Congressionally mandated to
77 fund projects that may result in Adverse Effects and may proceed with funding such projects after
78 completing the actions described in 36 CFR § 800.6; and

79 **WHEREAS**, the NPS ABPP, NCSHPO, and the ACHP, with the Civil War Trust as a
80 Concurring Party, implemented an Interim Programmatic Agreement (IPA), dated May 14, 2015, to

81 implement and formalize the Section 106 review process for ABPP BLAGs in ten states funded with
82 remaining FY 2014 and new FY 2015 money; and

83 **WHEREAS**, the IPA required the development and implementation of a comprehensive
84 Nationwide Programmatic Agreement (Nationwide PA) by December 31, 2015, to satisfy the
85 requirements of Section 106 for the NPS ABPP BLAG Program from that date forward and was extended
86 in December 2015 until June 30, 2016 and then in June 2016, extended until superseded by an executed
87 Nationwide PA and amended to include FY 2016 funding; and

88 **WHEREAS**, the NPS ABPP, in consultation with the ACHP, proposed to also include the ABPP
89 PLANNING GRANTS in the Nationwide PA in order to satisfy the requirements of Section 106 for that
90 grant program from the Effective Date of this Agreement forward; and

91 **WHEREAS**, an expedited compliance process for NPS ABPP grant-funded activities is
92 appropriate due to the large number of small undertakings on private and public property and Tribal
93 lands. The NPS ABPP has determined there is: (1) a timely need due to the one-year money for
94 PLANNING GRANTS that require obligation before the end of each fiscal year; (2) an urgent need to
95 award and release funds to BLAG applicants so that these lands are preserved in accordance with the
96 intent of the BLAG program and not lost to potential incompatible development and (3) the need to
97 provide expedited review for certain NPS ABPP grant-funded activities that are clearly undertakings but
98 with effects that are foreseeable and likely to be minimal or not adverse to historic properties, in
99 accordance with 36 CFR §800.14(c)(1)(ii); and

100 **WHEREAS**, the NPS ABPP, NCSHPO, and the ACHP have consulted in accordance with 36
101 CFR § 800.14(b) to develop this Nationwide PA to expedite the Section 106 review process to the
102 provisions set forth in the NPS ABPP Grant manuals/application guidance, including delegating authority
103 to its applicants, when appropriate, to initiate consultation in accordance with 36 CFR § 800.2(c)(4),
104 except as provided herein as it relates to Tribes; and
105

106 **WHEREAS**, the NPS ABPP notified the ACHP regarding the Section 106 consultation process
107 to develop this Agreement in accordance 36 CFR § 800.14(b)(2); and

108 **WHEREAS**, the NPS ABPP has consulted with the NCSHPO for the NPS ABPP PLANNING
109 GRANTS and BLAG Programs, and has invited the NCSHPO to be a signatory of this Agreement, in
110 accordance with 36 CFR § 800.14(b)(2), with NCSHPO agreeing to sign this Agreement on behalf of the
111 State Historic Preservation Officers (SHPOs); and

112 **WHEREAS**, the NPS ABPP has determined that the administration of the ABPP Grant Programs
113 may have an effect on historic properties to which Indian tribes or Native Hawaiian Organizations
114 (NHO), may attach religious and cultural significance; and

115 **WHEREAS**, because of the sovereign status of federally recognized Indian Tribes or NHO, the
116 NPS ABPP has determined, and the ACHP has concurred, that it is appropriate to invite each federally
117 recognized Indian Tribe Tribal Historic Preservation Officer (THPO) or NHO to develop independent
118 consultation protocols with the NPS ABPP (based upon government-to-government consultation) and,
119 hence, no Tribes have been asked to be signatories to this agreement; and

120 **WHEREAS**, ABPP recognizes that SHPOs, THPOs, and Indian Tribes may wish to develop
121 specific BLAG protocols with applicants, particularly if the SHPO, THPO, or Indian Tribe is intended to
122 be the grant-funded project easement holder or when the NPS ABPP grant-funded land acquisition is to
123 be included into a state park. Such alternative protocols shall in no way supersede this Agreement, but
124 shall be a means to structure expected submittals and processes in accordance with this Agreement. Such
125 protocols may be established through a memorandum of understanding (MOU) and communicated to
126 NPS ABPP, ACHP, and NCSHPO; and

127 **WHEREAS**, the NPS ABPP has consulted with the Civil War Trust (CWT) and Campaign 1776,
128 a project of the CWT, both being major, private, non-profit partner organizations to the NPS ABPP,
129 regarding the potential effects of the two ABPP Grant Programs, and has invited them to sign this
130 Agreement as a concurring party; and

131 **WHEREAS**, the NPS ABPP has consulted with the following organizations who have a
132 demonstrated interest in battlefield preservation regarding the potential effects of the two ABPP Grant
133 Programs, and have been invited to sign this Agreement as a concurring party: The Public Archaeology
134 Facility (PAF) at Binghamton University, NY; the South Carolina Institute of Archaeology and
135 Anthropology (SCIAA); the Mashantucket Pequot Museum and Research Center, CT; and Shenandoah
136 Valley Battlefields Foundation, VA; and

137 **WHEREAS**, the NPS ABPP shall take appropriate measures (e.g. PEPC Planning, Environment,
138 and Public Comment website and NPS ABPP website) to notify local governments and the public of the
139 existence of this Nationwide PA and involve them as appropriate during the implementation of the terms
140 of this Agreement as set forth in Stipulation VII; and

141 **NOW, THEREFORE**, the NPS ABPP, the NCSHPO, and the ACHP agree that the NPS ABPP
142 Grant Programs shall be implemented in accordance with the following stipulations in order to take into
143 account the effect of these Grant Programs on historic properties.

144 **NPS ABPP, in coordination with Applicants who receive ABPP grants, agrees to carry out the**
145 **following measures.**

146 **I. APPLICABILITY**

147 This Agreement shall apply only to the NPS ABPP Battlefield Preservation Planning Grant
148 (PLANNING GRANTS) Program and Battlefield Land Acquisition Grant (BLAG) Program.
149

150 **II. ROLES AND RESPONSIBILITIES**

151 Roles and Responsibilities are generalized below and actions by any of the listed parties are not limited
152 to those listed.

