

**PROGRAMMATIC AGREEMENT AMONG  
ARLINGTON NATIONAL CEMETERY,  
THE VIRGINIA STATE HISTORIC PRESERVATION OFFICER, AND  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION  
FOR THE OPERATION, MAINTENANCE, AND REPAIR ACTIVITIES AT  
ARLINGTON NATIONAL CEMETERY,  
ARLINGTON COUNTY, VIRGINIA**

**WHEREAS**, the organization known as Arlington National Cemetery maintains and operates Arlington National Cemetery (hereinafter ANC) in Arlington County, Virginia, proposes to continue to coordinate and administer ongoing programs of operations, maintenance, and repair, including grounds work and associated landscaping (Projects), as part of its mission on behalf of the American people lay to rest those who have served our nation with dignity and honor, treating their families with respect and compassion, and connecting guests to the rich tapestry of the cemetery's living history while maintaining those hallowed grounds befitting the sacrifice of all those who rest there in quiet repose; and

**WHEREAS**, ANC, a federally owned and operated facility, plans to carry out these Projects which are undertakings subject to review under Section 106 of the National Historic Preservation Act (hereinafter NHPA), 16 U.S.C. § 470f, and its implementing regulations, 36 C.F.R. Part 800; and

**WHEREAS**, ANC defined the area of potential effects (hereinafter APE) as within the parcel in Arlington County, Virginia, known as the ANC Historic District and associated viewsheds as defined in Attachment C; and

**WHEREAS**, ANC determined that these undertakings may affect the ANC Historic District (DHR# 000-0042) and the Memorial Amphitheater (DHR# 000-0042-0006) which are listed in the National Register of Historic Places (hereinafter NRHP) (both under NRHP Reference # 14000146), as well as Arlington Memorial Bridge (DHR# 000-0014) and Arlington House (DHR# 000-0001) which are listed in the NRHP, and has consulted with the Virginia State Historic Preservation Office (hereinafter SHPO) pursuant to 36 C.F.R. Part 800; and

**WHEREAS**, ANC, in accordance with 36 C.F.R. §§ 800.2(c)(2) and 800.6(c)(3), invited the following federally recognized Indian tribes, for which land ANC occupies may have religious and cultural significance, to be consulting parties to this Programmatic Agreement (hereinafter Agreement): the Absentee-Shawnee Tribe of Indians of Oklahoma, Cayuga Nation, Delaware Tribe of Indians, Eastern Shawnee Tribe of Oklahoma, Oneida Indian Nation, Oneida Tribe of Indians of Wisconsin, Onondaga Indian Nation, Saint Regis Mohawk Tribe, Seneca-Cayuga Tribe of Oklahoma, Seneca Nation of New York, Shawnee Tribe, Tonawanda Band of Seneca Indians of New York, Tuscarora Nation, Cherokee Nation, Eastern Band of Cherokee Indians, United Keetoowah Band of Cherokee Indians, and the Catawba Indian Tribe; and

**WHEREAS**, ANC did not receive a request from a federally recognized Indian tribe for participation on the development of this Agreement; and

**WHEREAS**, ANC, in accordance with 36 C.F.R. §§ 800.2(c)(3), 800.2(c)(5), and 800.6(c)(3), identified and invited the following organizations to participate as consulting or potential concurring parties to this Agreement: the National Park Service – George Washington Memorial Parkway (hereinafter NPS-GWMP) the U.S. Commission of Fine Arts (hereinafter CFA), the National Capitol Planning Commission (hereinafter NCPC), Washington Headquarters Service (hereinafter WHS), Joint Base Myer-Henderson Hall (hereinafter JBM-HH), the National Trust for Historic Preservation (hereinafter NTHP), Preservation Virginia (formerly the Association for the Preservation of Virginia Antiquities), the Virginia Council on Indians (disbanded in July 2012), the Arlington Historical Society, Inc., the Historical Society of Washington DC, and Arlington County; and

**WHEREAS**, the CFA, the NCPC, WHS, JBM-HH, the Virginia Council on Indians, the NTHP, Preservation Virginia, the Arlington Historical Society, Inc., and the Historical Society of Washington DC declined or did not respond to the invitation to participate in the development of this Agreement; and

