

**PROGRAMMATIC AGREEMENT
AMONG
THE NATIONAL PARK SERVICE, AMERICAN BATTLEFIELD PROTECTION PROGRAM
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
AND
THE NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION OFFICERS
REGARDING THE AMERICAN BATTLEFIELD PROTECTION PROGRAM'S
BATTLEFIELD LAND ACQUISITION GRANTS
TO BE AWARDED WITH REMAINING FY 14 FUNDS AND NEW FY 15 FUNDS**

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

WHEREAS, the ABPP administers financial assistance to non-Federal entities in multiple states through two grant programs (Battlefield Planning Grants and Battlefield Land Acquisition Grants) that support projects that lead to the preservation, protection, and interpretation of battlefield land and sites associated with wars fought on American soil such as the American Revolution, War of 1812, Indian Wars, American Civil War, and World War II; and

WHEREAS, as authorized by Congress by the Omnibus Public Land Management Act of 2009, as amended (P. L. 111-11), and most recently reauthorized through FY 2021 by the National Defense Authorization Act, 2015 (P.L. 113-291), a portion of the Land and Water Conservation Fund (LWCF) monies are made available to ABPP to fund its Battlefield Land Acquisition Grant (BLAG) Program, which assists States and local communities to acquire and preserve threatened Revolutionary War, War of 1812 and Civil War battlefield lands through a competitive process; and

WHEREAS, any private non-profit organization seeking to acquire battlefield land with assistance from this program must apply in partnership with a State or local government agency (Government Sponsor); and

WHEREAS, the BLAG program requires a dollar-for-dollar non-Federal match which can be used for the fee simple acquisition of land or for the acquisition of permanent, protective interests in land at Revolutionary War and War of 1812 battlefields as listed in the ABPP's **2007 Report to Congress on the Historic Preservation of Revolutionary War and War of 1812 Sites in the United States** and at Civil War battlefields as listed by the Civil War Sites Advisory Commission's **1993 Report on the Nation's Civil War Battlefields**; and

WHEREAS, the ABPP BLAGs solely fund the fee simple acquisition of battlefield land or the acquisition of permanent, protective interests in land through conservation easements and do not fund any rehabilitation, restoration, demolition or other future actions on the property; the ABPP understands the potential for secondary effects to historic properties eligible for listing in or listed in the National

Register of Historic Places once acquisition has occurred and therefore, after acquisition, such future proposed activities will require review as outlined herein; and

WHEREAS, while this this interim Agreement (Agreement) was developed to cover the fee simple acquisition of battlefield land or the acquisition of permanent, protective interests in land through conservation easements only, it will also cover Section 106 reviews that have already been initiated and consultation started for ABPP BLAG applications. The Section 106 review for those applications will continue per the terms of this Agreement; and

WHEREAS, this Agreement will not supersede any Memorandums of Agreement or Programmatic Agreements in development or in place related to individual grant projects funded with remaining FY 14 or new FY 15 money; and

WHEREAS, under the Consolidated Appropriations Act, 2014 (P.L. 113-76), Congress appropriated \$8,986,000 from the LWCF on a “no-year” basis to assist non-Federal efforts to acquire and preserve Civil War battlefield lands outside of the legislative boundaries of National Park units. A total of \$3,979,150.46 was previously awarded from the FY 14 appropriations. Funds appropriated on a “no-year” basis are available until exhausted; and

WHEREAS, under the Consolidated and Further Continuing Appropriations Act, 2015 (P.L.113-235), Congress appropriated \$8,986,000 from the LWCF on a “no-year” basis to assist non-Federal efforts to acquire and preserve battlefield lands outside of the legislative boundaries of National Park units. Funds appropriated on a “no-year” basis are available until exhausted; and

WHEREAS, the ABPP has determined that the implementation of the BLAG program may affect properties included in or eligible for inclusion in the National Register of Historic Places (National Register) and has consulted with the Advisory Council on Historic Preservation and the State Historic Preservation Officers in Arkansas, Georgia, Kentucky, Maryland, Mississippi, North Carolina, Pennsylvania, Tennessee, Virginia, and West Virginia (the Affected SHPOs) pursuant to the regulations 36 CFR Part 800, implementing Sections 54 U.S.C. §306108 and 54 U.S.C. §306107 of the National Historic Preservation Act (NHPA), 54 U.S.C. §300101 et seq.; and

WHEREAS, this Agreement is applicable only to projects within Arkansas, Georgia, Kentucky, Maryland, Mississippi, North Carolina, Pennsylvania, Tennessee, Virginia, and West Virginia; and

