

**SECOND AMENDMENT TO  
PROGRAMMATIC AGREEMENT  
AMONG  
THE NATIONAL PARK SERVICE, AMERICAN BATTLEFIELD PROTECTION PROGRAM AND  
THE NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION OFFICERS  
AND  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION  
REGARDING THE AMERICAN BATTLEFIELD PROTECTION PROGRAM'S GRANTS  
(AGREEMENT)**

**WHEREAS**, the National Park Service (NPS), the National Conference of State Historic Preservation Officers (NCSHPO), and the Advisory Council on Historic Preservation (ACHP) executed this Nationwide Programmatic Agreement (Agreement) on September 27, 2016 in accordance with 36 CFR § 800.14(b) to address the Section 106 process as it applies to the American Battlefield Protection Program's (ABPP) Preservation Planning Grants and Battlefield Land Acquisition Grants; and

**WHEREAS**, the NPS, the NCSHPO, and ACHP executed the first amendment to this Agreement on January 14, 2021 to address technical corrections to align terms with Federal regulations and Department of the Interior guidelines and procedures for Financial Assistance; and

**WHEREAS**, the NPS administers financial assistance to non-Federal entities in multiple states through its American Battlefield Protection Program (ABPP), the Battlefield Preservation Planning Grants (Planning Grants), Battlefield Land Acquisition Grants (Acquisition Grants), Battlefield Interpretation Grants (Interpretation Grants), and Battlefield Restoration Grants (Restoration Grants), collectively the ABPP Grant Programs (ABPP Grant Programs), 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, but not limited to, the American Revolution, War of 1812, Indian Wars, American Civil War, Mexican-American War and World War II; and

**WHEREAS**, as authorized by Congress most recently through the Omnibus Public Land Management Act of 2009, as amended (P.L. 111-11, 54 U.S.C. § 308102, including notes), monies are made available to NPS to fund its Planning Grants, which provide financial assistance to encourage, support, assist, recognize, and work in partnership with citizens, Federal, State, local, and Tribal governments, other public entities, educational institutions, and private nonprofit organizations in identifying, researching, evaluating, interpreting, and protecting historic battlefields and associated sites on a national, Tribal, State, and local level; and

**WHEREAS**, the term "State" in reference to an eligible recipient for awards administered through Planning Grants, which provide financial assistance to encourage, support, assist, recognize, and work in partnership with citizens, is further defined as US Territories and other entities that meet the definition of "State" under the National Historic Preservation Act who otherwise meet the requirements of the grant program; and

**WHEREAS**, as authorized by Congress through the Omnibus Public Land Management Act of 2009, as amended (P. L. 111-11), and most recently reauthorized through FY 2028 by the Further Consolidated Appropriations Act of 2020, (P.L. 116-94, 54 U.S.C. § 308103 Battlefield Acquisition Grant Program, including notes), a portion of the Land and Water Conservation Fund (LWCF) monies are made available to NPS to fund its

Acquisition Grants, 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**, as authorized by Congress through FY 2028 by the Further Consolidated Appropriations Act of 2020, (P.L. 116-94, 54 U.S.C. § 308104), monies are made available to NPS to fund its Interpretation Grants, which provide financial assistance to States, Tribes, local governments, and nonprofit organizations for projects and programs that deploy technology to modernize battlefield interpretation and education at Revolutionary War, War of 1812, and Civil War battlefield sites eligible for assistance under the Battlefield Acquisition Grant Program established under 54 U.S.C. § 308103(b); and

**WHEREAS**, as authorized by Congress through FY 2028 by the Further Consolidated Appropriations Act of 2020, (P.L. 116-94, 54 U.S.C. § 308105), monies are made available to NPS to fund its Restoration Grants, which provide financial assistance to States, Tribes, local governments, and nonprofit organizations for projects that restore day-of-battle conditions on land preserved under the Battlefield Acquisition Grant Program established under section 54 U.S.C. § 308103(b); and

**WHEREAS**, the NPS, in conformance with provisions for annual reporting in Stipulation XV of this Agreement, has notified signatories of its inability to meet certain terms of this Agreement and requested amendments to remove certain Stipulations related to the Federal regulations, guidelines, and procedures for Financial Assistance. Additionally, the NPS identified several Stipulations requiring amendments to clarify roles and responsibilities for NPS, applicants, recipients, pass-through entities, subapplicants, subrecipients, State Historic Preservation Offices (SHPOs), and other consulting parties; and

**WHEREAS**, the NPS requested consultation with signatories regarding the Section 106 process for the Interpretation Grants and Restoration Grants; and

**WHEREAS**, the NPS, in consultation with signatories, determined a second amendment to the Agreement in its entirety is needed to standardize the terminology related to the ABPP Grant Programs and their participants; and

**WHEREAS**, the NPS notified the ACHP and NCSHPO, as Signatories, regarding the consultation process to develop this amendment in accordance with Stipulation XVI of this Agreement, and the ACHP and NCSHPO consulted on the need for such an amendment; and

**WHEREAS**, the NPS consulted with the American Battlefield Trust, doing business as the Civil War Trust, South Carolina Institute of Archaeology and Anthropology, and Shenandoah Valley Battlefields Foundation as major, private, non-profit partner organizations to ABPP, regarding the amendment to this Agreement, and invited them to sign this Agreement as a Concurring Party; and