**WHEREAS**, ANC received requests from Arlington County and NPS-GWMP, for participation on the development of this Agreement, and they are Concurring Parties to this Agreement; and

**WHEREAS**, ANC, pursuant to 36 C.F.R. § 800.14(b)(2)(ii), provided the public an opportunity to review and comment on this Agreement by posting it on the official ANC web site (<http://www.arlingtoncemetery.mil>); and

**WHEREAS**, in accordance with 36 C.F.R. § 800.6(a)(1), ANC notified the Advisory Council on Historic Preservation (hereinafter ACHP) of its assessment of effects providing the specified documentation, and the ACHP chose to participate in the consultation in accordance with 36 C.F.R. § 800.6(a)(1)(iii) and

**WHEREAS**, ANC, SHPO, and the ACHP are participating in this agreement and are therefore Signatories (hereinafter Signatories); and

**WHEREAS**, a survey and evaluation, entitled “*Historic Resources Inventory for Arlington National Cemetery, Arlington, Virginia*” (May 2012) (Attachment C), was undertaken to identify resources contributing to a NRHP eligible historic district at ANC under Criteria A and C with an ongoing period of significance starting in 1864, in accordance with 36 C.F.R. § 60.9(a), and identified the Memorial Amphitheater as individually eligible to the NRHP under Criteria A and C with an ongoing period of significance starting in 1920, and the SHPO has concurred with this survey and evaluation; and

**WHEREAS**, no historic properties of an archaeological nature eligible for listing in the NRHP have been identified on ANC property, however, ANC recognizes the potential for undiscovered archaeological sites in specific areas within the APE varies in probability, discussed and mapped in Attachment D; and

**WHEREAS**, ANC has developed an Integrated Cultural Resources Management Plan (ICRMP) for ANC which provides direction for the management and treatment for historic properties at ANC, and which was approved 06 March 2013 by the ANC Chief of Staff; and

**WHEREAS**, ANC has been provided with a *Sourcebook for Historic Preservation* (hereinafter *Sourcebook*) compiled by US Army Corps of Engineers, Norfolk District from National Park Service publications, which includes preservation and maintenance guidelines and procedures for conducting work on historic buildings, landscapes, monuments, and memorials, the contents of which is listed in Attachment B, to guide operation, repair and maintenance activities within ANC; and

**WHEREAS**, undertakings at ANC for which effects have been taken into account through the ACHP *Program Comment for DoD Rehabilitation Treatment Measures* (removal of mortar joints and repointing, preparation of lime and cement-amended mortars, preparation of lime- or Portland based stucco, repair of historic stucco, and identifying masonry types and failures) are not subject to review under this Agreement; and

**WHEREAS**, ANC is consulting with the SHPO and other identified consulting parties separately regarding the planned expansions of ANC in the Millennium Area and Navy Annex Area, and therefore, these large-scale construction projects are not subject to review under this Agreement;

**NOW, THEREFORE**, ANC, the SHPO, and the ACHP agree that this Agreement shall be implemented in accordance with the following stipulations to take into account the effect of the undertakings on historic properties at ANC.

## **STIPULATIONS**

ANC shall ensure that the following measures are carried out:

### **I. Roles and Responsibilities**

#### **A. Agency Official**

1. Executive Director, as defined by Department of the Army Directive 2010-04, is designated the Agency Official for Section 106 in accordance with 36 C.F.R. § 800.2(a) and has delegated the Chief Engineer of ANC responsible for carrying out Section 106 under authority of 10 U.S.C. § 4721 and 4724.

2. The Chief Engineer shall ensure that:

a) A staff person designated as the Cultural Resources Manager (hereinafter CRM) who meets the *Secretary of the Interior's Professional Qualification Standards* (Archeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines [As Amended and Annotated], 48 Fed. Reg. 44716, Sept. 1983 [hereinafter SOI Professional Qualifications]) shall be assigned responsibility for administering the process outlined in this Agreement.

b) all prudent and feasible efforts to conduct undertakings are in accordance with the preservation and maintenance guidelines for historic buildings, landscapes, monuments and memorials in the *Sourcebook* and be consistent with the *Secretary of the Interiors Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings* (36 C.F.R. Part 68; hereinafter *Standards*).

c) the *Standards* are referenced in all scopes of work for undertakings so that contractors seeking to undertake work on historic architectural properties at ANC shall show past performance in the successful application of the *Standards* for the treatments required in statements of qualifications for bids and proposals and be pre-qualified based on demonstrated experience in the successful application of the *Standards*.

d) The provisions of Stipulation VII are included in all ANC operations and contracts involving ground disturbance.