WHEREAS, this Agreement does not apply to a BLAG application submitted for the fee simple acquisition of battlefield land or the acquisition of permanent, protective interests in land through conservation easements in a state not listed above as the Section 106 Review process must be completed for those applications before the grant is awarded; and

WHEREAS, the ABPP is developing this Agreement in accordance with 36 CFR §800.14(b) (2) to establish a process for taking into account the potential for effects on historic properties in the administration of the ABPP BLAG Program; and

WHEREAS, the ABPP proposes to consult with the ACHP, the National Conference of State Historic Preservation Officers (NCSHPO), and Indian tribe(s) to develop and implement a comprehensive

Nationwide Programmatic Agreement (Nationwide PA) by December 31, 2015, to satisfy the requirements of Section 106 for the ABPP BLAG Program from that date forward; and

WHEREAS, ABPP has an urgent need to release funds to pending BLAG applications so that these lands are not lost to potential development before the Nationwide PA can be executed, and the Signatories have agreed to develop and implement this interim Agreement; and

WHEREAS, implementation of this Agreement will be done in coordination and in accordance with other applicable cultural resource laws, including State laws that protect historic properties, such as archeological resources and human remains, as appropriate; and

WHEREAS, the ABPP has consulted with the SHPOs in those states where there are applicants of ABPP BLAGs which are to be awarded with remaining FY 2014 funding and new FY 2015 funding; and

WHEREAS, the ABPP has determined that the administration of the ABPP BLAG Program may have an effect on historic properties to which Indian tribes may attach religious and cultural significance; and

WHEREAS, the ABPP intends to consult with Indian tribe(s) in the development of the Nationwide PA and in conducting individual Section 106 Reviews should the Applicant choose to carry out any Section 106 Reviews before the implementation of the Nationwide PA; and

WHEREAS, the ABPP notified the ACHP regarding the proposed administration of the ABPP BLAG Program and the ACHP has participated in the Section 106 consultation process to develop this Agreement in accordance 36 CFR §800.14(b)(2); and

WHEREAS, the ABPP has consulted with the NCSHPO regarding the proposed administration of the ABPP BLAG Program, and the NCSHPO, who participated in the Section 106 consultation process to develop this Agreement, will sign this Agreement on behalf of the Affected SHPOs; and

WHEREAS, the ABPP has consulted with the Civil War Trust, a major, private, non-profit partner organization to the ABPP, regarding the potential effects of this ABPP BLAG Program, and has invited them to sign this Agreement as a concurring party.

NOW, THEREFORE, the NPS ABPP, the ACHP, and the NCSHPO agree that the ABPP BLAG Program shall be implemented in accordance with the following stipulations in order to take into account the effect of this BLAG Program on historic properties.

STIPULATIONS

The NPS ABPP, in coordination with Applicants, shall ensure the following:

I. APPLICABILITY

This Agreement shall apply only to the fee simple acquisition of battlefield land or the acquisition of permanent, protective interest in land through conservation easements specified in the ABPP BLAGs as specified in Stipulation II. Any ABPP BLAG undertaking or activities not specified in this Agreement shall be subject to compliance with 36 CFR Part 800.

II. ABPP BATTLEFIELD LAND ACQUISITION GRANTS

- A. The Section 106 Review Process for Grants Already Awarded or to be Awarded with Remaining FY 2014 or New FY 2015 Funding. Due to the urgency of the pending ABPP BLAG applications and the intent of Congress to fund grant projects that protect threatened battlefield land in a timely manner, the following will address the Section 106 review process:
1. The ABPP will review complete applications as per the BLAG guidelines.
 2. The Applicant and SHPO, or ABPP and the SHPO, as appropriate, will consult during the application review process for those applications awarded with remaining FY 2014 and new FY 2015 funding, and follow the process set forth in Stipulation II.B. In cases where the application review process has already been completed by the ABPP, the Applicant will notify the SHPO, in writing, of the application and proposed acquisition project prior to the ABPP finalizing the grant agreement.
 3. In recognizing that the completion of the ABPP application review process will not fully complete the requirements of Section 106, the Signatories agree that conditions will be set forth in the grant agreement for those projects already awarded or to be awarded in order to ensure that Section 106 compliance shall be completed at a later time. The grant agreement shall contain the following provisions regarding completing compliance with Section 106:
 - a. No activity, other than the acquisition of battlefield land or a conservation easement and placement of a conservation easement, as appropriate, may occur on the property before the Section 106 review is complete.
 - b. The Section 106 review process may be initiated, continued, and/or completed, depending on where each application is in the review process at the time this interim Agreement is executed, as set forth below in Stipulation II.B. while the Nationwide PA is being negotiated and finalized.
 4. While the above provision in Stipulation II.A.3. allows for the award of the grant before completion of the Section 106 review, the ABPP, in accordance with what is commonly known as Section 110(k) of the NHPA (54 U.S.C. 306113) and 36 CFR §800.9(c), shall ensure that it will not provide grant assistance to an Applicant who, with intent to avoid the requirements of Section 106, has intentionally significantly adversely affected a historic property (e.g., demolition or removal of all or part of the property or conducting significant ground-disturbing activity) to which the grant would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the ABPP, after consultation with the ACHP, determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant.
- B. The Section 106 Review Process. In those cases where the Section 106 Review has been initiated prior to the execution of this Agreement, the Applicant will continue with consultation as outlined in Stipulations II and III. The NPS ABPP shall authorize the Applicant to consult with the appropriate SHPO prior to any proposed activity on the property and prior to or after the property is acquired. The ABPP will consult with Indian tribe(s) who attach religious and cultural significance to properties affected by the undertaking prior to any proposed activity on the property and prior to or after the property is acquired. The Applicant will provide to the SHPO and other consulting parties its determination and findings regarding the identification and evaluation of historic properties and assessment of effect for historic properties located within, or