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

**WHEREAS**, because of the sovereign status of federally recognized Indian Tribes, the NPS determined during the original consultation for the Agreement, and the ACHP had previously concurred, that it is appropriate to invite each federally recognized Indian Tribe or Tribal Historic Preservation Officer (THPO), as defined in Section

101(d)(2) of the NHPA, to develop independent consultation protocols with the NPS (based upon government-to-government consultation) and, hence, no Tribes were asked to be signatories to this amended Agreement; and

**WHEREAS**, the NPS shall take appropriate measures (e.g. ABPP website, social media) to notify Tribal governments, local governments and the public of the existence of this amended Agreement and involve them as appropriate during the implementation of the terms of this Agreement as set forth in Stipulations VII and VIII; and

**NOW THEREFORE**, in accordance with Stipulation XVI of the Agreement, the Advisory Council on Historic Preservation, the National Conference of State Historic Preservation Officers, and the National Park Service agree that the Agreement shall be amended in its entirety as follows:

**NPS, in coordination with applicants for and recipients of awards through the ABPP Grant Programs, agree to carry out the following measures:**

**I. APPLICABILITY**

- A. This Agreement shall apply only to the NPS ABPP Battlefield Preservation Planning Grants (Planning Grants), Battlefield Land Acquisition Grants (Acquisition Grants), Battlefield Interpretation Grants (Interpretation Grants), and Battlefield Restoration Grants (Restoration Grants), collectively the ABPP Grant Programs (ABPP Grant Programs).
- B. If other federal agencies are involved in an NPS undertaking covered by this Agreement, the other federal agency can meet its Section 106 compliance responsibilities by adhering to the terms of this Agreement or by deferring to NPS to be the lead federal agency.

**II. ROLES AND RESPONSIBILITIES**

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

A. National Park Service (NPS)

- 1. The NPS is the federal agency responsible for completing consultation under Section 106 for the activities funded through its ABPP Grant Programs.
- 2. The NPS will retain staff who meets the Secretary of the Interior's (SOI's) *Professional Qualifications Standards* (SOI *Qualifications*) in order to identify and evaluate historic properties.
- 3. The NPS will provide grant program guidance to applicants and recipients, and subapplicants and subrecipients when applicable. NPS staff who meets the SOI's *Qualifications* will determine which proposals meet programmatic exclusions from the Section 106 review according to Stipulation III.A and V.A, below. For all other proposals, the NPS will advise applicants and recipients that the Section 106 process must be completed for their projects and provide guidance on the materials recipients will be expected to provide.
- 4. The NPS will provide technical assistance to SHPOs, non-profits, local governments, universities, and Tribes on best practices for battlefield preservation, as needed.
- 5. For Acquisition Grants, the NPS authorizes the recipient, and in the case of a proposal with a pass-through entity, the subrecipient, or their designee, who meets the SOI *Qualifications*,

to assist the NPS in carrying out the requirements of 36 CFR §§ 800.3 through 800.4 with the exception of fulfilling the requirements contained in Stipulation VII (Tribal Consultation) of this Agreement. NPS will retain oversight responsibilities to ensure the stipulations of this Agreement are met, and must be notified by the recipient if, after routine consultation or coordination with the SHPO, disputes remain regarding the identification, evaluation or treatment of historic properties.

6. For all ABPP Grant Programs, the NPS will consult government-to-government with Federally recognized Indian Tribes and NHOs on undertakings that occur on and off Tribal lands in accordance with 36 CFR § 800.2(c)(2).
7. The NPS will provide the ACHP and NCSHPO with an annual report for the previous fiscal year by December 31 as long as this Agreement is in effect as outlined in Stipulation XV. NCSHPO will distribute the annual report to its member SHPOs.

#### B. Applicants and Recipients

1. In the case of Planning Grants, Interpretation Grants, and Restoration Grants, eligible applicants are non-profit groups, academic institutions, and local, regional, state, and tribal governments.
  - a. An applicant for Planning Grants, Interpretation Grants, and Restoration Grants will submit a complete application by the annual due date to NPS.
  - b. If a proposed project is not considered eligible for a programmatic exclusion in accordance with this Agreement or other subsequent agreement, the Planning Grants, Interpretation Grants, and Restoration Grants applicant will provide the NPS with any previous correspondence received from the SHPO about the project in the application, if any exist.
  - c. Planning Grants, Interpretation Grants, and Restoration Grants recipients will be responsible for all costs associated with resolving any Adverse Effects on historic properties.
2. In the case of Acquisition Grants, eligible applicants are State or local governments seeking to acquire a fee-simple or permanent less-than-fee conservation easement interest in eligible battlefield lands. A State or local government may function as pass-through entity in partnership with a nonprofit organization to acquire an interest in an eligible site with Acquisition Grant assistance; in such acquisitions, the nonprofit partner will function as the recipient for Section 106 purposes and fulfill all delegated responsibilities.
  - a. The Acquisition Grant recipient, or in the case of a proposal with a pass-through entity, the subrecipient, will carry out the requirements of 36 CFR §§ 800.3 through 800.4 with the SHPO as defined herein. The Acquisition Grant recipient shall ensure that all work carried out pursuant to this Agreement shall be done by or under the direct supervision of professionals who meet the SOI *Qualifications*.
  - b. The Acquisition Grant recipient, or in the case of a proposal with a pass-through entity, the subrecipient, will be responsible for costs associated with resolving any adverse effects.
3. All work undertaken by an ABPP Grant Program applicant and/or recipient, or in the case of a proposal with a pass-through entity, the subrecipient, pursuant to this Agreement shall be conducted by or under the direct supervision of qualified individuals meeting at minimum the qualifications required by 36 CFR § 800.2(a)(1). Applicants may budget for

the necessary identification and evaluation activities in their grant proposal application. In developing a grant proposal, it is recommended that applicants consult with a professional that meets the SOI *Qualifications* to budget and plan for adequate historic property identification efforts.