## B. Cultural Resources Manager

1. For the purposes of this Agreement, the CRM's responsibilities shall include, but are not limited to:

a) Serving as the point of contact with the SHPO, the ACHP, other consulting parties, and the public as appropriate for questions and concerns about historic properties and preservation at ANC.

b) Analyzing existing and future ANC documents, to identify specific undertakings that may be subject to review under the terms of this Agreement, including, but are not limited to:

(1) the SHPO Data Sharing System (DSS) records or its successor database technology;

(2) cultural resource reports;

- (3) National Environmental Policy Act (hereinafter NEPA) compliance documents;
  - (4) the ANC Master Plan;
  - (5) the ANC ICRMP; and
  - (6) construction and operations plans.
- c) Establishing treatment plans, schedules, and priorities within the planning cycle for historic properties that might be affected by undertakings.
- d) Ensuring that information is available to ANC senior management and involved offices on review requirements and ANC's responsibilities under this Agreement, so that adverse effects may be identified and avoided early in the planning process.
- e) Overseeing the Streamline Review Process in accordance with Stipulation II.
- f) The CRM shall ensure that all identification and evaluation survey documentation and all resource treatment documentation carried out pursuant to the terms of this Agreement shall be completed by or under the direct supervision of an individual or individuals who meet SOI Professional Qualifications in the appropriate discipline.
- g) The CRM shall post an electronic copy of this Agreement and of the *Sourcebook* to the ANC internal website within twenty-one (21) calendar days of execution of this Agreement and notify via email all appropriate ANC and U.S. Army Corps of Engineers personnel involved with carrying out actions under this Agreement within thirty (30) calendar days of execution of this Agreement.
- h) The CRM shall notify via email new personnel of this Agreement and the *Sourcebook* within fourteen (14) calendar days of that personnel coming into relevant positions. New notifications via email shall be made within fourteen (14) calendar days of amendments or updates to the Agreement or *Sourcebook*.

i) The CRM shall conduct a training opportunity, including scheduling workshops in the application of the *Standards* and other appropriate historic preservation topics, for personnel undertaking repair and maintenance work involving historic buildings. The training shall occur annually, within one (1) year of execution of this Agreement, and repeated within one (1) year of that date annually. Training opportunities may include, but are not limited to, internally lead or courses in association with outside interests.

C. Horticultural Division

The preservation of the historic character of ANC shall be preserved by the ANC Horticultural Division staff by directing replacement of trees and shrubs with the same species and in the same location, with exceptions given in Attachment A.

**II. Streamlined Review Process for Undertakings**

A. Determine the Undertaking

1. The CRM shall determine if the proposed project is an undertaking as defined in 36 C.F.R. § 800.16(y).
2. If the CRM determines the proposed project is an undertaking that has no potential to cause effects on historic properties as defined in 36 C.F.R. § 800.16(i), the CRM shall document this determination for inclusion in the Annual Report (Stipulation X), and ANC has no further obligations under this Agreement.
3. If the CRM determines the proposed project is an undertaking with the potential to cause effects on historic properties, the CRM shall continue on in the Streamlined Review Process.
4. If the CRM determines the undertaking is an activity that is listed in Attachment A, the CRM shall document this determination for inclusion in the Annual Report (Stipulation X), and ANC has no further obligations under this Agreement.
5. If the CRM determines the undertaking is not an activity that is listed in Attachment A, the CRM shall continue on in the Streamlined Review Process.

B. Define the Area of Potential Effects and Identify Historic Properties

1. The CRM shall determine and document the undertaking's APE taking

into account direct, indirect, and cumulative effects.