immediately adjacent to, the boundaries of the land to be acquired. The SHPO and other consulting parties will determine whether or not they will concur with the Applicant's determinations and findings within thirty (30) calendar days after receiving the Applicant's request. The Indian tribe(s) identified by the ABPP will be contacted and requested to provide written comments to the ABPP regarding the identification of religious and cultural significance to properties affected by the undertaking located within or immediately adjacent to the boundaries of the land to be acquired and whether the proposed undertakings would adversely affect those properties within thirty (30) calendar days of receiving invitation to comment from the ABPP.

1. The Applicant, in consultation with the appropriate SHPO will confirm that the appropriate standards and guidelines that apply to the proposed grant activity referenced in the ABPP BLAG guidelines have been met.
 2. For any subject for which the appropriate SHPO advises the Applicant that it does not have staff expertise, the Applicant will request technical assistance and guidance from the ABPP.
 3. If the appropriate SHPO concurs with the Applicant that there are no historic properties, other than the battlefield, located within or immediately adjacent to the boundary of the land to be acquired by the proposed grant funded activity will not adversely affect any historic property (ies), the Applicant will note this, in writing, to the ABPP, and the appropriate SHPO will document this in a letter that the appropriate SHPO submits to the Applicant as part of its review within the thirty (30) calendar day review period. The appropriate SHPO may also submit comments explaining a finding of no adverse effect or no historic properties affected, or conditions required leading to a determination of no adverse effect, as appropriate.
 4. If the Applicant and the appropriate SHPO agree that the ABPP funded activity may result in an adverse effect on historic properties, the Applicant will note this in writing to the ABPP, and Section 106 consultation will be carried out in accordance with Stipulation VI.B. of this Agreement.
- C. Consultation Regarding Assessment of Effects. For applications submitted requesting the use of remaining FY 14 or new FY 15 funds and awarded by the ABPP, the Applicant will consult with the appropriate SHPO and other identified consulting parties prior to initiating any activity on the property other than the acquisition of the property, interest in the property, and, if applicable, placement of a conservation easement on the property. The ABPP will consult with the appropriate Indian tribe(s) prior to any activity on the property other than the acquisition of the property interest in the property, and, if applicable, placement of a conservation easement on the property. If the Applicant or Government Sponsor needs technical assistance, ABPP will provide timely advice and guidance, including comments on general management plans and long term planning. The Applicant will submit to ABPP findings of no historic properties affected, no adverse effect, or adverse effect, along with supporting documents, from the appropriate SHPO or other identified consulting parties.
- D. Easements. Applicants applying for the funding of a protective property interest in the battlefield land such as a conservation easement will consult with the appropriate SHPO to determine how the partial donation or sale of a conservation easement to the SHPO, or to another government agency, organization or entity approved by the ABPP and the SHPO, will protect a variety of lands, including farms, forests, historic areas, ranches, wildlife habitats, and scenic views.