#### C. Pass-through entity

1. A pass-through entity is a non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program.
2. Acquisition Grants are awarded to units of State and local governments. Private, non-profit organizations (subapplicants) may apply to acquire a fee- or less-than-fee conservation easement interest in eligible battlefield lands through Acquisition Grants in partnership with a State or local government agency sponsor (pass-through entity).
3. The pass-through entity may then subaward the Federal assistance to the private, non-profit organization (subrecipient).
4. For Acquisition Grant proposals with a pass-through entity, the subrecipient is responsible for those authorized responsibilities in Stipulation IV. The pass-through entity will have no role in the Section 106 review process as it relates to submission of documentation or communication with consulting parties unless they voluntarily assume these responsibilities. The subrecipient will provide the pass-through entity all documents related to the Section 106 review that the subrecipient has sent or received.

#### D. SHPOs

1. The SHPO will provide technical assistance to applicants, as requested, during the application process.
2. The SHPOs will consult with the NPS, applicants/recipients, and subapplicants/subrecipients (when applicable for Acquisition Grants), or their designees, to help the NPS bring the Section 106 review process to completion.
3. The SHPO will recognize the delegation of Section 106 responsibilities to the Acquisition Grant recipient, as provided herein.
4. The SHPO will be offered the opportunity for review and comment on draft products associated with the NPS ABPP Grant Programs as conditioned in a project's grant agreement.
5. The SHPO, regardless of whether it is the easement holder or not, will work with Acquisition Grant recipients and the NPS to ensure easement language and any required plans are written to meet the requirements of the SHPO and the *Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (Standards)*, the *Treatment of Historic Properties*, and *Guidelines for the Treatment of Cultural Landscapes*.
6. For Acquisition Grants with a nonprofit or non-SHPO governmental entity easement holder, the easement provisions will require the SHPO to serve as a technical reviewer and approver of certain activities. The SHPO will be provided the draft conservation easement for review and comment as outlined in Stipulation IV.B.4.

#### E. ACHP

1. The ACHP will participate in consultation to resolve Adverse Effects when determined

appropriate by ACHP.

2. The ACHP will assist in resolving disputes among signatories of this Agreement, any affected Indian Tribe(s), any applicant, or any recipient.

### III. PLANNING AND INTERPRETATION GRANTS

#### A. Programmatic Exclusions and Conditions

1. For the following eligible activities, NPS shall assume there is no potential to cause effect (No Effect) to historic properties and NPS has no further Section 106 responsibilities with regards to them, pursuant to 36 CFR § 800.3(a)(1). No further consultation is required beyond technical assistance for:
  - a. Historical research/overviews;
  - b. GPS/GIS mapping;
  - c. Survey and Inventory with no ground disturbance (i.e. pedestrian survey, shovel testing and test unit excavation, and the use of remote sensing techniques for the purposes of protecting, preserving, and documenting archaeologically significant deposits, sites, and features);
  - d. NHL/NRHP/state register nomination, update, or boundary expansion (excluded from Section 106 review, but will receive SHPO review through the NRHP process);
  - e. Preservation plans without treatment recommendations;
  - f. Heritage tourism interpretive plans;
  - g. Strategic/organizational/administrative planning (when no ground disturbance or alteration to structures or buildings are planned);
  - h. Viewshed analysis;
  - i. Educational activities, such as museum exhibit plans, videos/brochures/guides, and web-based interpretation, all with sensitive locations redacted; and
  - j. Advocacy and support, such as administrative support, press and media outreach, public outreach, meetings and strategic advocacy.
2. Planning Grants and Interpretation Grants assist eligible activities that develop plans that may have reasonably foreseeable effects to historic properties as a result of the assisted project. These include (i) preservation plans with treatment recommendations, and (ii) development of wayside plans, including the draft content, proposed designs and installation sites, and specific methods/process for wayside installation.
  - a. An NPS staff member that meets the SOI's *Qualifications* will review selected proposals and determine if the proposed work will be carried out (i) in a manner that meets the *Secretary of Interior's Standards (Standards)* and any applicable state guidelines, (ii) by a professional that meets or exceeds the SOI's *Qualifications*, and (iii) with an opportunity for SHPO review of grant product(s).
  - b. If the project cannot be modified to meet the *Standards*, involves ground disturbances or would otherwise result in an Adverse Effect on historic properties, NPS will follow the process outlined in Stipulation III.B.
  - c. If the project meets the conditions outlined above (Stipulation III.A.2.a), the NPS shall conclude the Section 106 process by documenting this determination in the official file of

record, without SHPO review or notification, when sufficient conditions are included in the grant agreement.

- d. If after SHPO review of the draft grant products, the SHPO identifies potential Adverse Effects on historic properties, the SHPO will notify the NPS and request the NPS reopen Section 106 consultation on the proposed plans. If the NPS and SHPO concur that the draft plans may result in Adverse Effects on historic properties, NPS shall follow the process outlined in Stipulation VI.
3. The list of Planning Grants and Interpretation Grants awarded not subject to Section 106 review will be included in the Annual Report (Stipulation XV).