2. The CRM shall identify historic properties within the APE using Attachments C, D, and E, or require additional surveys if warranted.
3. If the CRM determines that the APE contains only contributing resources not requiring further review as identified in Attachment E, and the proposed undertaking will not directly or indirectly affect historic properties identified in Attachment C, the CRM shall document this determination for inclusion in the Annual Report (Stipulation X), and ANC has no further obligations under this Agreement.
4. If the CRM identifies a historic property listed in Attachment C that may be directly, indirectly, or cumulatively affected within the APE, the CRM shall continue on in the Streamlined Review Process.

C. Evaluate Effects of the Undertaking

1. The CRM shall assess the effects of the proposed undertaking, to include direct, indirect, and cumulative effects, on historic properties using the criteria of adverse effects (36 C.F.R. § 800.5[a][1]).

2. No Adverse Effects

- a) If the CRM determines that the undertaking will not have adverse effects on identified historic properties, the CRM shall notify the SHPO using the following process:

- (1) The CRM shall prepare a notification package for the SHPO that includes a description of the undertaking, an illustration of the APE, a list of identified historic properties within the APE, and the justification for the finding of no adverse effects.

- (2) The CRM shall send the notification package to the SHPO via its ePix project notification system, or its successor technology. Upon receipt of the notification package, the SHPO has thirty (30) calendar days to provide a written response to the CRM.

(3) The CRM shall post the notification package on the official ANC website (<http://www.arlingtoncemetery.mil>) for a minimum of thirty (30) days for public review and comment. The information posted may be redacted, as appropriate for publication, in accordance with 36 C.F.R. § 800.11(c).

(4) The CRM shall send the notification package electronically via AMRDEC S.A.F.E. to Consulting Parties identified by the CRM pursuant to 36 C.F.R. §§ 800.2(c)(5). Consulting Parties shall have thirty (30) days to review and comment on the proposed undertaking.

(5) The CRM shall inform the SHPO of any comments about the undertaking received from the public or Consulting Parties during the thirty (30)-day review period.

b) If the SHPO concurs with the no adverse effects finding, the CRM shall document this concurrence for inclusion in the Annual Report (Stipulation X), and ANC has no further obligations under this Agreement.

c) If the SHPO does not concur with the finding of no adverse effects, the CRM shall consult with the SHPO to attempt to resolve concerns as identified by the SHPO.

(1) If after further consultation the SHPO concurs with the finding of no adverse effects, the CRM shall document this concurrence for inclusion in the Annual Report (Stipulation X), and ANC has no further obligations under this Agreement.

(2) If after further consultation the SHPO does not concur with the finding of no adverse effects, the CRM may accept the SHPO's comments and continue on in the Streamlined Review Process in order to address the adverse effects pursuant to Stipulation II(D), below; or request the involvement of the ACHP pursuant to 36 C.F.R. § 800.5(c)(2).

### 3. Adverse Effects

a) If the CRM determines that the undertaking will have adverse effects on identified historic properties, the CRM shall notify the SHPO using the following process:

(1) The CRM shall prepare a notification package for the SHPO that includes a description of the undertaking, an illustration of the APE, a list of identified historic properties within the APE, the explanation for the finding of adverse effects, and steps taken or considered to avoid or minimize the adverse effects.

(2) The CRM shall send the notification package to the SHPO via its ePix project notification system, or its successor technology. Upon receipt of the notification package, the SHPO has thirty (30) calendar days to provide a written response to the CRM.

(3) The CRM will post the notification package on the ANC website (<http://www.arlingtoncemetery.mil>) for a minimum of thirty (30) days for public review and comment. The information posted may be redacted, as appropriate for publication, in accordance with 36 C.F.R. § 800.11(c).

(4) The CRM shall send the notification package electronically via AMRDEC S.A.F.E. to Consulting Parties identified by the CRM pursuant to 36 C.F.R. §§ 800.2(c)(5). Consulting Parties shall have thirty (30) days to review and comment on the proposed undertaking.

(5) The CRM shall inform the SHPO of any comments about the undertaking received from the public or Consulting Parties received during the thirty (30)-day review period.

b) If the SHPO does not concur with the finding of adverse effects, the CRM shall consult with the SHPO to attempt to resolve concerns as identified by the CRM.