153 A. NPS ABPP

154 1. The NPS ABPP is the federal agency responsible for completing consultation under
155 Section 106 for the activities funded through its PLANNING GRANTS and BLAGs.
156 Staff manages the grant application review, award, and disbursement process, as well
157 as the review of all products of the PLANNING GRANTS (research designs, draft

- 158 reports, etc.) and the development of agreements and easements for the BLAGs. The
159 NPS has internal management policy documents related to the various elements of
160 the NPS ABPP program (Directors Order 2: Park Planning, Director's Order 6:
161 Interpretation and Education, Directors Order 16A: Reasonable Accommodation for
162 Applicants and Employees with Disabilities, Directors Order 17: Tourism, Directors
163 Order 25: Land Protection, Directors Order 28: Cultural Resource Management, etc.)
164 that provide guidance for NPS ABPP Staff and potential applicants to the program on
165 what are acceptable project proposals.
- 166 2. The NPS ABPP will provide grant program guidance to applicants. NPS ABPP will
167 determine which proposals meet programmatic exclusions from the Section 106
168 review according to Stipulation III, below. For all other proposals the NPS ABPP
169 will advise Applicants that the Section 106 process must be completed for their
170 projects and provide guidance on the materials Applicants will be expected to
171 provide.
 - 172 3. The NPS ABPP will provide technical assistance to SHPOs, non-profits, local
173 governments, universities, and Tribes on best practices for battlefield preservation, as
174 needed.
 - 175 4. The NPS ABPP will retain staff who meets the Secretary of the Interior's (SOI's)
176 *Professional Qualifications Standards* (Qualifications) in order to identify and
177 evaluate historic properties and to provide technical assistance to federal agencies
178 and the ACHP on federal projects that may adversely affect historic battlefields
179 throughout the country.
 - 180 5. The NPS ABPP will send SHPOs notification letters in February of PLANNING
181 GRANTS applications received for projects their state that will include notice of
182 these PLANNING GRANTS projects which qualify under a programmatic exclusion
183 as defined herein and do not require Section 106 review as defined in Stipulation
184 III.A.
 - 185 6. The NPS ABPP will include the Section 106 Review status of a BLAG application in
186 the application acknowledgement letter sent to the government sponsor and copied to
187 the Applicant, the SHPO, if the SHPO is not the government sponsor, and the
188 conservation easement holder, if not the SHPO.
 - 189 7. The NPS ABPP will request the Applicant, or their designee, who meets the SOI's
190 *Qualifications*, to assist the ABPP in carrying out the requirements of 36 CFR §§
191 800.4 through 800.6 with the exception of Stipulation VI, Tribal Consultation, for all
192 grant activities that are receiving NPS federal assistance and do not qualify as a
193 programmatic exclusion pursuant to Stipulation III. NPS ABPP will retain oversight
194 responsibilities to ensure the stipulations of this Agreement are met, and must be
195 notified by the Applicant if, after routine consultation or coordination with the
196 SHPO, disputes remain regarding the identification, evaluation or treatment of
197 historic properties.
 - 198 8. The NPS ABPP will consult government-to-government with Federally recognized
199 Indian Tribes and NHOs on undertakings that occur on and off Tribal lands in
200 accordance with 36 CFR §800.2(c)(2). As appropriate, correspondence will be
201 forwarded to the Applicant and, in the case of BLAGs, Government Sponsor.

202 9. The NPS ABPP will provide the ACHP and NCSHPO with an annual report for the
203 previous fiscal year by December 31 as long as this Agreement is in effect as outlined
204 in Stipulation XV.

205 B. Applicants

- 206 1. In the case of PLANNING GRANTS, eligible applicants are non-profit groups,
207 academic institutions, and local, regional, state, and tribal governments.
- 208 a. The PLANNING GRANTS Applicant will submit a complete application by the
209 annual due date to NPS ABPP.
- 210 b. If a proposed project is not considered eligible for a programmatic exclusion in
211 accordance with this Agreement or other subsequent agreement, the PLANNING
212 GRANTS Applicant will provide the NPS ABPP any previous correspondence
213 received from the SHPO about the project in the application.
- 214 c. If conditioned as part of a No Adverse Effect determination, the PLANNING
215 GRANTS Applicant is delegated to carry out the conditions and may be
216 reimbursed one hundred (100) % of costs associated with identification and
217 evaluation of historic properties to the grant.
- 218 d. The PLANNING GRANTS Applicant will be responsible for all costs associated
219 with resolving any Adverse Effects to historic properties.
- 220 2. In the case of the BLAGs, eligible applicants are non-profit organizations or state,
221 regional, or local governments seeking to acquire battlefield land or easements on
222 battlefield land.
- 223 a. The BLAG applicant will provide the NPS ABPP and the Government Sponsor
224 all information submitted to or received by the SHPO regarding Section 106
225 Review as part of the application. The BLAG applicant or their designee, who
226 meets the SOI's Qualifications, will carry out the requirements of 36 CFR §§
227 800.4 through 800.6 with the SHPO as defined herein. The BLAG Applicant will
228 also provide the easement holder, if not the SHPO, all information submitted to
229 or received by the SHPO regarding Section 106 Review.
- 230 b. If awarded, the BLAG Applicant or their designee, who meets the SOI's
231 Qualifications, will carry out the requirements of 36 CFR §§ 800.4 through 800.6
232 with the SHPO as specified in the grant agreement.
- 233 c. The BLAG Applicant may be reimbursed for up to fifty (50) % of costs
234 associated with identification and evaluation of historic properties, including but
235 not limited to any cultural resource surveys or inventories completed subsequent
236 to land or conservation easement acquisitions, to the BLAG.
- 237 d. The BLAG Applicant will be responsible for costs associated with resolving any
238 adverse effects.

239
240 C. Government Sponsor

- 241 1. BLAGs are awarded to units of State and local governments. In any case where a
242 private non-profit organization seeks to acquire or place a conservation easement on
243 battlefield land with assistance from the BLAG program, that organization must
244 apply in partnership with a State or local government agency sponsor.

- 245 2. The Government Sponsor may then sub-grant the Federal funds to the non-profit
246 organization.
247 3. The Government Sponsor will have no role in the Section 106 review process as it
248 relates to submission of documentation; however, the Applicant will provide all
249 documents related to the Section 106 review that the Applicant has sent to or
250 received from the SHPO, to the Government Sponsor.
251

252 D. SHPOs

- 253 1. The SHPOs will provide technical assistance to Applicants, as requested, during the
254 PLANNING GRANT and BLAG application process.
255 2. The SHPOs will consult with the NPS ABPP and Applicants, or their designee, to
256 bring the Section 106 review process to completion.
257 3. The SHPO will recognize the delegation of Section 106 responsibilities to the
258 Applicant, as provided herein.
259 4. The SHPO will be offered the opportunity for review and comment on draft products
260 associated with the PLANNING GRANTS as conditioned in a project's grant
261 agreement.
262 5. The SHPO, when also the easement holder, will work with the BLAG applicants and
263 the NPS ABPP to ensure easement language and any required plans are written to
264 meet the requirements of the SHPO and the *Secretary of the Interior's Standards and*
265 *Guidelines for Archeology and Historic Preservation, the Treatment of Historic*
266 *Properties, and Guidelines for the Treatment of Cultural Landscapes* as per the NPS
267 ABPP BLAG grant agreement.
268

269 E. ACHP

- 270 1. The ACHP will participate in consultation to resolve Adverse Effects when determined
271 appropriate by ACHP.
272 2. The ACHP will assist in resolving disputes among signatories of this Agreement, any
273 affected Indian Tribe(s), or any applicant.
274 3. If requested by the Applicant or Government Sponsor who received a grant, the ACHP
275 will assist in resolving disputes after the grant is completed regardless of whether the
276 NPS ABPP is requested to assist in the dispute.