1. The Applicant shall coordinate with the appropriate SHPO, conservation easement holder (if not the SHPO), and ABPP in drafting the language of the conservation easement consistent with the ABPP grant agreement requirements. The ABPP shall coordinate with the appropriate Indian tribe(s) in drafting the language of the conservation easement. If the appropriate SHPO or Indian tribe(s), following its review of proposed activities to be included in the conservation easement, concurs with the Applicant and/or ABPP that the proposed easement will not adversely affect any historic properties, the Applicant will note this in writing to the ABPP or in the application. The appropriate SHPO or Indian tribe(s) may also submit comments that explain the basis for its concurrence with the finding of no adverse effect with or without conditions, as appropriate, or a finding of no historic properties affected. A draft conservation easement will specify the conservation easement holder, the duration of the conservation easement, all requirements under what is commonly known as Section 6(f)(3) of the Land and Water Conservation Fund Act (54 U.S.C. 200305(f)(3)) and any other pertinent information regarding any rights and restrictions on the use of the property.
2. If the Applicant and the appropriate SHPO agrees that the proposed conservation easement activities will result in an adverse effect on historic properties, the Applicant will note this in writing to the ABPP or in the application, and Section 106 will be carried out in accordance with Stipulation VI.B of this Agreement. If the ABPP and the appropriate Indian tribe(s) agrees that the proposed conservation easement activities will result in an adverse effect on historic properties, the ABPP will note this in writing to application/grant file, and Section 106 will be carried out in accordance with Stipulation VI .B of this Agreement.
3. The timing of conservation easement development shall be consistent with existing ABPP guidance and grant agreements, which require a draft easement be approved by the ABPP before the payment of grant funding and not necessarily before submission on an application. ABPP has the discretion to modify the timing of the development of a required conservation easement as appropriate.

III. ROLES AND RESPONSIBILITIES OF THE ABPP IN THE DEVELOPMENT AND REVIEW OF BATTLEFIELD LAND ACQUISITION GRANT APPLICATIONS

- A. Informing Grant Applicants of NPS ABPP's Section 106 Responsibilities. The ABPP will ensure that Applicants and Government Sponsors for the ABPP BLAGs are made aware of the following:
 1. That funded activities outlined in the existing ABPP BLAG guidelines may have the potential to adversely affect historic properties as defined in the Criteria of Adverse Effect at 36 CFR §800.5(a)(1).
 2. That in accordance with 36 CFR §800.2(c)(4) the Applicants for ABPP BLAG funds are authorized to initiate the Section 106 process to assist ABPP in complying with the requirements of Section 106, but that the ABPP is legally responsible for all findings and determinations.
 3. ABPP BLAG applications will be developed in consultation with the ABPP, as appropriate, and the appropriate SHPO and other consulting parties before any activity occurs other than the fee simple acquisition of battlefield land or the acquisition of a permanent, protective interest in land through a conservation easement, or before the application is submitted,

whichever is appropriate, to ensure that all funded grant activities are carried out in accordance with a defined plan; are consistent with various applicable historic preservation standards and guidelines prescribed by the Secretary of Interior; and that ABPP has taken into account any adverse effects on historic properties as set forth in 36 CFR §800.5-800.6 and the ABPP BLAG guidelines.

- B. Identification of Historic Properties and Assessment of Effects. The ABPP will provide guidance to all ABPP BLAG Applicants and, when applicable, Government Sponsors, describing how the Applicant will assist the ABPP in identifying any historic properties that may be affected by the proposed grant activity or any post-acquisition activity proposed by the Applicant. In consultation with the appropriate SHPO and other consulting parties, the Applicant shall:
1. determine and document the area of potential effects (APE), as defined in 36 CFR §800.16(d);
 2. identify and evaluate historic property(ies) located in the APE in accordance with 36 CFR §800.4;
 3. assess the effect and/or adverse effect of the proposed grant activity taking into consideration direct, indirect, and cumulative effects to historic properties; and
 4. make recommendations to NPS ABPP to resolve adverse effects, if applicable, by seeking ways to avoid, minimize, or mitigate such adverse effects.
- C. Documentation. In preparing the information in Stipulation III.B, the Applicant will refer to the following:
1. The ACHP's *Section 106 Applicant Toolkit* and *Protecting Historic Properties: A Citizens Guide to Section 106 Review*.
 2. The ABPP BLAG application, informing Applicants and Government Sponsors those activities as a result of the acquisition grant may not begin prior to compliance with Section 106.
 3. The ABPP website, which will provide links to an ABPP Section 106 Review Quick Guide (Appendix A), relevant guidance, to include sample documents, eligible activities, timelines, and grantee resources.
 4. The ABPP website, which will provide a link to the National Conference of State Historic Preservation Officer's (NCSHPO's) list of SHPOs.
 5. The ABPP staff, who also will direct Applicants and Government Sponsors to the appropriate SHPO, as necessary.
- D. SHPO as Applicant or Government Sponsor. In the event that the SHPO is an applicant or the Government Sponsor for the ABPP grant, ABPP will assume responsibility for completing the Section 106 review of the project. If procedural issues are encountered, the ABPP will consult with the ACHP to coordinate and complete compliance with Section 106.
- E. NPS Completing Section 106 Review. In the event that the Applicant does not have the expertise to prepare the information and documentation needed in the Section 106 review process, the Applicant shall notify the ABPP in writing. If the ABPP agrees that the Applicant is not capable of carrying out the steps in Stipulation III.B., the ABPP will assume responsibility for completing the Section 106 review of the project.