(1) If after further consultation with the SHPO the CRM changes the finding to no adverse effects, the CRM shall document this concurrence for inclusion in the Annual Report (Stipulation X), and ANC has no further obligations under this Agreement.

(2) If after further consultation with the SHPO the CRM maintains the finding of adverse effects, the CRM shall continue pursuant to 36 C.F.R. §§ 800.6(b)(v).

c) If the SHPO concurs with the finding of adverse effects, the CRM shall proceed to the “Resolution of Adverse Effects” pursuant to Stipulation II(D). below.

D. Resolution of Adverse Effects

1. The CRM shall notify Consulting Parties and the public within ten (10) calendar days of receiving the SHPO’s concurrence of an adverse effect finding for an undertaking using the following process:

a) The CRM shall prepare a notification package for the Consulting Parties including the explanation for the finding of adverse effects, steps taken or considered by ANC to avoid or minimize the adverse effects, any SHPO comments received by ANC regarding the undertaking, an invitation to participate in a consultation to resolve adverse effects, and the proposed date for a Consulting Parties meeting.

b) The CRM shall send the notification package electronically via AMRDEC S.A.F.E. to the Consulting Parties.

c) The CRM shall post a notice of the adverse effects finding on the official ANC website to include an explanation for the finding of adverse effects, steps taken or considered by ANC to avoid or minimize the adverse effects, any SHPO comments received by ANC regarding the undertaking, and an invitation for the public to review the adverse effect finding and to provide written comment within thirty (30) calendar days of posting to the CRM.

d) Upon receipt of the notification package, Consulting Parties have thirty (30) calendar days to provide a written response to the CRM accepting the invitation to participate in the consultation. No response within thirty (30) calendar days shall be understood to mean that the Concurring Parties are not interested and they will not receive any additional information concerning the undertaking or consultation.

2. The CRM shall organize a Consulting Parties meeting, to include the SHPO, forty-five (45) calendar days after notifying Concurring Parties to discuss alternatives to avoid, minimize, or mitigate the adverse effects. Additional meetings shall be scheduled as needed.

3. If through consultation with the SHPO and Consulting Parties the undertaking avoids or minimizes the adverse effects, the CRM shall document the alternatives utilized in an attempt to reduce the effects of the undertaking to a no adverse effects finding and include them in the Annual Report (Stipulation X),

and ANC has no further obligations under this Agreement.

4. If through consultation with the SHPO and Consulting Parties the adverse effects are mitigated, the measures agreed to by ANC, the SHPO, and any other party that may have a responsibility outlined in the letter agreement can be specified in a minimization and/or mitigation modification form as found in Attachment F and signed by ANC, the SHPO, and any other party that may have a responsibility outlined in the letter agreement. If such a minimization and/or modification form is completed and signed by ANC, the SHPO, and any other party that may have a responsibility outlined in the letter agreement, ANC will include it in the annual report in accordance with Stipulation X. Other Consulting Parties may be asked to sign the letter agreement as Concurring Parties; however, their signature is not required for the letter agreement to be considered executed.

5. If through consultation with the SHPO and Consulting Parties the adverse effects are mitigated, but ANC or the SHPO requires more thorough documentation than a minimization and/or mitigation form, then the measures agreed to by ANC, the SHPO, and any other party that may have a responsibility shall be specified in a Memorandum of Agreement in accordance with 36 C.F.R. § 800.6(c) and filed with the ACHP upon execution.

6. The ACHP will only participate in the resolution of adverse effects for individual undertakings if a written request is received from ANC or the SHPO.

### **III. Addition of Signatories and Concurring Parties**

A. In the event that there is additional federal involvement in a proposed undertaking, that federal agency will have the option to accept the terms of this Agreement, which will not require an amendment. If the federal agency signs as an invited signatory, ANC must notify the Signatories in advance of the federal agency committing to the terms of this Agreement.

B. Organizations desiring participation in this Agreement after its execution may submit a written request to the Chief Engineer to sign as a Concurring Party. Such a request will not require an amendment to the Agreement, ANC will provide the organization with a Concurring Party signatory page, and ANC will inform the Signatories within thirty (30) calendar days of receiving that organization's newly executed Concurring Party signatory page.