277 III. PLANNING GRANTS

278 A. Programmatic Exclusions and Conditions

- 280 1. For the following eligible activities, NPS ABPP shall assume there no potential to
281 cause effect (No Effect) to historic properties and no further consultation is required
282 beyond technical assistance:
283
284 a. Historical research/overviews;
285 b. GPS/GIS mapping;
286 c. Survey and Inventory (when no ground disturbance is planned);

- 287 d. NHL/NRHP/state register nomination, update, or boundary expansion (excluded
288 from Section 106 review, but will receive SHPO review through the NRHP
289 process);
290 e. Preservation plan;
291 f. Heritage tourism interpretive plan;
292 g. Strategic/organizational/administrative planning (when no ground disturbance or
293 alternation to structures or buildings are planned);
294 h. Viewshed analysis;
295 i. Educational activities, such as museum exhibit plans, videos/brochures/guides,
296 and web-based interpretation, all with sensitive locations redacted; and
297 j. Advocacy and support, such as administrative support, press and media outreach,
298 public outreach, meetings and strategic advocacy.
299
- 300 2. For eligible activities **not listed** above in Stipulation II.A.1. that include, or result in,
301 ground disturbing activities, or involve potential preservation treatment
302 recommendations, the NPS ABPP will use the following criteria and conditions:
303 a. NPS ABPP will send the application to the SHPO for review and comment. If the
304 ABPP and SHPO concur that the proposed work will be carried out (i) in a manner
305 that meets the Secretary of Interior's *Standards* and any applicable state
306 guidelines, (ii) by a professional that meets or exceeds the Secretary of the
307 Interior's *Qualifications*, and (iii) in consultation with the SHPO, then the ABPP
308 will conclude the Section 106 process by making a finding of No Adverse Effect
309 or No Historic Properties Affected.
310 b. If changes are needed to make the activity meet the three criteria listed herein, the
311 SHPO will provide NPS ABPP and Applicant with any additional recommended
312 conditions. These may include SHPO/THPO or other Consulting Parties review of
313 the research design and/or resulting reports, treatment plans or other documents.
314 NPS ABPP will make a conditional No Adverse Effect finding and include the
315 agreed upon changes or conditions in the Grant Agreement, if awarded.
316
- 317 3. The list of grants awarded not subject to Section 106 review will be included in the
318 Annual Report (Stipulation XV).
319

320 B. Planning Grants Subject to Section 106.
321

- 322 1. The NPS ABPP shall encourage Applicants to design their projects to avoid Adverse
323 Effects to historic properties. The ABPP will also advise Applicants about the
324 applicability of Section 110(k) of the National Historic Preservation Act and inform
325 Applicants that ground disturbing activities and preservation treatments must not
326 commence until completion of the Section 106 review.
327
- 328 2. For projects that do not meet any of the exclusions of Stipulation III.A.1. above, the
329 NPS ABPP will initiate consultation with the SHPO in accordance with 36 CFR § 800
330 and Director's Order #28, Cultural Resource Management.
331

- 332 3. NPS ABPP shall also request the comments of any Indian Tribe(s) if the project is
333 located on or near land that is of traditional or cultural importance.
334
- 335 4. No further Section 106 review will be required if the NPS ABPP and the SHPO agree
336 that the project is designed and planned in accordance with the Secretary of Interior's
337 *Standards for the Treatment of Historic Properties* (35 CFR § 68, July 12, 1995
338 *Federal Register*) (*Standards*) and those conditions in Stipulation III.A.2. and will
339 result in No Historic Properties Affected or No Adverse Effects.
340
- 341 5. The NPS ABPP and the SHPOs will make best efforts to expedite reviews through a
342 finding of No Adverse Effect, with conditions, when the NPS ABPP and the SHPO
343 concur that plans and specifications or scopes of work can be modified to ensure
344 adherence to the *Standards*. If the project cannot be modified to meet the *Standards* or
345 would otherwise result in an Adverse Effect to historic properties, NPS ABPP will, if
346 intended to be awarded, proceed in accordance with Stipulation V, below.
347

348 **IV. BATTLEFIELD LAND ACQUISITION GRANTS (BLAGs)**

349 **A. Initiation of the Section 106 Process for BLAGs**

- 350
- 351
- 352 1. The NPS ABPP shall encourage Applicants to consult with the appropriate SHPO prior to
353 submitting a BLAG application to NPS ABPP. The Applicant will undertake the
354 following preliminary measures with regard to Section 106:
355
- 356 a. The Applicant, or their designee, shall define the scope of the identification
357 efforts, seek information from consulting parties, and identify historic properties
358 for submittal to the SHPO, along with the draft application for information
359 purposes. The SHPO will review the information within thirty (30) days of
360 receipt. A letter from the SHPO regarding this step in the Section 106 review
361 process must be included in the application to the NPS ABPP.
362
- 363 b. If applicable to the proposed project, the Applicant will also request a letter from
364 the SHPO, or other easement holder, agreeing to hold a conservation easement on
365 the land or other property interests acquired in perpetuity.
366
- 367 c. Once the above mentioned letters are secured by the Applicant, the Applicant will
368 complete the BLAG application and submit to the NPS ABPP. The Applicant will
369 include in the BLAG application the level of urgency to secure funding to acquire
370 the property and the priority ranking of the subject property according to the
371 Battlefield Reports.
- 372 2. After a complete application is received by the NPS ABPP, the NPS ABPP shall request
373 the comments of any Indian Tribe(s) if the project is located on or near land that is of
374 traditional or cultural importance.
- 375 3. In emergency purchase situations, the NPS ABPP may, at its discretion, reimburse
376 Applicants for the cost of acquisition, when the closing of the property is set to happen
before a full application can be submitted to the NPS ABPP. The Applicant must notify
the NPS ABPP, the SHPO, and ACHP at least forty-five (45) days prior to settlement.
NPS ABPP, SHPO, and ACHP will each have 15 days to review the documentation and

377 render a decision in writing. Provided that no objections are received from the SHPO or
378 ACHP, the NPS ABPP will approve the acquisition reimbursement, with the following
379 conditions:

- 380 a. The Applicant shall fulfill all documentation as required under the NPS
381 ABPP grant application and this agreement;
- 382 b. The Applicant shall ensure that there is no activity on the battlefield land
383 property until the NPS ABPP grant is awarded and the Section 106 process is
384 concluded.