#### B. Planning Grants and Interpretation Grants Subject to Section 106

1. The NPS shall encourage applicants to design their projects to avoid Adverse Effects on historic properties. The NPS will also advise applicants about the applicability of Section 110(k) of the National Historic Preservation Act and inform applicants that projects involving potential effects to historic properties (e.g. ground disturbing activities) must not commence until completion of the Section 106 review.
2. NPS will initiate Section 106 for Planning Grants and Interpretation Grants after selection and announcement of successful proposals. For projects that do not meet any of the exclusions of Stipulations III.A. above, the NPS will initiate consultation with the SHPO in accordance with 36 CFR Part 800 and Director's Order #28, Cultural Resource Management.
3. After selection and announcement of successful Planning Grants and Interpretation Grants proposals, NPS shall also request the comments of any Indian Tribe(s) and Native Hawaiian Organization(s) that might attach religious and cultural significance on or near land associated with the project in accordance with Stipulation VII, below.
4. The NPS and the SHPOs will make best efforts to expedite reviews through a finding of No Adverse Effect, with conditions, when the NPS and the SHPO concur that plans and specifications or scopes of work can be modified to ensure adherence to the *Standards*. If the project cannot be modified to meet the *Standards* or would otherwise result in an Adverse Effect on historic properties, NPS will proceed in accordance with Stipulation VI, below.

### IV. BATTLEFIELD LAND ACQUISITION GRANTS

#### A. Initiation of the Section 106 Process for Acquisition Grants

1. The NPS authorizes Acquisition Grant recipients, and in the case of a proposal with a pass-through entity, the subrecipient, or their designee, to consult with the appropriate SHPO after NPS completes the merit review of the proposal. The Acquisition Grant recipient will undertake the following preliminary measures with regard to Section 106:
  - a. The recipient, and in the case of a proposal with a pass-through entity, the subrecipient, or their designee, shall complete the requirements of 36 CFR §§ 800.3 through 800.4 on

behalf of the NPS. The recipient, and in the case of a proposal with a pass-through entity, the subrecipient, or their designee, shall ensure all work carried out shall be done by or under the direct supervision of professionals who meet the SOI's *Qualifications*.

The recipient shall:

- i. Define the proposed undertaking (36 CFR § 800.16(y));
  - ii. Determine and document the area of potential effects (36 CFR § 800.16(d));
  - iii. Research existing information on historic properties within the area of potential effects, including any data concerning possible historic properties not yet identified (36 CFR § 800.4(a)(2));
  - iv. Identify additional consulting parties with a demonstrated interest in the undertaking (36 CFR § 800.2(c)(5)).
- b. The recipient, and in the case of a proposal with a pass-through entity, the subrecipient, shall submit the details outlined in Stipulation IV.A.1.a to NPS for their initial review prior to submission to the SHPO.
- i. NPS will review the information and provide comments to the recipient, and in case of the proposal with a pass-through entity, the subrecipient. NPS will return the revised review to the recipient/subrecipient to initiate Section 106 with the SHPO and consulting parties.
  - ii. NPS will utilize this information to initiate Tribal Consultation as outlined in Stipulation IV.A.2 concurrently to the recipient initiating consultation with the SHPO and other consulting parties.
  - iii. The recipient, and in case of the proposal with a pass-through entity, the subrecipient, will identify any additional consulting parties with a demonstrated interest in the undertaking, and following NPS review and approval of the list of consulting parties, initiate consultation.
  - iv. If applicable to the proposed project, the recipient, and in case of the proposal with a pass-through entity, the subrecipient, will invite the proposed easement holder to participate in the Section 106 process as a consulting party.
- c. The SHPO will review the information within thirty (30) days of receipt from the Acquisition Grant recipient, and in the case of a proposal with a pass-through entity, the subrecipient. NPS requests the SHPO comment on the proposed area of potential effects, the recipient's identification of existing historic properties, and recommend any additional identification efforts necessary to evaluate potential effects to historic properties.
- d. Acquisition Grant recipients are encouraged to utilize the initial SHPO and Tribal consultation to determine if any additional historic property identification efforts are necessary to evaluate effects to historic properties.
- e. Once the Acquisition Grant recipient, or its designee, has completed the requirements of 36 CFR §§ 800.3 through 800.4 with the SHPO, the recipient will submit this information to NPS.
2. The NPS, as soon as it is in receipt of sufficient preliminary information from the recipient, and in the case of a proposal with a pass-through entity, the subrecipient, as outlined in Stipulation IV.A.1.a, will initiate consultation with federally recognized Tribes that might attach religious or cultural significance to historic properties in the area of potential effects and invite them to be consulting parties.



3. No activity with the potential to affect historic properties, other than the acquisition of battlefield land, may occur on the property before the Section 106 process is complete. In accordance with Section 110(k) of the NHPA (54 U.S.C. § 306113) NPS will not provide assistance to an applicant who, with intent to avoid the requirements of Section 106, has intentionally 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, has allowed the significant adverse effect to occur, unless NPS, after consultation with the ACHP, determines that circumstances justify granting the assistance despite the adverse effect created or permitted by the applicant.
  - a. If an Acquisition Grant applicant anticipates seeking reimbursement for fee-simple acquisition, applicants are encouraged to complete standard baseline photographic documentation of the property at the time of contract or closing and document any actions at the property since acquisition. Applicants shall disclose this information as part of its application to document their compliance with Section 110(k) of the National Historic Preservation Act.
4. NPS will carry out the requirements of 36 CFR §§ 800.5 through 800.6 in consultation with the Acquisition Grant recipient, subrecipient, or their designee, the SHPO/THPO, and any consulting parties, as outlined in Stipulations IV.B-C, below.