#### **IV. Annual Inspection**

Within one hundred-eighty (180) calendar days of the execution of this Agreement, ANC shall distribute to the SHPO and Concurring Parties a plan outlining an annual inspection of all historic properties (to include contributing resources) within ANC. The plan will include, but need not be limited to, a list of historic properties (including contributing resources) at ANC, the method of the annual inspection, and the baseline information for each historic property (including contributing resources) that will be used for the annual inspection to gauge changes. The results of the annual inspection will be documented for inclusion in the Annual Report (Stipulation X).

#### **V. Confidentiality**

In accordance with 36 C.F.R. § 800.11(c) ANC agrees to protect all sensitive, confidential, or proprietary information concerning Native American historic, cultural, or archaeological site locations. Property specific information will not appear in public documents or be made available to the public. Property-specific information will, however, be provided to the SHPO for inclusion in the state inventory files, as well as to appropriate ANC management staff, and to legitimate scholars carrying out related research. Such information may also be included in scholarly reports as appropriate and necessary. Every effort shall be made to present archaeological site locations at a scale which will not allow precise site location in inappropriate contexts.

#### **VI. Curation**

ANC shall deposit all archaeological materials and appropriate field and research notes, maps, drawing and photographic records collected as part of projects carried out under this Agreement (with the exception of human skeletal remains and associated funerary objects which shall be treated in accordance with Stipulation VII[B]) with a repository which meets the requirements in 36 C.F.R. Part 79, *Curation of Federally Owned and Administered Archeological Collections*. All such items shall be made available to educational institutions and individual scholars for appropriate exhibit and/or research under the operating policies of the selected repository which shall be specified in a Memorandum of Understanding between ANC and the repository per the example at 36 C.F.R. Part 79 Appendix B within thirty-six (36) months of the conclusion of this Agreement.

#### **VII. Post Review Discovery**

##### **A. Cultural Resources or Unanticipated Effects**

1. If previously unidentified cultural resources or unanticipated effects are discovered during the implementation of an undertaking, reviewed in accordance with the Streamline Review Process or standard Section 106 review, the ANC personnel or contractor shall immediately halt the undertaking in the immediate area of the finding and notify the Chief Engineer and CRM of the discovery and

implement interim measures to protect the discovery.

2. Immediately upon receipt of the notification from the ANC personnel or contractor, the CRM shall:

a) inspect the work site to determine the extent of the discovery and ensure that the project manager and contractor supervisors know that construction activities with the potential to affect the historic property in question must be halted as a legal and contractual requirement;

b) clearly mark the area of discovery and establish an appropriate buffer between the discovery and ground disturbing activities or other potential effects, as appropriate;

c) implement additional measures, e.g., surveillance or concealment as appropriate, to protect the discovery from looting and vandalism, as appropriate;

d) have an individual meeting the SOI Professional Standards for the appropriate discipline inspect the work site to determine the extent of the discovery and provide recommendations regarding NRHP eligibility and treatment; and

3. Within two (2) business days of the discovery, the CRM shall notify the SHPO and Concurring Parties via electronic mail.

4. Within seven (7) business days of the discovery, the CRM shall develop a notification package for the SHPO and Concurring Parties that includes a description of the undertaking and how it was reviewed in accordance with the Streamline Review Process, photographs of the discovery, the recommendation of NRHP eligibility, and a treatment plan.

a) The CRM shall send the notification package via electronic mail to the SHPO and Concurring Parties.

b) Upon receipt of the notification package, the SHPO and Concurring Parties have two (2) business days to provide a response to the CRM on the NRHP eligibility and treatment plan. No response within two (2) business days shall be understood to mean that the non-responding party has no comment.

5. ANC shall take into account the recommendations received on eligibility and treatment of the discovery and carry out any appropriate required actions

within five (5) working days of receipt.

6. The CRM shall provide the SHPO and Concurring Parties with a report on the actions taken within fourteen (14) calendar days of implementation.

7. Interment activities may proceed in the area of the discovery once the Chief Engineer has determined that the treatment plan is complete.

