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Division of Architecture

PROGRAMMATIC AGREEMENT
BETWEEN THE
U.S. DEPARTMENT OF VETERANS AFFAIRS
NATIONAL CEMETERY ADMINISTRATION
AND
THE TEXAS STATE HISTORIC PRESERVATION OFFICER
AND
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING
THE EXPANSION OF
FORT SAM HOUSTON NATIONAL CEMETERY
IN SAN ANTONIO, TEXAS

**PROGRAMMATIC AGREEMENT
FOR
FORT SAM HOUSTON NATIONAL CEMETERY EXPANSION
AND IMPROVEMENTS**

THIS PROGRAMMATIC AGREEMENT (hereinafter the "Agreement") is made and entered into as of this 7th day of January 2009, by and between the U.S. Department of Veterans Affairs (VA), National Cemetery Administration (hereinafter "NCA"), the Texas State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP) (hereinafter the "Parties").

RECITALS

WHEREAS, NCA is the owner of approximately 155 acres located at the Fort Sam Houston National Cemetery, in Bexar County, Texas ("Property"); and

WHEREAS, NCA recently acquired approximately 40 additional acres of undeveloped land from the United States Army for cemetery expansion; and

WHEREAS, VA and the SHPO agreed that the proposal is a single project with two separate construction phases – preparation of the 40 acres, located east of Nursery Road, and redevelopment of the existing, developed, historic section, located west of Nursery Road (see Appendix 1); and

WHEREAS, VA contracted for an archaeological survey of the additional 40 acres of undeveloped land transferred from the Department of the Army using a sampling method agreed to by the SHPO, which was completed in August 2008; and

WHEREAS, VA provided a letter report to the SHPO following the conclusion of the archaeological investigations and the SHPO provided comments regarding the report. It was agreed that no further archaeological work is needed on this tract and unanticipated discoveries will be dealt with following the Unanticipated Discoveries stipulations of this Agreement; and

WHEREAS, VA determined with the SHPO that the expansion phase of the undeveloped 40-acre section could proceed following completion of the archaeological sampling and SHPO comments on the report; and

WHEREAS, VA has initiated consultation with the Mescalero Apache Tribe, the Lipan Apache Tribe, and the Alabama-Coushatta tribe; and

WHEREAS, NCA will not construct the overpass originally planned to cross Nursery Road at San Antonio Boulevard during Phase I; should the overpass be required in the future, consultation will recommence; and

WHEREAS, NCA has completed a cultural resources inventory of the developed historic section of the cemetery; and

WHEREAS, NCA has contracted for the completion of *Historic American Landscape Survey (HALS)* documentation, composed of written histories and large format photography of the developed historic section of the cemetery; and

WHEREAS, NCA has contracted for the preparation of a National Register of Historic Places (NRHP) nomination, as part of a multiple property submission on the theme of Intra-War National Cemeteries for the developed historic section of the cemetery; and

WHEREAS, NCA, in consultation with the SHPO, determined that the actions proposed for the developed historic section of the cemetery may cause adverse effects and that such effects could best be addressed through the development of this Agreement pursuant to 36 CFR Part 800.14(b); and

WHEREAS, NCA notified ACHP of the adverse effect determination and its intention to develop this Agreement pursuant to 36 CFR Part 800.6(a)(1)(i)(C) and ACHP elected to participate in the consultation; and

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

STIPULATIONS

NCA shall ensure that the following measures are carried out:

I. General and Planning

a. NCA will review its previous 95 percent complete design and re-design Phase II of the undertaking, taking into account the historic preservation concerns that the SHPO has previously stated in its letter of October 30, 2007 (Appendix B).

b. NCA will submit to the SHPO for review any architectural, landscape, and engineering designs for new construction, or renovation at the developed historic section of the cemetery at the 30 percent and 90 percent construction document phase. All submissions will be submitted through the project manager. Submittal will be via hard copy. SHPO will provide comments and recommendations within 30 calendar days of receipt. NCA will consider the comments and incorporate, as appropriate.

c. All rehabilitation and new construction work at the developed historic portion of the cemetery will be done in accordance with the Secretary of Interior's *Standards for Treatment of Historic Properties*. The associated Guidelines, planning work and construction oversight will be performed by professionals, who meet the Secretary of Interior's Professional Qualifications for Historic Architect or Architectural Historian.

d. NCA will initiate consultation with representatives of local governments and additional consulting parties for any plans to alter the historic section of the cemetery. At a minimum, NCA will notify and invite the following organizations and individuals to participate in the specific consultation regarding Phase II: the Society for the Preservation of Fort Sam Houston National Cemetery, the Bexar County Historical Commission, the San Antonio Conservation Society, the historic preservation staff at Fort Sam Houston National Cemetery, appropriate veterans' organizations, and the general public.