385 B. Section 106 for BLAG Fee Simple Acquisitions and Easements

- 386 1. With the exception of situations where a State government agency will acquire and
387 manage the property with BLAG funding, if NPS ABPP determines in consultation with
388 the SHPO/THPO, appropriate federally recognized tribes, and Consulting Parties that the
389 project will have No Adverse Effect on historic properties pursuant to 36 CFR § 800.5(b),
390 the Applicant, or purchaser, shall encumber the title to the acquired battlefield property
391 with a conservation easement, in favor of and enforceable in court by the SHPO, another
392 government agency, or qualified conservation easement holder acceptable to the NPS, in
393 perpetuity.
- 394 2. If the SHPO is not the proposed easement holder, NPS ABPP will condition its
395 determination of No Adverse Effect process in the grant agreement and in a notification
396 letter to the proposed easement holder.
- 397 3. Both the grant agreements and conservation easements must acknowledge the Land and
398 Water Conservation Fund Act “Section 6(f)(3)” restrictions (54 U.S.C. 200305(f)(3)).
399 Conservation easements must be sent to the NPS ABPP for review and approval prior to
400 their execution and recordation.
- 401 4. The grant agreement shall be null and void if its conditions regarding Section 106 review
402 are not carried out within three (3) years from the date of its execution, if not amended.
403 At such time, and prior to any ground disturbing activities or alterations to historic
404 buildings or structures occurring within the project area, the NPS ABPP shall either
405 execute an amendment to the grant agreement extending its duration or consult with the
406 SHPO/THPO, Indian Tribes, and Consulting Parties to comply with 36 CFR § 800.6
407 Resolution of Adverse Effects, as outlined in Stipulation V.

408 C. Section 106 for State Government Agency Property Manager.

- 409 1. In cases where a State government agency will acquire and manage the property acquired
410 by BLAG funding, if NPS ABPP determines, in consultation with the SHPO/THPO and
411 appropriate federally recognized tribes, that the project will have No Adverse Effect on
412 historic properties, the NPS ABPP may complete the Section 106 process by entering into
413 a preservation letter of agreement with the State government agency (See sample in

- 414 Attachment A). The preservation letter of agreement will be required in the grant
415 agreement.
- 416 2. The preservation letter of agreement shall require the State to conduct the following
417 actions, if permitted under State law:
- 418 a. hold the property forever
 - 419 b. allow for public access
 - 420 c. maintain and protect the historic features and landscape
 - 421 d. restrict development to that needed for interpretation and visitor access
 - 422 e. pursue site development only after appropriate environmental and cultural studies
423 are completed to inform best possibilities for low impact design and construction.
 - 424 f. submit to the SHPO for review and approval pre-development site planning (such
425 as surveys to identify significant landscape and historic features, and archeological
426 investigations) and final construction designs
 - 427 g. acknowledge the Land and Water Conservation Fund Act Section 6(f)(3)
428 restrictions (54 U.S.C. 200305(f)(3)) on the property.
- 429
- 430 3. The conditions of the preservation letter of agreement will be recorded with the deed of
431 conveyance or in a deed of covenants and restrictions encumbering the property and will
432 run with the land in perpetuity.
- 433

434 V. RESOLVING ADVERSE EFFECTS

- 435
- 436 A. With respect to both PLANNING GRANTS and BLAGs, if NPS ABPP determines in
437 consultation with the SHPO that the project will have an Adverse Effect on historic properties,
438 the NPS ABPP shall continue consultation with the SHPO, Applicant and other appropriate
439 consulting parties, including appropriate federally recognized Tribes, in accordance with 36 CFR
440 § 800.6, to develop alternative or modifications to the project that could avoid, minimize or
441 mitigate effects on historic properties. NPS ABPP shall notify the ACHP of all adverse effect
442 findings, provide documentation specified in 36 CFR § 800.11(e), and invite ACHP to participate
443 in a manner consistent with 36 CFR § 800.6(a)(1)(i). NPS ABPP shall copy all consulting parties,
444 including Tribes, when it notifies ACHP.
- 445
- 446 B. Should Adverse Effects be determined and, through consultation, cannot be avoided or
447 minimized, the NPS ABPP, SHPO, and the Applicant, along with any Tribes or consulting
448 parties, will develop an MOA or PA for any undertaking subject to this Agreement. Development
449 of the MOA or PA shall be limited to a period of 180 days from notification of the ACHP, after
450 which an MOA or PA will be executed, or the NPA ABPP will request the staff comments of the
451 ACHP.
- 452
- 453 C. NPS ABPP may use the standard stipulations included in Attachment B of this Agreement to
454 expedite development of an MOA, or, if the project warrants due to its complexity, develop a
455 project-specific programmatic agreement.

456 **VI. TRIBAL CONSULTATION**

- 457 A. After PLANNING GRANTS and BLAG applications are received, the NPS ABPP shall ensure
458 that Indian tribe(s) that may attach cultural and religious significance to properties affected by the
459 proposed grant activities have been or are notified and invited to consult on the proposed
460 activities. In addition, the NPS ABPP shall conduct government-to-government consultation with
461 Indian tribe(s) that attaches significance to historic properties that may be affected by
462 PLANNING GRANTS and BLAG proposed post-acquisition activities.
463
- 464 B. The NPS ABPP may develop protocols with individual Indian tribe(s), or agree to have
465 government-to-government consultation for each PLANNING GRANTS and BLAG in which
466 they may have an interest. If tribal consultation protocols with an individual Indian tribe or group
467 of Indian tribes are formally adopted by the NPS ABPP, a copy of the protocols shall be
468 forwarded by the NPS ABPP to the ACHP for its records and a copy to NCSHPO for distribution
469 to the SHPOs.
- 470 C. SHPOs may be involved in the consultations described in Stipulation VI. A at the discretion of
471 the Indian tribes, and following notification to NPS ABPP accordingly. Existing agreements
472 regarding review and consultation between Indian tribes and individual SHPOs shall remain in
473 force provided both parties agree in writing to continue this method for both ABPP Grant
474 Programs
475

476 **VII. INVOLVEMENT OF CONSULTING PARTIES AND THE PUBLIC**

- 477
- 478 A. The NPS ABPP will arrange for public participation appropriate to the subject matter and the
479 scope of work and involve the individuals, organizations and entities likely to be interested, in
480 accordance with 36 CFR § 800.2(d) and § 800.6(4). If the Applicant has concerns regarding
481 confidentiality or the disclosure of discretionary information, they must consult with NPS ABPP
482 to develop procedures that will not compromise financial and real estate acquisition concerns
483 related to the BLAG grant.
484

485 **VIII. PROFESSIONAL QUALIFICATIONS**

- 486 A. All work undertaken by the Applicant, or its designee, pursuant to this Agreement shall be
487 conducted by or under the direct supervision of qualified individuals meeting at minimum the
488 qualifications required by 36 CFR § 800.2(a)(1). If an Applicant is unable to secure these
489 services, they must notify the ABPP to determine whether or not grant funds are available to
490 assist in conducting the necessary identification and evaluation and avoidance, minimization, or
491 mitigation activities.
492

493 **IX. PREPARATION AND REVIEW OF DOCUMENTS**

- 494 A. When the grant agreement for any PLANNING GRANT so stipulates, the Applicant shall submit
495 a draft of all technical reports, treatment plans and other documentation to the NPS ABPP,
496 SHPO/THPO and Consulting Parties.
497
- 498 B. The PLANNING GRANT Applicant shall correct or address all comments received on the
499 technical report, treatment plans or other documentation or they will be denied final payment.