B. Unidentified Human Remains Dating Prior to the Establishment of Arlington National Cemetery

1. ANC shall make all reasonable efforts to avoid disturbing non-ANC gravesites. ANC shall treat those in a manner consistent with the ACHP "Policy Statement Regarding Treatment of Burial Sites, Human Remains and Funerary Objects" (23 February 2007; <http://www.achp.gov/docs/hrpolicy0207.pdf>) or ACHP policy in effect at the time remains and funerary artifacts are handled.

2. If the unidentified non-ANC remains are determined to be of Native American origin, ANC shall comply with the provisions of the Native American Graves Protection and Repatriation Act (hereinafter NAGPRA [25 U.S.C. Sec 3001 et seq.]), and shall use reasonable efforts to ensure that the general public is excluded from viewing any Native American or other human remains or associated funerary artifacts.

3. If the unidentified non-ANC remains are determined not to be of Native American origin, ANC shall consult with the SHPO and consulting parties, except for the ACHP. Prior to the archaeological excavation of any remains, the following information shall be submitted to the SHPO and consulting parties for consultation:

a) The name of the property or archaeological site, and the specific location therein, from which the recovery is proposed. If the recovery is from a known historic property, a state-issued site number must be included.

- b) Indication of whether a waiver of public notice is requested and why. If a waiver is not requested, a copy of the public notice (to be published in a newspaper having general circulation in the area for a minimum of thirty (30) calendar days prior to recovery) must be submitted.
- c) A copy of the curriculum vitae of the skeletal biologist who will perform the analysis of the remains.
- d) A statement that the treatment of human skeletal remains and associated artifacts will be respectful.
- e) An expected timetable for excavation, osteological analysis, preparation of final report, and final disposition of remains.
- f) A statement of the goals and objectives of the removal (to include both excavation and osteological analysis).
- g) If a disposition other than reburial is proposed, a statement of justification.

4. No photographs of any human remains or associated funerary artifacts shall be released to the press or general public subject to the requirements of the federal Freedom of Information Act, 16 U.S.C. 470w-3 of the NHPA, and other laws as applicable.

### **VIII. Dispute Resolution**

A. Any party to this Agreement may raise objections to actions carried out or proposed by ANC with regard to the implementation of measures stipulated in this Agreement. ANC shall notify the other parties of any objections raised and shall consult with the objecting party to resolve the objection.

B. If the objection remains unresolved, ANC shall forward all documentation relevant to the objection to the ACHP, including the proposed response to the objection. The ACHP shall provide ANC with its advice on the resolution of the objection within thirty (30) calendar days of receiving adequate documentation. Prior to reaching a final decision on the dispute, ANC shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories and concurring parties, and provide them with a copy of this written response. ANC will then proceed according to its final decision.

C. If the ACHP does not provide its advice regarding the dispute within the thirty (30) calendar day time period, ANC may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, ANC shall prepare a written

response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to this Agreement, and provide them and the ACHP with a copy of such written response.

D. ANC's responsibility to carry out all other actions subject to the terms of this Agreement, that are not the subject of the dispute, remain unchanged.

E. At any time during implementation of the measures stipulated in this Agreement, should a member of the public object to ANC regarding the manner in which the measures stipulated in this Agreement are being implemented, ANC shall notify the signatories to this Agreement and consult with the signatories to evaluate and address the objection.

## **IX. Efficient Communications**

In accordance with Executive Order 13563 "Improving Regulation and Regulatory Review," and Executive Order 13589 "Promoting Efficient Spending" communications between signatories of this Agreement and consulting parties discussed herein shall be in electronic form whenever practicable, permitted by law, and consistent with applicable records retention requirements. Unless specifically requested in another form (i.e., mail/hard copy) by the SHPO, Concurring Parties, or Consulting Parties in writing to ANC

## **X. Annual Reporting and Monitoring**

On the first day of July of each year this Agreement remains in force, ANC shall prepare and provide an annual report that reviews the implementation of the terms of this Agreement and to determine whether amendments are needed to consulting parties. The annual status report shall address the following topics:

1. Problems with implementation or issues encountered during the previous year.
2. Amendments or changes ANC believes should be made in implementation of this Agreement.
3. A list of projects/undertakings reviewed in accordance with the Streamlined Review Process.
4. A list of all ANC professional training opportunities relative to this Agreement provided during the reporting period and number of participants and organizations.
5. Management summaries of cultural resource reports completed during the previous year.