#### B. Section 106 for Acquisition Grant Fee Simple Acquisitions and Easements

1. With the exception of situations where a State government agency will acquire and manage the property with Acquisition Grant funding, Acquisition Grant recipients, and in the case of a proposal with a pass-through entity, the subrecipient, are required to encumber the title to the acquired battlefield property with a conservation easement, in favor of and enforceable in court by the SHPO, another government agency, or qualified conservation easement holder acceptable to the NPS, in perpetuity.
2. Acquisition Grant recipients, and in the case of a proposal with a pass-through entity, the subrecipient, or their designee, will ensure any additional historic properties within the area of potential effect are identified prior to drafting the conservation easement in consultation with NPS, SHPO/THPOs, Indian Tribes, NHOs, and other consulting parties.
3. Once NPS agrees that appropriate historic property identification efforts have been completed, the Acquisition Grant recipient, and in the case of a proposal with a pass-through entity, the subrecipient, will coordinate with the proposed easement holder to draft the conservation easement. The Acquisition Grant recipient or subrecipient will provide the draft conservation easement to NPS for its review and acceptance prior to its execution and recordation. NPS review is limited to determining if the proposed conservation easement meets program requirements.
  - a. If the SHPO is not the proposed easement holder, NPS will require that the SHPO is written into the easement as a technical reviewer/approver of certain activities, as appropriate, and the SHPO is provided the draft conservation easement for review and comment.
4. Based upon the review of the draft conservation easement, NPS will apply the criteria of adverse effect to historic properties (36 CFR § 800.5(a)). NPS will propose a finding of no

adverse effect in accordance with 36 CFR § 800.6(b) if there are sufficient restrictions to protect the identified historic properties in perpetuity.

- a. Both the grant agreements and conservation easements must acknowledge the Land and Water Conservation Fund Act "Section 6(f)(3)" restrictions (54 U.S.C. § 200305(f)(3)).
  - b. NPS shall notify the SHPO, participating Indian Tribe(s), and all other consulting parties of its finding and provide supporting documentation pursuant to 36 CFR § 800.11(e).
5. If the draft conservation easement cannot be modified to meet the *Standards* or the Acquisition Grant proposal would otherwise result in an Adverse Effect on historic properties, NPS will proceed in accordance with Stipulation VI, below.

C. Section 106 for State Government Agency Property Manager.

1. In situations where a State government agency Acquisition Grant recipient will acquire and manage the property acquired by Acquisition Grant funding, the State is required to enter into a preservation letter of agreement (See sample in Attachment B). The preservation letter of agreement will be required in the grant agreement.
2. Based upon consultation with NPS, SHPO/THPOs, Indian Tribes, NHOs, and other consulting parties, the State government agency Acquisition Grant recipient, or their designee, will ensure any additional historic properties within the area of potential effect are identified prior to executing the preservation letter of agreement.
3. Once NPS agrees that appropriate historic property identification efforts have been completed, the State government agency Acquisition Grant recipient will draft a preservation letter of agreement. The State government agency Acquisition Grant recipient, or their designee, will provide the draft preservation letter of agreement to NPS for its review and approval prior to its execution and recordation. NPS review is limited to determining if the proposed preservation letter of agreement meets program requirements.
4. The preservation letter of agreement shall require the State to conduct the following actions, if permitted under State law:
  - a. hold the property forever
  - b. allow for public access
  - c. maintain and protect the historic features and landscape
  - d. restrict development to that needed for interpretation and visitor access
  - e. pursue site development only after appropriate environmental and cultural studies are completed to inform best possibilities for low impact design and construction.
  - f. if the SHPO is not the State government agency, NPS will require that the SHPO is written into the preservation letter of agreement as a technical reviewer/approver of certain activities, as appropriate, and the SHPO is provided the draft letter of agreement for review and comment. The State shall submit to the SHPO for review and approval pre-development site planning (such as surveys to identify significant landscape and historic features, and archeological investigations), design phase, and final construction designs.
  - g. acknowledge the Land and Water Conservation Fund Act Section 6(f)(3) restrictions (54 U.S.C. § 200305(f)(3)) on the property.

5. Based upon the review of the draft preservation letter of agreement, NPS will apply the criteria of adverse effect to historic properties (36 CFR § 800.5(a)). NPS will propose a finding of no adverse effect if there are sufficient restrictions to protect the identified historic properties in perpetuity.
  - a. NPS shall notify the SHPO, participating Indian Tribe(s), and all other consulting parties of its finding and provide supporting documentation pursuant to 36 CFR § 800.11(e).
6. The conditions of the preservation letter of agreement will be recorded with the deed of conveyance or in a deed of covenants and restrictions encumbering the property and will run with the land in perpetuity.
7. If the preservation letter of agreement cannot be modified to meet the *Standards* or the Acquisition Grant proposal would otherwise result in an Adverse Effect on historic properties, NPS will proceed in accordance with Stipulation VI, below.