500 Following approval in writing by the NPS ABPP, PLANNING GRANT Applicant shall provide
501 final reports, treatment plans or other documentation to the SHPO/THPO and other Consulting
502 Parties in an agreed upon format.
503

504 C. All technical reports prepared pursuant to this Agreement will be consistent with the federal
505 standards entitled *Archeology and Historic Preservation: Secretary of the Interior's Standards*
506 *and Guidelines*, 48 Fed. Reg. 44,716–42 (Sep. 29, 1983) and the guidelines of the state in which
507 the project is located.

508 D. SHPO/THPOs and other Consulting Parties agree to provide comments on all technical reports,
509 treatment plans, and other documentation arising from this Agreement within thirty (30) calendar
510 days of receipt. If no comments are received within the thirty (30) day review period, the NPS
511 ABPP may assume the non-responding party has no comments.

512 X. CURATION

513
514 A. Within thirty (30) days of the NPS ABPP's approval of the final technical report, the Applicant
515 shall deposit all archaeological materials and appropriate field and research notes, maps, drawings
516 and photographic records collected as a result of archeological investigations arising from this
517 Agreement (with the exception of human skeletal remains and associated funerary objects) for
518 permanent curation with a curation facility which meets the requirements in 36 C.F.R. Part 79,
519 Curation of Federally Owned and Administered Archeological Collections. The Applicant shall
520 provide the NPS ABPP with a copy of the curation agreement as evidence of its compliance with
521 this stipulation. All such items shall be made available to educational institutions and individual
522 scholars for appropriate exhibit and/or research under the operating policies of the curation
523 facility.

524 XI. MEMORANDUMS OF UNDERSTANDING (MOUs) WITH SHPOs/THPOs OR INDIAN 525 TRIBES

526 A. The SHPO/THPO or Indian Tribe may develop a Memorandum of Understanding (MOU) with
527 Applicants for BLAG projects to develop efficiencies with the SHPO/THPO or Indian Tribe if
528 they will have a number of projects that fit a specific category (or categories) of action, like the
529 recordation of required easement. The SHPO/THPO or Indian Tribe shall provide the NPS ABPP
530 with copies of the MOU. The MOU shall not interfere with existing policies or programs of the
531 easement holder or this Agreement.

532 XII. POST-REVIEW DISCOVERIES

533 A. PLANNING GRANTS

534 The NPS ABPP shall ensure that the grant agreements for PLANNING GRANTS shall address
535 post review discoveries by including the following language:

536 1. The Applicant shall ensure that the following provision is included in all contracts: "If
537 previously unidentified historic properties or unanticipated effects to historic properties are
538 discovered during the project, the contractor shall immediately halt all activity within a one

- 539 hundred (100) foot radius of the discovery, and notify the Applicant of the discovery and
540 implement interim measures to protect the discovery from looting and vandalism.”
- 541 2. Immediately upon receipt of the notification required in the above (Stipulation XII.A.1.), the
542 Applicant shall:
- 543 a. Notify the appropriate law enforcement if the discovery involves human remains; and
 - 544 b. inspect the construction site to determine the extent of the discovery and ensure that
545 construction activities have halted; and
 - 546 c. clearly mark the area of the discovery; and
 - 547 d. implement additional measures, as appropriate, to protect the discovery from looting and
548 vandalism; and
 - 549 e. have a professional archeologist, meeting the Secretary of the Interior Professional
550 Qualifications Standards, 48 Fed. Reg. 44,738–39 (Sep. 29, 1983), inspect the
551 construction site to determine the extent of the discovery and provide recommendations
552 regarding its NRHP eligibility and treatment; and
 - 553 f. notify the NPS ABPP, the SHPO and other consulting parties of the discovery, within 72
554 hours, describing the measures that have been implemented to comply with this
555 Stipulation and the preliminary assessment of the NRHP eligibility of the discovery and
556 the measures proposed to resolve adverse effects. In making its evaluation, the Applicant,
557 in consultation with the SHPO/THPO, may assume the discovery to be NRHP eligible for
558 the purposes of Section 106 pursuant to 36 CFR § 800.13(c). The NPS ABPP, the SHPO
559 and other Consulting Parties shall respond to the Applicant’s assessment within 48 hours
560 of receipt.
- 561
- 562 3. The NPS ABPP will take into account the SHPO/THPO and other Consulting Parties’
563 recommendations on eligibility and treatment of the discovery and will notify the Applicant
564 of its eligibility determination and its decision regarding the proposed treatment plan within
565 fifteen (15) days. The Applicant must comply with the required actions, if any, and provide
566 the NPS ABPP, the SHPO and other Consulting Parties with a report on the actions when
567 implemented. Any actions that the NPS ABPP deems appropriate for the Applicant to take
568 with regard to such discovery will automatically become additional conditions to the grant
569 agreement. If the Applicant fails to comply with such actions, such failure will constitute a
570 breach of the grant agreement.
- 571
- 572 4. Construction activities may proceed in the area of the discovery when the NPS ABPP has
573 determined that implementation of the actions undertaken to address the discovery pursuant
574 to this Stipulation are complete.
- 575
- 576 5. The ACHP should be notified of all unanticipated discoveries upon approval of the eligibility
577 and treatment of the discovery by the NPS.

576 B. BLAGs

- 577 1. Grant Agreements for BLAGs shall require that no activity involving ground disturbance or
578 building or structure alterations may be undertaken until the easement or preservation letter of
579 agreement is recorded. The easement holder or State property owner, whichever is applicable,

580 will then assume responsibility for ensuring that post review discoveries and human remains
581 are appropriately handled.

582 C. Human Remains

583 1. The NPS ABPP shall ensure that the grant agreements for PLANNING GRANTS and
584 BLAGs shall address post review discoveries of human remains by including, at a minimum,
585 the following language:

586 a. Applicants, or their designees, shall make all reasonable efforts to avoid disturbing
587 gravesites, including those containing Native American human remains and
588 associated funerary artifacts. All human remains shall be treated in a manner
589 consistent with the ACHP's *Policy Statement Regarding Treatment of Burial*
590 *Sites, Human Remains and Funerary Objects* (February 23, 2007;
591 <http://www.achp.gov/docs/hrpolicy0207.pdf>).