F. Technical Guidance. Upon request, the ABPP shall, in a timely manner, provide technical guidance and/or assistance to the Applicant, Government sponsor, SHPO, or Indian tribe(s) on issues in the development of the grant application, or during the funded activity such as, but not limited to:

1. Questions about National Register eligibility and boundaries.
2. Interpretation of the relevant Secretary of Interior's *Standards and Guidelines*.
3. Suggestions regarding the procurement of expert technical services.
4. Guidance on protecting properties through mothballing or stabilization activities.

G. Notification of Award. The ABPP shall notify each SHPO, Government Sponsor, non-profit applicant, or others partners of any ABPP BLAG awarded for projects in their respective state. The notification shall reference any provisions recommended by the ABPP and approved by the Director of the NPS or his/her designee as a condition of receiving the award, including Section 106 recommendations.

IV. TRIBAL CONSULTATION

- A. After ABPP BLAG applications are received, the ABPP shall ensure that Indian tribe(s) that may attach cultural and religious significance to properties affected by the proposed fee simple battlefield land acquisition and conservation easements have been or are notified and invited to consult on the proposed activities. In addition, the ABPP shall conduct government-to-government consultation with Indian tribe(s) that attaches significance to historic properties that may be affected by future proposed activities post-acquisition.
- B. In preparing the Nationwide PA for the ABPP BLAGs, the ABPP shall consult with Indian tribes, individually or collectively, located within the States or for those with ancestral ties to the affected areas, to facilitate tribal consultation regarding the potential effects of ABPP activities on properties to which Indian tribe(s) may attach religious and cultural significance. The ABPP will develop protocols with the Indian tribe(s), or agree to have government-to-government consultation for each ABPP BLAG in which they may have an interest.

V. PUBLIC OUTREACH AND COORDINATION

- A. Public Outreach in the Section 106 review process. The ABPP will engage the public in the Section 106 review process for each BLAG covered under this Agreement as outlined in Stipulation II.A and II.B. through one or all of the following:
1. The ABPP will post a list of awarded grants or submitted applications via a press release or on its website, along with a short description of the undertaking. The general public will be directed to send any comments relating to the Section 106 review for any grant or application to ABPP@nps.gov.
 2. The ABPP will utilize the NPS' Planning, Environment, and Public Comment (PEPC) application to solicit comments from the general public. PEPC can be accessed at parkplanning.nps.gov.

- B. The ABPP will consider the public comments it receives at any time during the review period, and shall notify the consulting parties of any objection and consult further with the objecting party and the consulting parties to seek resolution. If the ABPP determines that the objection cannot be resolved, the ABPP shall forward a proposed resolution of the objection and all documentation on the objection, the consulting parties' opinion of the proposed resolution, if any, and any other relevant documentation to the ACHP. Within 15 days after receipt of all pertinent documentation the ACHP will submit to the ABPP their recommendations. Any ACHP recommendation provided in response to such a request will be taken into account by the ABPP with reference only to the subject of the dispute. The NPS ABPP's responsibility to carry out all actions under this Agreement that is not the subject of the dispute will remain unchanged.