## V. RESTORATION GRANTS

### A. Scoping Grants

1. Restoration Scoping Grants fund early stages of project development, such as research, documentation, and evaluation to determine appropriate treatment options that meet *the Secretary of the Interior's Standards for the Treatment of Historic Properties and Guidelines for the Treatment of Historic Landscapes*, consultation with stakeholders, development of comprehensive treatment and management plans, schematic designs, and/or specifications.
2. Restoration Scoping Grants develop plans that may have reasonably foreseeable effects to historic properties as a result of the assisted project.
3. An NPS staff member that meets the SOI's *Qualifications* will review the application and determine if the proposed work will be carried out (i) in a manner that meets the *Secretary of Interior's Standards* and any applicable state guidelines, (ii) by a professional that meets or exceeds the SOI's *Qualifications*, and (iii) with an opportunity for SHPO and easement holder's review of grant product(s).
  - a. If yes, the NPS shall conclude the Section 106 process by documenting this determination in the official file of record, without SHPO review or notification, when sufficient conditions are placed in the grant agreement.
  - b. If after SHPO review of the draft grant products, the SHPO identifies potential Adverse Effects on historic properties, the SHPO will notify the NPS and request the NPS reopen Section 106 consultation on the proposed plans. If the NPS and SHPO concur that the draft plans may result in Adverse Effects on historic properties, NPS shall follow the process outlined in Stipulation VI.
4. If the project cannot be modified to meet the requirements in Stipulation V.A.3, NPS will carry out the requirements of 36 CFR §§ 800.3 through 800.6 in consultation with the Restoration Scoping Grants recipient, the SHPO/THPO, Indian Tribes/NHOs, the easement holder and any consulting parties, and the public.
5. The list of Restoration Scoping Grants awarded not subject to Section 106 review will be included in the Annual Report (Stipulation XVI).

**B. Restoration Implementation Grants**

1. Restoration Implementation Grants fund the restoration of day-of-battle conditions of American Revolution, Civil War, and War of 1812 properties that have been acquired and protected with assistance from Acquisition Grants.
2. NPS requires Restoration Implementation Grants applicants to have completed planning activities prior to application, including evaluation of historic properties, and identification if preservation, rehabilitation, or restoration is the most appropriate and viable option according to the *Secretary of the Interior's Standards* as evaluated by a professional that meets or exceeds the SOI's *Qualifications*.
3. Upon selection of Restoration Implementation Grant proposals, NPS will carry out the requirements of 36 CFR §§ 800.3 through 800.6 in consultation with the Restoration Implementation Grant recipient, the SHPO/THPO, Indian Tribes/NHOs, the easement holder and any consulting parties, and the public.
4. If the project will result in an Adverse Effect on historic properties, NPS will proceed in accordance with Stipulation VI, below.

**VI. RESOLVING ADVERSE EFFECTS**

- A. With respect to all ABPP Grant Programs, if NPS determines that the project will have an Adverse Effect on historic properties and the SHPO concurs, the NPS then will continue consultation with the SHPO, recipient, and other appropriate Consulting Parties, including appropriate federally recognized Tribes and NHOs in accordance with 36 CFR § 800.6, to develop alternatives or modifications to the project that could avoid, minimize or mitigate effects on historic properties. NPS shall notify the ACHP of all adverse effect findings, provide documentation specified in 36 CFR § 800.11(e), and invite ACHP to participate in a manner consistent with 36 CFR § 800.6(a)(1)(i). NPS shall copy all Consulting Parties, including Tribes, when it notifies ACHP.
- B. Should Adverse Effects be determined and, through consultation, cannot be avoided or minimized, the NPS, SHPO, and the recipient, along with any Indian Tribes, NHOs or Consulting Parties, will develop a Memorandum of Agreement (MOA) or project-specific Programmatic Agreement (PA) for any undertaking subject to this Agreement. Development of the MOA or PA shall be limited to a period of 180 days from notification of the ACHP, after which an MOA or PA will be executed, or the NPS will request the staff comments of the ACHP.
- C. NPS may use the standard stipulations included in Attachment C of this Agreement to expedite development of an MOA, or, if the project warrants due to its complexity, develop a project-specific programmatic agreement.

**VII. TRIBAL CONSULTATION**

- A. When appropriate to the proposed activity, NPS encourages applicants to partner with or have preliminary discussions with Indian Tribe(s)/NHOs in developing a grant application. However, in recognition of the government-to-government relationship between the Federal government and federally recognized Tribes, the NPS will take the lead in identifying and establishing consultation with federally recognized Tribes pursuant to 36 CFR § 800.2(c)(2) and 36 CFR § 800.3(c)-(f) for all ABPP Grant Programs.

- B. After selection of successful proposals in Planning Grants, Interpretation Grants, and Restoration Grants, the NPS shall ensure that Indian Tribe(s) and/or NHOs that may attach cultural and religious significance to properties affected by the proposed grant activities are invited to consult on the proposed activities.
- C. For Acquisition Grants, as noted in Stipulation IV.A.2 above, NPS will initiate consultation with federally recognized Tribes as soon as it is in receipt of sufficient preliminary information from the recipient.
- D. The NPS may develop protocols with individual Indian Tribe(s) or NHOs, or agree to have government-to-government consultation for ABPP Grant Programs in which they may have an interest. If tribal consultation protocols with an individual Indian Tribe, NHO, or group of Indian Tribes/NHOs are formally adopted by the NPS, a copy of the protocols shall be forwarded by the NPS to the ACHP for its records and a copy to NCSHPO for distribution to the SHPOs.
- E. SHPOs may be involved in the consultations described in Stipulation VI.B-C at the discretion of the Indian Tribes or NHOs, and following notification to NPS accordingly. Existing agreements regarding review and consultation between Indian Tribes or NHOs and individual SHPOs shall remain in force provided both parties agree in writing to continue this method for the ABPP Grant Programs.