592 b. If human remains are encountered during the course of actions taken as a result of
593 activities arising from a PLANNING GRANT or BLAG shall be treated in
594 accordance with the laws and regulations of the state in which the project is
595 located. The Applicant shall be responsible for all reasonable costs associated with
596 treatment of human remains and associated funerary objects.
597

598 **XIII. EMERGENCY SITUATIONS AND NATURAL DISASTERS**

599 A. Immediate rescue and salvage operations conducted to preserve life or property are exempt from
600 the provisions of Section 106 and the terms of this Agreement.

601 B. In the event the NPS ABPP and the Applicant agree that an emergency undertaking that involves
602 an NPS ABPP grant is an essential and immediate response to a disaster or emergency declared
603 by the President, a tribal government, or the Governor of a State or another immediate threat to
604 life or property, the NPS ABPP will comply with 36 CFR § 800.12 and shall:

605 1. Notify the appropriate SHPO and any Indian tribe that may attach religious and cultural
606 significance to historic properties likely to be affected prior to the undertaking and afford
607 them an opportunity to comment within seven (7) calendar days of notification. If the
608 NPS determines that circumstances do not permit seven (7) days for comment, the agency
609 official shall notify the SHPO and the Indian tribe(s) and invite comments within the time
610 available. The NPS ABPP shall take into account any comments received in reaching a
611 decision on how to proceed with the emergency undertaking.

612 2. These emergency procedures apply only to undertakings that must be implemented
613 within 30 calendar days after the disaster or emergency has been formally declared by the
614 appropriate authority. The NPS ABPP may request an extension of the period of
615 applicability from the SHPO or Indian tribe(s) prior to the expiration of the 30 calendar
616 days.

- 617 3. The NPS ABPP shall notify the ACHP of disaster and emergency situations related to an
618 NPS ABPP grant project and the action that has been proposed or taken as specified in
619 Stipulations III-V.

620 **XIV. DISPUTE RESOLUTION**

621 A. Should any signatory or concurring party to this Agreement, or any SHPO, object at any time to
622 any actions proposed or the manner in which the terms of this Agreement are implemented, the
623 NPS ABPP shall consult with such party to resolve the objection. If the NPS ABPP determines
624 that such objection cannot be resolved, the NPS ABPP will:

- 625
- 626 1. Forward all documentation relevant to the dispute, including the NPS ABPP's proposed
627 resolution, to the ACHP. The ACHP shall provide the NPS ABPP with its advice on the
628 resolution of the objection within thirty (30) days of receiving adequate documentation.
629 Prior to reaching a final decision on the dispute, the NPS ABPP shall prepare a written
630 response that takes into account any timely advice or comments regarding the dispute
631 from the ACHP, signatories and Concurring Parties, and provide them with a copy of this
632 written response. The NPS ABPP will then proceed according to its final decision.
633
- 634 2. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day
635 time period, the NPS ABPP may make a final decision on the dispute and proceed
636 accordingly. Prior to reaching such a final decision, the NPS ABPP shall prepare a
637 written response that takes into account any timely comments
638
- 639 3. At any time during implementation of the measures stipulated in this Agreement, should
640 an objection pertaining to this Agreement be raised by a member of the public, the NPS
641 ABPP shall notify the parties to this Agreement and take the objection into account,
642 consulting with the objector and, should the objector so request, consult with all parties to
643 this Agreement to resolve the objection.
644
- 645 4. The NPS ABPP responsibility to carry out all other actions subject to the terms of this
646 Agreement that are not the subject of the dispute remains unchanged.

647 **XV. ANNUAL REPORTING**

- 648 A. The NPS ABPP shall provide the ACHP, NCSHPO and any Tribal government that requests
649 it, a copy of an annual report. This report will be made available by December 31 of each
650 calendar year for the previous fiscal year ending September 30 and will be posted on the NPS
651 ABPP web site. The report will include, but is not limited to:
- 652 1. A list of the PLANNING GRANTS and BLAGs awarded in each state and on Tribal
653 lands, including the name of the Applicant and, in the case of BLAGs, the
654 Government Sponsor; exact amount of the award; and the exact acreage acquired
655 with ABPP funding, along with any changes made. The list should also include
656 grants awarded and funds dispersed with no easement recorded.
- 657 2. A report, as appropriate, identifying any issues, initiatives or goals the NPS ABPP
658 will address in the coming year with regard to its two grant programs, and any

- 659 guidance or assistance that the ACHP or NCSHPO may provide to help make
660 compliance activities more effective and efficient.
- 661 3. A discussion identifying any problems the NPS ABPP encountered in carrying out
662 the terms of this agreement that need to be addressed by the signatories through
663 amendments or development of guidance documents.
- 664 4. Any other information the NPS ABPP wishes to provide that might improve the
665 effectiveness of this agreement.
- 666
- 667 B. On or before January 31 of each year, commencing in 2018, the NPS ABPP shall invite the
668 signatories to this Agreement, SHPOs and consulting parties concurring in this Agreement to
669 a meeting to facilitate review of the Agreement, the performance of NPS ABPPs in meeting
670 its responsibilities set forth in this Agreement, and to discuss any programmatic or policy
671 issues encountered in the implementation of its stipulations.

672 **XVI. AMENDMENT AND TERMINATION.**

- 673 A. If any signatory to this Agreement determines that its terms will not, or cannot, be carried out,
674 that party shall immediately consult with the other parties to attempt to develop an
675 amendment. The signatory parties shall consult to determine the need for an amendment to
676 this Agreement. The Agreement may be amended when such an amendment is agreed to in
677 writing by all signatories. The amendment will be effective on the date a copy signed by all
678 of the signatories is filed with the ACHP. If the signatories cannot agree to appropriate terms
679 to amend this Agreement, any signatory may terminate the Agreement in accordance with
680 Stipulation XVI.B, below.
- 681
- 682 B. The ACHP may be asked by any signatory to this Agreement to review its terms and its
683 implementation by the NPS ABPP prior to seeking a termination of the Agreement. If within
684 thirty (30) days (or another time period agreed to by all signatories) an amendment cannot be
685 reached, any signatory may terminate the Agreement upon written notification to the other
686 signatories.
- 687
- 688 C. If this Agreement is terminated, the NPS ABPP shall comply with subpart B of 36 CFR § 800
689 prior to carrying out any individual undertakings of the NPS ABPP covered by the terms of
690 this Agreement.
- 691
- 692 D. An individual SHPO may withdraw from the Agreement upon written notice to all signatories
693 and invited signatories after having consulted with them for at least 30 days to attempt to find
694 a way to avoid the withdrawal. Upon withdrawal, and prior to continuing work on any
695 undertaking previously covered by this Agreement in the relevant State, the NPS will comply
696 with Section 106 for the undertaking in accordance with 36 CFR §§ 800.3 through 800.7 or
697 execute a new agreement in accordance with 36 CFR § 800.14(b) for that State. This
698 Agreement will remain in effect with regard to the two NPS ABPP Grant Programs located in
699 the jurisdiction of the SHPO(s) that have not withdrawn from this Agreement. If all SHPOs
700 withdraw from this Agreement, this Agreement will be considered to be terminated.
- 701

702 E. Termination is formalized with notification to the ACHP.

703 **XVII. EXECUTION AND TERM OF AGREEMENT**

704 A. This Agreement shall take effect in each State on the date it is signed by the NPS, NCSHPO,
705 and the ACHP. This Agreement shall continue in effect until September 30, 2026, unless
706 otherwise terminated prior to that date. Prior to such time, the NPS, NCSHPO, and the ACHP
707 may agree in writing to extend its duration.