VI. CONCLUDING SECTION 106 REVIEWS

- A. In consultation with the appropriate SHPO and other consulting parties, the Applicant for the ABPP BLAG will assess the effect of the proposed funding activity on historic properties.
 1. If the Applicant obtains the concurrence of the appropriate SHPO or other consulting parties that there are no historic properties affected, or that the proposed funding activity will have no adverse effect on historic properties, the Applicant will notify the ABPP as referenced in Stipulation II.C. of this Agreement.
 - a. If there is an objection to a finding of no historic properties affected or no adverse effect, ABPP, the Applicant, the SHPO, or Indian tribe(s) will consult according to the process described in Stipulation VI.A.3., below, of this Agreement.
 2. If during consultation with the appropriate SHPO, the Applicant determines that there will be an adverse effect, the Applicant will notify ABPP.
 3. Should the appropriate SHPO and the Applicant disagree about whether there is an effect to a historic property, or whether the effect on the historic property is adverse or not adverse, the Applicant will provide to ABPP a summary of the disagreement. The ABPP, in consultation with the SHPO and/or Indian tribe, will then consider the potential effects of the undertaking and will seek ways to resolve the disagreement before approving any activity on the property. If unable to resolve the disagreement, the ABPP will notify the ACHP and request the ACHP's advisory opinion. The ACHP shall provide its advisory opinion on the dispute to the ABPP within 15- calendar days. The ABPP shall take the ACHP's opinion into account prior to making a final decision on the dispute.
 4. Should the SHPO and the Applicant disagree about the applicability or interpretation of the Secretary of the Interior's *Standards for the Treatment of Historic Properties*, the Applicant shall refer the matter to the ABPP for resolution. The ABPP shall provide its final opinion to the Applicant.
- B. Adverse Effects on Historic Properties. In the event that ABPP concurs with the Applicant's determination that an Adverse Effect upon an historic property will occur, as defined in 36 CFR §800.5 (a) (1) and (2), ABPP shall notify the ACHP of the effect and initiate consultation consistent with the regulations, including the appropriate SHPO, Indian Tribe(s) and other consulting parties, as appropriate, and develop a Memorandum of Agreement (MOA) or individual grant Programmatic Agreement (PA) pursuant to 36 CFR §800.6.

1. If the Applicant receives concurrence from the SHPO that the proposed ABPP BLAG will result in adverse effects on historic properties, the Applicant will notify the ABPP in writing. The SHPO will document this in its comments, which may be shared with ABPP via telephone, e-mail or letter.
 2. Following ABPP receipt of the Applicant's written notification, and the SHPO and/or Indian tribe's comments, ABPP will notify the ACHP of the adverse effect. Within 15 days of receiving the ABPP adverse effect notification, the ACHP will determine whether or not it will participate in the consultation to resolve adverse effects, and will notify the ABPP in writing.
 3. If the Applicant, NPS ABPP, SHPO, or Indian tribe(s), and ACHP if participating, reach consensus regarding how to resolve the adverse effects and concur that the adverse effect cannot be avoided or minimized, they will consult on the best ways to mitigate the adverse effect and their agreed upon provisions will be included in a MOA or PA that adheres to the form found in Appendix B of this Agreement, and executed as outlined in Stipulation VI.B.4 below. Any costs relating to the agreed upon resolution of adverse effects will be the responsibility of the Applicant. The MOA will be included with a management plan or proposal as required by the conservation easement, if applicable, and, if necessary, a separate project budget. The management plan or proposal and the MOA will be made a condition of any grant awarded by the ABPP.
 4. To execute an MOA or PA, the Applicant shall sign first as an invited signatory, and then submit the MOA or PA to the SHPO for signature. After the SHPO has signed, the Applicant shall forward the MOA or PA to the ABPP and the ACHP, if participating in consultation, for signature. The NPS shall submit a copy of the fully executed MOA or PA to the ACHP, SHPO, Indian tribe(s), Applicant, and other any signatories for their records.
 5. To avoid delays in the implementation of ABPP BLAGs, consultation with all parties, including other consulting parties, to resolve adverse effects and, if the adverse effect cannot be avoided or minimized, to develop an MOA or PA for any undertaking subject to this Agreement shall be limited to a period of 60 days from notification of the ACHP, after which an MOA or PA will be executed, or the ABPP will request the staff comments of the ACHP. The ACHP will provide comments or recommendations to the Associate Director, Cultural Resources, Partnerships, and Science of the NPS, or a designated acting, for consideration within 15-days from the notification. The ABPP shall take into account any comments provided by the ACHP prior to approving or awarding the undertaking. The execution of an MOA or PA and/or receipt and consideration of ACHP comments shall conclude the Section 106 process for the undertaking.
- C. Adverse effects on National Historic Landmarks (NHLs). NPS ABPP will work with the Applicant to avoid adverse effects to the NHL, and will to the maximum extent possible undertake such planning and actions as may be necessary to minimize harm to the NHL. If in the SHPO's or Indian tribe's opinion the proposed ABPP BLAG project will have an adverse effect on a National Historic Landmark (NHL) property, the SHPO or Indian tribe shall immediately notify the ABPP. The ABPP will then comply with what is commonly known as Section 110(f) of NHPA and 36 CFR §800.10, and notify the ACHP of the adverse effect on the NHL and request the ACHP to participate in the consultation to resolve the adverse effects. ABPP will also

notify the appropriate NPS regional office managing NHLs and invite it to participate in the consultation to resolve the adverse effects.

VII. DEVELOPMENT OF NATIONWIDE PA

The ABPP, in consultation with the SHPOs and the ACHP, shall develop, within 45 days from the execution of this Interim Agreement, a proposed schedule, including milestones and tasks, for drafting a nationwide PA.