### **VIII. INVOLVEMENT OF CONSULTING PARTIES AND THE PUBLIC**

- A. The NPS will arrange for public participation appropriate to the subject matter and the scope of work and involve the individuals, organizations and entities likely to be interested, in accordance with 36 CFR §§ 800.2(d) and 800.6(4). If the recipient has concerns regarding confidentiality or the disclosure of discretionary information, they must consult with NPS to develop procedures that will not compromise financial and real estate acquisition concerns related to the Acquisition Grant project.

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

- A. When the grant agreement for an award under the ABPP Grant Programs so stipulates, the recipient shall submit a draft of all technical reports, treatment plans and other documentation to the NPS, SHPO/THPO, and Consulting Parties.
- B. For all ABPP Grant Programs, the recipient shall provide final reports, treatment plans or other documentation to the SHPO/THPO and other Consulting Parties in format(s) specified in the grant agreement.
- C. All technical reports prepared pursuant to this Agreement will be consistent with the federal standards entitled *Archeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines*, 48 Fed. Reg. 44,716-42 (Sep. 29, 1983) and the guidelines of the state in which the project is located.

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

## **X. CURATION**

- A. Within thirty (30) days of the NPS's approval of the final technical report, the recipient shall deposit all archeological materials and appropriate field and research notes, maps, drawings and photographic records collected as a result of archeological investigations arising from this Agreement (with the exception of human skeletal remains and associated funerary objects, which may be subject to the Native American Graves and Repatriation Act (NAGPRA) (25 U.S.C. §§ 3001-3013)) for permanent curation with a curation facility which meets the requirements in 36 CFR Part 79, Curation of Federally Owned and Administered Archeological Collections. Any recipient that is an institution or State or local government agency (including any institution of higher learning) and has "possession" of, or "control" over, "cultural items" must comply with the requirements of NAGPRA and its implementing regulations (43 CFR Part 10). The recipient shall provide the NPS with a copy of the curation agreement as evidence of its compliance with this stipulation. 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 curation facility.

## **XI. MEMORANDA OF UNDERSTANDING (MOUs) WITH SHPOs/THPOs OR INDIAN TRIBES**

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

## **XII. POST-REVIEW DISCOVERIES**

### **A. ABPP GRANT PROGRAMS**

The NPS shall ensure that the grant agreements for ABPP Grant Programs shall address post review discoveries by including the following language:

1. The recipient shall ensure that the following provision is included in all contracts with third-party entities to conduct project activities: "If previously unidentified historic properties or unanticipated Effects on historic properties are discovered during the project, the contractor shall immediately halt all activity within a one hundred (100) foot radius of the discovery, and notify the recipient of the discovery and implement interim measures to protect the discovery from looting and vandalism."
2. Immediately upon receipt of the notification required in the above (Stipulation XII.A.I.), the

recipient shall:

- a. notify the appropriate law enforcement and SHPO/THPO if the discovery involves human remains; and
  - b. inspect the construction site to determine the extent of the discovery and ensure that construction activities have halted; and
  - c. clearly mark the area of the discovery; and
  - d. implement additional measures, as appropriate, to protect the discovery from looting and vandalism; and
  - e. have a professional in the appropriate discipline meeting the SOI's *Qualifications*, 48 Fed. Reg. 44,738-39 (Sep. 29, 1983), inspect the construction site to determine the extent of the discovery and provide recommendations regarding its NRHP eligibility and treatment; and
  - f. comply with the requirements of NAGPRA (25 U.S.C. §§3001-3013) and its implementing regulations (43 CFR Part 10), if applicable. Any recipient who is an individual, partnership, corporation, trust, institution, association, or any private entity, or any official, employee, agent, department, or instrumentality of any Indian tribe, or of any State or political subdivision thereof and discovers "cultural items" on "Federal lands" or "tribal land"/"Tribal lands" must comply with the requirements of NAGPRA; and
  - g. notify the NPS, the SHPO/THPO and other Consulting Parties of the discovery, within 72 hours, indicating within the cover letter the 48-hour response time, describing the measures that have been implemented to comply with this Stipulation and the preliminary assessment of the NRHP eligibility of the discovery and the measures proposed to resolve adverse effects. In making its evaluation, the recipient, in consultation with the SHPO/THPO, may assume the discovery to be NRHP-eligible for the purposes of Section 106 pursuant to 36 CFR § 800.13(c). The NPS, the SHPO and other Consulting Parties shall respond to the recipient's assessment within 48 hours of receipt.
3. The NPS will take into account the SHPO/THPO and other Consulting Parties' recommendations on eligibility and treatment of the discovery and will notify the recipient of its eligibility determination and its decision regarding the proposed treatment plan within fifteen (15) days. The recipient must comply with the required actions, if any, and provide the NPS, the SHPO/THPO and other Consulting Parties with a report on the actions when implemented.
  4. Construction activities may proceed in the area of the discovery when the NPS has determined that implementation of the actions undertaken to address the discovery pursuant to this Stipulation are complete.
  5. The ACHP should be notified of all unanticipated discoveries upon approval of the eligibility and treatment of the discovery by the NPS.