708
709 B. Execution of this Agreement by the NPS, the NCSHPO, and the ACHP and implementation
710 of its terms evidence that the NPS ABPP has taken into account the effects of the two ABBP
711 Grant Programs on historic properties and afforded the ACHP an opportunity to comment.

712 C. This Agreement may be executed in counterparts, each of which shall constitute an original,
713 and all of which shall constitute one and the same agreement.

714 **SIGNATORIES:**

715
716 **National Park Service**

717
718
719 _____ Date: _____

720 By: Stephanie Toothman, PhD.
721 Associate Director, Cultural Resources, Partnerships, and Science
722

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741 **Advisory Council on Historic Preservation**

742

743 _____ Date: _____

744 By: John M. Fowler

745 Executive Director

746

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DRAFT

766 **National Conference for State Historic Preservation Officers**

767

768 _____ Date: _____

769 By: Erik M. Hein
770 Executive Director

771

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DRAFT

807 **CONCUR:**

808

809 **Civil War Trust**

810

811

812 _____ Date: _____

813 By: James Campi, Jr.

814 Policy and Communications Director

815

816

817

818

819

820

DRAFT

821 **The Public Archaeology Facility (PAF) at Binghamton University, NY**

822

823

824

Date: _____

825 By: Nina M. Versaggi

826 Director

827

828

829

830

831

832

DRAFT

833 **South Carolina Institute of Archaeology and Anthropology**

834

835

836

Date: _____

837 By: Steven D. Smith

838 Director

839

840

841

842

843

844

845

DRAFT

846 **Mashantucket Pequot Museum and Research Center, CT**

847

848

849 _____ Date: _____

850 By: [Name]

851 [Title]

852

853

854

855

856

DRAFT

857 **Shenandoah Valley Battlefield Foundation, VA**

858

859

860 _____ Date: _____

861 By: Keven Walker

862 Chief Executive Officer

DRAFT

ATTACHMENT A – Sample Preservation Letter of Agreement

863
864

865 **[BATTLEFIELD NAME/TRACT NAME], [COUNTY], [STATE] (ACREAGE)**

866 The **[NAME OF STATE]**, as part of the protection of the above tracts of land through the ABPP, will
867 acquire the tracts, in perpetuity, for incorporation in the **[NAME OF STATE PARK]** from the
868 **[SELLER/DONOR]**, subject to the following language contained in the deed:

869 In accordance with Battlefield Acquisition Grant Program authorization (54 U.S.C. § 308103)
870 and what is commonly known as Section 6(f)(3) of the LWCF Act of 1965, and 54 U.S.C. §
871 200305(f)(3) (hereinafter “Section 6(f)(3)”) of the Land and Water Conservation Fund Act (54
872 U.S.C. §§ 200301 - 200310 (2015)), "No property acquired or developed with assistance under
873 this section shall, without the approval of the Secretary, be conveyed to other than public outdoor
874 recreation uses. The Secretary [of the U.S. Department of Interior] shall approve such conversion
875 only if s/he finds it to be in accord with the then existing comprehensive statewide outdoor
876 recreation plan and only upon such conditions as he deems necessary to assure the substitution of
877 other recreation properties of at least equal fair market value and of reasonably equivalent
878 usefulness and location." Conversion of the Property, in whole or in part, for uses other than those
879 permitted by the Secretary acting through the American Battlefield Protection Program is not
880 permitted without approval of the Secretary. Nothing contained in this Deed shall be interpreted
881 to authorize or permit the violation of Section 6(f)(3) of the LWCF Act, and the requirements of
882 the LCWF act shall survive any private action or governmental proceedings with respect to the
883 Property or this Deed.

884 The tract will be maintained and preserved for public benefit and education and will not be developed for
885 any purpose other than preservation and interpretation of the historic battlefield and/or accommodation of
886 the general public through appropriate visitor facilities. Site development will be pursued only after
887 appropriate environmental and cultural studies are completed to inform best possibilities for low impact
888 design and construction. The State Historic Preservation Office must approve in advance any permitted
889 development on the site.

890 NPS ABPP **[STATE AGENCY]**

891 _____

892 **[NAME]** **[DATE]** **[NAME]** **[DATE]**

893 **[TITLE]** **[TITLE]**

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ATTACHMENT B – ACHP Template Agreement Document

ACHP Template Agreement Documents

Included below are two agreement templates: a two-party Memorandum of Agreement (MOA) template (followed by instructions on how to turn it into a three-party MOA template), and a template to amend an MOA or a project Programmatic Agreement (project PA).

ACHP Model Two-Party MOA Template:

**MEMORANDUM OF AGREEMENT
BETWEEN [insert Agency]
AND THE
[insert name of State or Tribe] ["STATE" or "TRIBAL"] HISTORIC PRESERVATION
OFFICER
REGARDING THE [insert project name and location]**

WHEREAS, the [Agency] ([insert Agency abbreviation]) plans to ["carry out" or "fund" or "approver"/"license"/"permit" or other appropriate verb] the [insert project name] (undertaking) pursuant to the [insert name of the substantive statute authorizing the federal agency involvement in the undertaking], [insert legal cite for that statute]; and

WHEREAS, the undertaking consists of [insert a brief explanation of the undertaking];

WHEREAS, [Agency abbreviation] has defined the undertaking's area of potential effects (APE) as [insert written description and/or "described in Attachment XXX"]; and

WHEREAS, [Agency abbreviation] has determined that the undertaking may have an adverse effect on [insert name of historic property(ies)], which ["is" or "are"] ["listed in" or "eligible for listing in"] the National Register of Historic Places, and has consulted with the [insert name of State or Tribe] ["State" or "Tribal"] Historic Preservation Officer (["SHPO" or "THPO"]) pursuant to 36 CFR Part 800, the regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. § 470f); and

WHEREAS, [Agency abbreviation] has consulted with the [insert name of Indian tribe(s) or Native Hawaiian organization(s)], for which [insert name of historic property(ies)] ["has" or "have"] religious and cultural significance, [Insert this whereas clause if appropriate]; and

WHEREAS, [Agency abbreviation] has consulted with [insert names of other consulting parties, if any] regarding the effects of the undertaking on historic properties and has invited them to sign this MOA as a ["invited signatory(ies)" or "concurring party(ies)"]; and