6. Copies of any minimization and/or mitigation measure modification agreement letters concluded during the previous 12 months.

B. ANC shall ensure that the public is made aware of the availability of the Annual Report on its website, and that interested members of the public are invited to provide comments to the ANC.

C. The SHPO and the ACHP may monitor and review the activities carried out pursuant to this Agreement. ANC shall cooperate with the SHPO and the ACHP in their monitoring and review responsibilities.

D. ANC shall hold an annual meeting with SHPO, ACHP, and the Concurring Parties to this Agreement to review the implementation of this Agreement and any amendments that may be proposed.

E. One year after the execution of this Agreement, in conjunction with the first Annual Report, ANC shall consult with SHPO and ACHP about revising the Streamlined Review Process, specifically not requiring ANC to notify the SHPO of a no adverse effects finding.

## **XI. Amendment**

This Agreement may be amended when such an amendment is agreed to in writing by all Signatories. The amendment shall be effective on the date a copy signed by all of the Signatories is filed with the ACHP.

## **XII. Termination**

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 Signatories to attempt to develop an amendment per Stipulation XI, above. If within thirty (30) calendar 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. Once the Agreement is terminated, and prior to work continuing on undertakings, ANC must either (a) execute a Memorandum of Agreement pursuant to 36 C.F.R. § 800.6, or (b) request, take into account, and respond to the comments of the ACHP under 36 C.F.R. § 800.7. ANC shall notify the Signatories as to the course of action it will pursue.

C. Should the position of CRM be vacated, the Chief Engineer shall notify SHPO and the ACHP within five (5) calendar days of the position becoming vacant, and shall consult on each individual undertaking pursuant to 36 C.F.R. §§ 800.3 through 800.6 until the CRM position is appropriately filled.

### **XIII. Anti-Deficiency Act**

ANC's future efforts to execute requirements arising from the stipulations of this Agreement are subject to the provisions of the Anti-Deficiency Act. If compliance with the Anti-Deficiency Act alters or impairs ANC's ability to implement the stipulations of this Agreement, ANC shall consult in accordance with the amendment and termination procedures found at Stipulation XI and XII of this Agreement. No provision of this Agreement shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, Title 31 U.S.C. § 1341.

### **XIV. Duration of Agreement**

This Agreement shall remain in full force and effect for ten (10) years after the date of the last signatory's signature. This Agreement shall be reviewed periodically, not less than five (5) years from the execution of the Agreement. Sixty (60) calendar days prior to the date this Agreement would otherwise expire, ANC shall consult with the Signatories to determine whether the Agreement needs to be extended, amended, or terminated and take such actions as appropriate.

**Execution** of this Agreement by ANC, the SHPO, and the ACHP and implementation of its terms, evidence that ANC has taken into account the effects of the undertakings on historic properties and afforded the ACHP an opportunity to comment.

PROGRAMMATIC AGREEMENT AMONG ARLINGTON NATIONAL CEMETERY,  
THE VIRGINIA STATE HISTORIC PRESERVATION OFFICER, AND  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION  
FOR THE OPERATION, MAINTENANCE, AND REPAIR ACTIVITIES AT  
ARLINGTON NATIONAL CEMETERY,  
ARLINGTON COUNTY, VIRGINIA

SIGNATORIES:

ARLINGTON NATIONAL CEMETERY

By: Michelle J Stewart Date: 22 May 14  
Colonel Michelle J. Stewart, *Chief Engineer, Arlington National Cemetery*

VIRGINIA STATE HISTORIC PRESERVATION OFFICER

By: Julie V Langan Date: 6/16/14  
Ms. Julie V. Langan, *Director, Department of Historic Resources*

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: John M. Fowler Date: 7/18/14  
Mr. John M. Fowler, *Executive Director*

**CONCUR:**

ARLINGTON COUNTY

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Barbara Donnellan, *County Manager*

NATIONAL PARK SERVICE-GEORGE WASHINGTON MEMORIAL PARKWAY

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Alexcy Romero, *Acting Superintendent*