VIII. POST-REVIEW DISCOVERIES

- A. Pursuant to 36 CFR §800.13, if historic properties are discovered or unanticipated effects on historic properties are found after the ABPP's approval of the ABPP BLAG award, the completion of the Section 106 review process, and following the initiation of any construction related activities, the ABPP shall require the Applicant to implement any post review discovery plan included in the grant agreement conditions developed pursuant to this Agreement. If no such plan is included as a condition of the ABPP grant agreement, the Applicant shall take reasonable efforts to avoid or minimize adverse effects to any discovered historic properties; determine reasonable actions that it can take to resolve any adverse effects, and notify ABPP (7) calendar days of the discovery.
1. The notification to the SHPO or Indian tribe by the ABPP shall describe the ABPP's assessment of the National Register eligibility of the property and propose actions to resolve the adverse effects. The SHPO or Indian tribe(s) that has been notified shall have 7 days to respond to ABPP following receipt of the notification of the discovery. The ABPP shall take into account any recommendations provided by the SHPO or Indian tribe(s) regarding National Register eligibility and the proposed actions, and then require the Applicant to carry out the appropriate treatment. The ABPP shall provide the SHPO or Indian tribe(s) and the ACHP a report of the actions when they are complete.
 2. The ABPP, in consultation with the SHPO or Indian tribe(s), may assume a newly-discovered property to be eligible for listing in the National Register for purposes of Section 106, and shall specify the National Register criteria used to assume the property's eligibility.

IX. TREATMENT OF HUMAN REMAINS

- A. The ABPP shall ensure that its Applicants will treat all human remains in a manner consistent with the ACHP "Policy Statement Regarding Treatment of Burial Sites, Human Remains and Funerary Objects" (February 23, 2007; <http://www.achp.gov/docs/hrpolicy0207.pdf>).
- B. The ABPP shall ensure that its Applicants will treat human remains and associated funerary objects encountered during the course of actions taken as a result of ABPP funds in accordance with the appropriate state law(s) governing human remains, burials, unmarked graves, and cemeteries. Avoidance and preservation in place is the preferred option for treating all human remains.

- C. If human remains are discovered during ground-disturbing activities, the Applicant will ensure that work in that portion of the project shall stop immediately and will notify ABPP. The Applicant will also ensure that the human remains are covered and/or protected in place in such a way that minimizes further exposure of and damage to the human remains. ABPP will immediately consult with the SHPO or Indian tribe(s) regarding the appropriate method of determining the identity of the human remains, in accordance with all applicable state and local regulations. If the remains are found to be Native American, ABPP will also consult with the appropriate Indian tribe(s) about the treatment of the human remains and associated funerary artifacts.
- D. If the remains are not Native American, the ABPP will consult with the appropriate local authority (ies) to determine the treatment of the human remains. The disposition of any non-Native American human remains and associated funerary artifacts shall be governed as specified in any permit issued by the SHPO or any order of the local court authorizing their removal. The ABPP shall ensure that any treatment and reburial plan is fully implemented.
- E. The Applicant shall ensure that the general public is excluded from viewing any burial site (including its human remains or associated funerary artifacts). The Applicant shall not release photographs of any burial site (including its human remains or associated funerary artifacts) to the press or general public.

X. EMERGENCY SITUATIONS

- A. Immediate rescue and salvage operations conducted to preserve life or property are exempt from the provisions of Section 106 and the terms of this Agreement.
- B. In the event the ABPP and the Applicant agree that an emergency undertaking that involves an ABPP BLAG is an essential and immediate response to a disaster or emergency declared by the President, a tribal government, or the Governor of a State or another immediate threat to life or property, the ABPP will comply with 36 CFR §800.12, and shall:
 - 1. Notify the appropriate SHPO and any Indian tribe that may attach religious and cultural significance to historic properties likely to be affected prior to the undertaking and afford them an opportunity to comment within seven (7) calendar days of notification. If the ABPP determines that circumstances do not permit seven days for comment, the agency official shall notify the SHPO and the Indian tribe(s) and invite comments within the time available. The ABPP shall take into account any comments received in reaching a decision on how to proceed with the emergency undertaking.
 - 2. These emergency procedures apply only to undertakings that must be implemented within 30 calendar days after the disaster or emergency has been formally declared by the appropriate authority. The ABPP may request an extension of the period of applicability from the SHPO or Indian tribe(s) prior to the expiration of the 30 calendar days.
 - 3. The ABPP shall notify the ACHP of disaster and emergency situations related to an ABPP BLAG project and the action that has been proposed or taken under Stipulations II.A and II.B.