982 A. Forward all documentation relevant to the dispute, including the [Agency abbreviation]'s
983 proposed resolution, to the ACHP. The ACHP shall provide [Agency abbreviation] with its
984 advice on the resolution of the objection within thirty (30) days of receiving adequate
985 documentation. Prior to reaching a final decision on the dispute, [Agency abbreviation] shall
986 prepare a written response that takes into account any timely advice or comments regarding the
987 dispute from the ACHP, signatories and concurring parties, and provide them with a copy of this
988 written response. [Agency abbreviation] will then proceed according to its final decision.
989

990 B. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time
991 period, [Agency abbreviation] may make a final decision on the dispute and proceed
992 accordingly. Prior to reaching such a final decision, [Agency abbreviation] shall prepare a
993 written response that takes into account any timely comments regarding the dispute from the
994 signatories and concurring parties to the MOA, and provide them and the ACHP with a copy of
995 such written response.
996

997 C. [Agency abbreviation]'s responsibility to carry out all other actions subject to the terms of
998 this MOA that are not the subject of the dispute remain unchanged.
999

1000 VIII. AMENDMENTS

1001
1002 This MOA may be amended when such an amendment is agreed to in writing by all signatories.
1003 The amendment will be effective on the date a copy signed by all of the signatories is filed with
1004 the ACHP.
1005

1006 IX. TERMINATION

1007
1008 If any signatory to this MOA determines that its terms will not or cannot be carried out, that party
1009 shall immediately consult with the other signatories to attempt to develop an amendment per
1010 Stipulation VIII, above. If within thirty (30) days (or another time period agreed to by all signatories)
1011 an amendment cannot be reached, any signatory may terminate the MOA upon written notification to the
1012 other signatories.
1013

1014 Once the MOA is terminated, and prior to work continuing on the undertaking, [Agency Abbreviation]
1015 must either (a) execute an MOA pursuant to 36 CFR § 800.6 or (b) request, take into account, and
1016 respond to the comments of the ACHP under 36 CFR § 800.7. [Agency abbreviation] shall notify the
1017 signatories as to the course of action it will pursue.
1018

1019 Execution of this MOA by the [Agency abbreviation] and ["S" or "T"]HPO and implementation of its
1020 terms evidence that [Agency abbreviation] has taken into account the effects of this undertaking on
1021 historic properties and afforded the ACHP an opportunity to comment.**
1022

1023
1024
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1026 **SIGNATORIES:**

1027
1028 **[Insert Agency name]**

1029 _____ Date

1030 **[Insert agency official name and title]**

1031
1032 **[Insert name of State or Tribe] ["State" or "Tribal"] Historic Preservation Officer**

1033
1034 _____ Date

1035 **[Insert name and title]**

1036
1037
1038 **INVITED SIGNATORIES:**

1039
1040 **[Insert invited signatory name]**

1041
1042 _____ Date

1043 **[Insert name and title]**

1044
1045
1046 **CONCURRING PARTIES:**

1047
1048 **[Insert name of concurring party]**

1049
1050 _____ Date

1051 **[Insert name and title]**

1052
1053
1054 Notes:

1055
1056 ** This document assumes that the term "signatory" has been defined in the agreement to include both*
1057 *signatories and invited signatories.*

1058 *** Remember that the agency must submit a copy of the executed MOA, along with the documentation*
1059 *specified in Section 800.1 1(f), to the ACHP prior to approving the undertaking in order to meet the*
1060 *requirements of Section 106. 36 CFR § 800.6(b)(1)(iv).*

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**Instructions on how to turn the Two-Party MOA template (above) into a
Three-Party MOA Template**

If the ACHP is participating in the consultation to resolve adverse effects, the two-party MOA template can be revised to create a three-party agreement by inclusion of the following (*in italics*):

1. Revise the Title to read:

**MEMORANDUM OF AGREEMENT
AMONG [insert Agency],
THE
[Insert name of State or Tribe] ["STATE" or "TRIBAL"] HISTORIC PRESERVATION
OFFICER,
AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING THE [insert project name and location]**

2. Revise the 7th WHEREAS clause to read:

WHEREAS, in accordance with 36 c.F.R. g 800.6(a)(1), [Agency abbreviation] has notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect determination with specified documentation, and the ACHP has chosen /o participate in the consultation pursuant to 36 CFR g 800.6(a)(1)(iii); and

3. At the end of the Whereas clauses add "ACHP" to the 'Now, therefore' clause to read: NOW, THEREFORE, [Agency abbreviation], the ["SHPO" or "THPO"], *and the ACHP agree....*

4. Add the "ACHP" to all relevant stipulations as needed.

5. Include "ACHP" in the paragraph immediately above the signature lines:

Execution of this MOA by the [Agency abbreviation], the ["S" or "T"]HPO, and the ACHP, and implementation of its terms evidence that [Agency abbreviation] has taken into account....

6. Add the following line to the signatory page

Advisory Council on Historic Preservation

_____ Date

John M. Fowler, Executive Director

1106
1107 **Model MOA/Project PA Template Amendment:**
1108

1109
1110 AMENDMENT TO
1111 **[INSERT FULLNAME OF THE AGREEMENT]**
1112 **(AGREEMENT)**
1113

1114 **WHEREAS**, the Agreement was executed on **[insert month and year of execution]**;
1115

1116 **WHEREAS**, **[insert a concise explanation of the reasons for the amendment]**;
1117

1118 **WHEREAS**, **[insert the name of the federal agency]** will send a copy of this executed amendment to
1119 the ACHP **[Only use this whereas clause if the ACHP is not a signatory to the Agreement]**;
1120

1121 **NOW, THEREFORE**, in accordance with Stipulation **[insert the number of the amendment**
1122 **stipulation]** of the Agreement, **[insert the Signatories of the Agreement]** agree to amend the
1123 Agreement as follows:

- 1124 1. Amend Stipulation **[insert the number of the stipulation to be amended]** so it reads as
1125 follows:

1126 **[Insert the amended text of the stipulation]**
1127

1128 **[AND/OR, if the amendment involves adding a new stipulation to the Agreement]**
1129

- 1130 2. Add new Stipulation **[insert the number of the new stipulation]**:
1131 **[Insert the text of the new stipulation]**
1132

1133 **[AND/OR, if the amendment involves deleting a stipulation of the Agreement]**
1134

- 1135 3. Delete Stipulation **[insert the number of the stipulation to be deleted]**.
1136

1137 **[Repeat #7, 2, and 3 as necessary]**
1138

1139 **[OR, if the amendments are so pervasive that it is easier to cut/paste a copy of the entire, amended**
1140 **Agreement]**
1141

- 1142 1. Amend the Agreement so it reads as follows:

1143 **[Attach the text of the entire, amended agreement]**
1144
1145

1146 **[Insert signature and date lines for all Signatories. If the amendments add duties to a party that**
1147 **did not sign the Agreement, add a signature line for that party.]**
1148