e. The re-design of Phase II and any subsequent projects in the historically developed section of the cemetery and any proposed subsequent development will also take into account the following considerations:

1. scale
2. massing
3. proportions
4. siting
5. elevations
6. sympathetic colors
7. sympathetic material
8. style

f. NCA's maintenance workers will be provided information on working with historic buildings, such as the National Park Service *Preservation Briefs*.

g. NCA will consider reopening the formal entrance at Winans Road, on axis with Macdonia Street, for improved traffic access.

h. NCA will retain and repair as much of the historic landscape of the developed cemetery as possible, including the historic flagpole and ornamental base, enclosure rock walls, and the iron fencing/gates.

i. NCA will provide the results of the HALS and NR studies to the SHPO for review and comment.

j. NCA will take appropriate steps to avoid or minimize potential adverse effects, in consultation with the SHPO and other Parties, including changing the location of proposed actions or altering plans.

II. Resolution of Adverse Effects

- a. Should an adverse effect be determined, NCA will, in writing, contact the SHPO, ACHP, and other consulting parties, including tribes and potential consulting parties cited in Stipulation I (d) to resolve the adverse effect following the provisions of 36 CFR 800.3-6.
- b. NCA will provide an opportunity for public input during the consultation process to resolve the adverse effect.
- c. Resolving adverse effects include avoiding, minimizing or mitigating the effect. NCA will document resolution alternatives and why those not chosen are not feasible.
- d. Avoiding adverse effects can include moving the project to another location or modifying or eliminating the project completely.
- e. Minimizing or mitigating adverse effects can include recordation, curation, relocation, repair/modifications meeting the Secretary of the Interior's *Standards for the Treatment of Historic Properties*, public outreach, or other measures that consulting parties agree upon, as appropriate, based on the size and type of the adverse effect.
- f. The consultation should result in an agreement document that will spell out the responsibilities of the NCA, SHPO, and other consulting parties.
- g. Should NCA and the SHPO be unable to resolve the adverse effect, NCA will notify the ACHP.

III. Emergency Situations

- a. In the case of emergency situations or disasters, NCA will follow the procedures laid out in 36 CFR 800.12

IV. Unanticipated Discoveries

- a. In the course of conducting work on a Project or any other activity on the Property that involves disturbance of the ground, NCA shall not intentionally or knowingly remove, or disturb or cause to be removed or disturbed any archaeological, or other cultural artifacts, relics, remains, or objects of antiquity. Any such artifacts, relics, remains, or objects of antiquity constitute federally-owned property under the control of the NCA.
- b. In the event that a previously unidentified archaeological resource is discovered during such activities, NCA shall ensure that all work involving subsurface disturbance in the immediate area of the resource is stopped immediately and in the surrounding area where further subsurface resources may reasonably be expected to occur (the "Site"), and shall immediately notify NCA.

NCA shall then, within ten (10) days of such notice, obtain a Qualified Archaeologist to inspect the Site to determine whether further investigations are warranted. Following the inspection by the Qualified Archaeologist, NCA and the SHPO shall consult and determine, within three (3) business days following the completion of such inspection, whether to conduct any archeological work that may be necessary, and if so, how such archaeological work shall be accomplished. Construction work may continue in the Project area outside the Site.

c. If, following the inspection by the Qualified Archaeologist, NCA determines that the previously unidentified archeological resource is eligible for listing in the NRHP, NCA shall submit to the SHPO an assessment of the Site's eligibility and a Treatment Plan prepared by NCA to avoid, minimize, or mitigate any adverse effect on the resource. The Treatment Plan shall be prepared and implemented in accordance with the Secretary of Interior's *Standards and Guidelines for Archaeology and Historic Preservation*. The SHPO shall provide NCA comments on the eligibility of the resource for listing in the NRHP and the Treatment Plan within 14 calendar days of receipt. NCA shall then take into account the SHPO's comments regarding NRHP eligibility and the Treatment Plan, and provide consolidated comments to ACHP. NCA shall carry out appropriate actions in accordance with the Treatment Plan. If it is later determined by the SHPO and NCA that the archaeological resource on the Site does not meet the criteria for eligibility in the NRHP (36 CFR § 60.4), NCA shall provide SHPO with a written report on actions taken pursuant to the Treatment Plan within thirty (30) calendar days following the resumption of work on the Site.

d. If human remains are identified on the Property by any action taken pursuant to this Agreement, NCA shall consult and notify SHPO within (3) three business days and shall develop and implement a plan for the appropriate treatment of those remains in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA) (25 USC § 300 et. seq. as appropriate) and the Archaeological Resources Protection Act (ARPA) (16 § USC 470aa et. seq.) and their respective regulations. The plan shall include provisions for in-place preservation, excavation, and analysis, in accordance with a data recovery plan approved pursuant to this Agreement, and disposition of the remains as appropriate. NCA shall, in good faith, consult with the relevant parties in accordance with applicable law. NCA shall then submit the plan to the SHPO for review and comment prior to its implementation.

e. If any discoveries under this paragraph will permanently impact the proposed development by NCA under the Master Plan, the Parties agree to work to modify the Master Plan as expeditiously as possible, so as to allow NCA to resume the action.