XI. DISPUTE RESOLUTION

- A. Should any signatory to this Agreement, or any affected Indian Tribe(s), object to any plans, specifications, actions, or reports required under the terms of this Agreement, the signatories shall consult with the ABPP to seek resolution. If any signatory or Indian Tribe(s) determines that the dispute cannot be resolved, the ABPP will refer the dispute to the ACHP for its advisory opinion and notify all other consulting parties that it has done so. The ABPP will request ACHP staff recommendations and assistance regarding resolution of the dispute. The ACHP will provide its recommendations to the ABPP within 15 days of receipt of adequate documentation. The ABPP will take these recommendations into account in reaching a final decision concerning the dispute, and notify the signatories of this Agreement of the final outcome.
- B. Any ACHP staff recommendations will pertain only to the subject of the dispute. The responsibility of the signatories to implement all other actions pursuant to the terms of this Agreement that are not subject to the dispute shall remain unchanged.

XII. EXECUTION AND TERM OF AGREEMENT

This Agreement shall take effect in each State on the date it is signed by the NPS, the ACHP, and the applicable SHPO. This Agreement shall continue in effect until December 31, 2015, unless otherwise terminated prior to that date. Prior to such time, the NPS and ACHP may agree in writing to extend its duration.

XIII. AMENDMENTS

If any signatory or invited signatory, determines that the terms of the Agreement will not or cannot be carried out, or that an amendment to the terms of the Agreement should be made, that party shall initiate consultation with the ABPP and ACHP, and notify all other signatories in writing. The signatory parties shall consult to determine the need for an amendment to this Agreement. The Agreement may be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date a copy signed by all of the signatories is filed with the ACHP. If the signatories cannot agree to appropriate terms to amend this Agreement, any signatory may terminate the Agreement in accordance with Stipulation XIV below.

XIV. TERMINATION AND SHPO WITHDRAWAL FROM AGREEMENT

- A. If any signatory to this Agreement determines that its terms will not, or cannot be, carried out, that party shall immediately consult with the other parties to attempt to develop an amendment per Stipulation XII, above. The ACHP may be asked by any signatory to this Agreement to review its terms and its implementation by the NPS prior to seeking a termination of the Agreement. If within thirty (30) days (or another time period agreed to by all signatories) an amendment cannot be reached, any signatory may terminate the Agreement upon written notification to the other signatories.
- B. If this Agreement is terminated, the ABPP shall comply with Subpart B of 36 CFR Part 800 prior to carrying out any individual undertakings of the ABPP covered by the terms of this Agreement.

1. An individual SHPO may withdraw from the Agreement upon written notice to all signatories and concurring signatories, after having consulted with them for at least 30 days to attempt to find a way to avoid the withdrawal. Upon withdrawal, and prior to continuing work on any undertaking previously covered by this Agreement in the relevant State, the ABPP will comply with Section 106 for the undertaking in accordance with 36 CFR §800.3 through §800.7 or execute a new agreement in accordance with 36 CFR §800.14(b) for that State. This Agreement will remain in effect with regard to the ABPP BLAG program located in the jurisdiction of the SHPO(s) that have not withdrawn from the PA. If all SHPOs withdraw from the PA, the PA will be considered to be terminated.

Execution of this Agreement by the NPS, the ACHP, and the NCSHPO and implementation of its terms evidence that the NPS ABPP has taken into account the effects of the ABBP BLAG program on historic properties and afforded the ACHP an opportunity to comment.

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

SIGNATORIES:

National Park Service

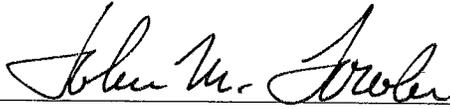
Date: _____

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

Programmatic Agreement
May 2015

NPS ABPP Battlefield Land Acquisition Grant Program
Remaining FY 14 and New FY 15 Funding

Advisory Council on Historic Preservation



Date: _____

5/14/15

By: John M. Fowler
Executive Director

Programmatic Agreement
May 2015

NPS ABPP Battlefield Land Acquisition Grant Program
Remaining FY 14 and New FY 15 Funding

National Council for State Historic Preservation Officers

_____ Date: _____

By: Erik M. Hein
Executive Director

Programmatic Agreement
May 2015

NPS ABPP Battlefield Land Acquisition Grant Program
Remaining FY 14 and New FY 15 Funding

CONCUR:

Civil War Trust

Date: _____

By: O. James Lighthizer
President

APPENDIX A

ABPP Section 106 Review Quick Guide

APPENDIX B

ACHP Template Agreement Document