V. Public Education and Outreach

- a. NCA may facilitate and permit visitors on the Fort Sam Houston National Cemetery grounds as development activities allow.
- b. NCA shall submit a proposal for and, if approved, install an official Texas Historical Marker at the cemetery in an appropriate location to be decided in consultation with the SHPO.
- c. NCA will develop and install not to exceed (3) three interpretative signs depicting the unique historic resources at the historic cemetery.
- d. NCA will have a standard public presentation about the history of Fort Sam Houston National Cemetery, and deliver it to the general public upon request, at a minimum of two times.
- e. Within one (1) year of the execution of this Agreement, NCA will have a tri-fold brochure developed depicting the history of Fort Sam Houston National Cemetery. The brochure will be available via the Internet, as well as through the NCA Communication and Outreach Support Division (41C2). The brochure will be developed, in consultation with SHPO, the VA Federal Preservation Officer, and the NCA History Program (41C4). SHPO will have thirty (30) calendar days to review and comment on the final draft.
- f. NCA will work with consulting parties, as appropriate, when developing outreach materials.

VI. Professional Qualification Standards

All *preservation-related work carried out in accordance with this Agreement*, shall be overseen by a person or persons meeting the Secretary of the Interior's Professional Qualification Standards (36 CFR Part 61) for the appropriate discipline.

VII. Monitoring and Reporting

Once a year, following the execution of this Agreement until it expires or is terminated, NCA shall provide all parties to this Agreement a summary report detailing work undertaken pursuant to its terms. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes and objections received in NCA's efforts to carry out the terms of this Agreement.

VIII. Dispute Resolution

Should any signatory to this Agreement object at any time to any actions proposed or the manner in which the terms of this Agreement are implemented, NCA shall consult with such party to resolve the objection. If NCA determines that such objection cannot be resolved, NCA will:

- a. Forward all documentation relevant to the dispute, including the NCA's proposed resolution, to the ACHP. The ACHP shall provide NCA with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, NCA 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. NCA will then proceed according to its final decision.
- b. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, NCA may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, NCA shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the Agreement, and provide them and the ACHP with a copy of such written response.
- c. NCA'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.

IX. Amendments

This 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.

X. Termination

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 VIII. 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.

Once the Agreement is terminated, and prior to work continuing on the undertaking, NCA must either (a) execute an Agreement pursuant to 36 CFR § 800.6 or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. NCA shall notify the signatories as to the course of action it will pursue.

XI. Notice and Other Correspondence

a. Notice and other correspondence between authorized representatives of the Parties as described in this Agreement may be in writing or via electronic means, unless otherwise required to be in writing as specified in the narrative.

b. All written notices required or arising from the terms of this Agreement from any Party or to any Party shall be served on or mailed to that Party via the address(s) designated below. Such written notices shall be deemed to be given upon receipt. *Refusal to accept delivery, and inability to make delivery because of an incorrect or outdated address provided by the intended recipient, shall constitute receipt.*

XII. Availability of Funds

This Agreement is subject to the Anti-Deficiency Act (31 U.S.C. §1341). NCA's responsibilities under this Agreement are contingent upon the availability of appropriated funds from which payment, if any, can be made. No legal liability on the part of NCA for any payment may arise until funds are made available to NCA for this Agreement and until the Designated NCA Representative receives written notice of such availability.

Department of Veterans Affairs

National Cemetery Administration
Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20420

Texas Historical Commission

Texas Historical Commission
P.O. Box 12276
Austin, TX 78711
(physical address: 1511 Colorado Ave, Austin, TX 78701)

Advisory Council on Historic Preservation

Advisory Council on Historic Preservation
1100 Pennsylvania Avenue, NW - Suite 809
Washington, DC 20004

SIGNATURES FOLLOW ON NEXT PAGE

Execution of this Programmatic Agreement by the Parties and implementation of its terms evidence that the NCA has taken into account the effects of the understanding on historic properties and provided the ACHP an opportunity to comment pursuant to 36 CFR 800, the regulations that implement Section 106 of the National Historic Preservation Act of 1966, as amended.

DEPARTMENT OF VETERANS AFFAIRS:

By: Steve Muro
Steve Muro
Acting Under Secretary for Memorial Affairs

Date: 1-22-09

TEXAS HISTORICAL COMMISSION:

By: F. Lawrence Oaks
F. Lawrence Oaks
State Historic Preservation Officer

Date: 2-4-09

ADVISORY COUNCIL ON HISTORIC PRESERVATION:

By: John M. Fowler
John M. Fowler
Executive Director

Date: 2/18/09