#### B. Acquisition Grants

1. Grant Agreements for Acquisition Grants shall require that no activity with the potential to affect historic properties, including but not limited to, ground disturbance or building or structure alterations, may be undertaken until the easement or preservation letter of agreement is recorded. The easement holder or State property owner, whichever is applicable, will then assume

responsibility for ensuring that post-review discoveries and human remains are appropriately handled.

### C. Human Remains

1. The NPS shall ensure that ABPP grant agreements shall address post review discoveries of human remains by including, at a minimum, the following language:
  - a. Recipients, or their designees, shall make all reasonable efforts to avoid disturbing gravesites, including those containing Native American human remains and associated funerary artifacts. All human remains shall be treated in a manner consistent with the ACHP's *Policy Statement Regarding Treatment of Burial Sites, Human Remains and Funerary Objects* (February 23, 2007).
  - b. All human remains encountered during the course of actions taken as a result of activities arising from ABPP Grant Programs shall be treated in accordance with NAGPRA, its regulations, and the laws and regulations of the state in which the project is located. The recipient shall be responsible for all reasonable costs associated with treatment of human remains and associated funerary objects.

## XIII. EMERGENCY SITUATIONS AND NATURAL DISASTERS

- 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 NPS and the recipient agree that an emergency undertaking that involves ABPP Grant Programs 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 NPS will comply with 36 CFR § 800.12 and shall:
  1. Notify the appropriate SHPO/THPO, identifying the shortened review time, and any Indian Tribe that may attach cultural and religious 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 NPS determines that circumstances do not permit seven (7) days for comment, the agency official shall notify the SHPO/THPO and the Indian Tribe(s)/NHO(s) and invite comments within the time available, as specifically noted. The NPS 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 NPS may request an extension of the period of applicability from the SHPO/THPO or Indian tribe(s)/NHO(s) prior to the expiration of the 30 calendar days.
  3. The NPS shall notify the ACHP of disaster and emergency situations related to an ABPP grant project and the action that has been proposed or already taken pursuant to Stipulations III-V.



#### **XIV. DISPUTE RESOLUTION**

- A. Should any signatory or concurring party to this Agreement, or any SHPO, object at any time to any actions proposed or the manner in which the terms of this Agreement are implemented, the NPS shall consult with such party to resolve the objection. If the NPS determines that such objection cannot be resolved, the NPS will:
1. Forward all documentation relevant to the dispute, including the NPS's proposed resolution, to the ACHP. The ACHP shall provide the NPS 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, the NPS 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 within thirty (30) days after receiving any ACHP advice or comment. The NPS will then proceed according to its final decision.
  2. If the ACHP does not provide its advice regarding the dispute within the thirty (30)-day time period, the NPS may make a final decision on the dispute within thirty (30) days after the initial ACHP thirty (30)-day time period and proceed accordingly. Prior to reaching such a final decision, the NPS shall prepare a written response that takes into account any timely comments.
  3. At any time during implementation of the measures stipulated in this Agreement, should an objection pertaining to this Agreement be raised by a Tribal government or a member of the public, the NPS shall notify the parties to this Agreement and take the objection into account, consulting with the objector and, should the objector so request, consult with all parties to this Agreement to resolve the objection.
  4. The NPS responsibility to carry out all other actions subject to the terms of this Agreement that are not the subject of the dispute remains unchanged.

#### **XV. ANNUAL REPORTING**

- A. The NPS shall provide the ACHP, NCSHPO, and any Tribal government that requests it, a copy of an annual report. This report will be made available by December 31 of each calendar year for the previous fiscal year ending September 30 and will be posted on the ABPP web site. The report will include, but is not limited to:
1. A list of ABPP grants awarded in each state and on Tribal lands, including the name of the recipient and the exact amount of the award. In the case of Acquisition Grant awards, the list will also include the name of the recipient, the party acquiring the interest in real property (if different), the easement holding organization, property location, the exact acreage acquired with ABPP funding, the drafting, review, and/or recordation status of the easement, or, if applicable, Preservation Letter of Agreement, and the status of the Section 106 consultation.
  2. The list of Planning Grants, Interpretation Grants, and Restoration Grants will

indicate which projects the NPS determined constituted programmatic exclusions and under which conditions.

3. A report, as appropriate, identifying any issues, initiatives or goals the NPS will address in the coming year with regard to its ABPP Grant Programs, and any guidance or assistance that the ACHP or NCSHPO may provide to help make compliance activities more effective and efficient.
4. A discussion identifying any problems the NPS encountered in carrying out the terms of this agreement that need to be addressed by the signatories through amendments or development of guidance documents.
5. Any other information the NPS wishes to provide that might improve the effectiveness of this agreement.

- B. On or before January 31 of each year, commencing in 2018, the NPS shall invite the signatories to this Agreement, SHPOs, and Consulting Parties concurring in this Agreement to an in-person and/or virtual meeting to facilitate review of the Agreement, the performance of NPS in meeting its responsibilities set forth in this Agreement, and to discuss any programmatic or policy issues encountered in the implementation of its stipulations. If all parties agree such a meeting is not necessary at that time, the meeting may be waived.

## **XVI. AMENDMENT AND 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 parties to attempt to develop an amendment. 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 XVII.B, below.
- B. 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.
- C. If this Agreement is terminated, the NPS shall comply with 36 CFR §§ 800.3 to 800.7 prior to carrying out any individual undertakings of the NPS covered by the terms of this Agreement.
- D. An individual SHPO may withdraw from the Agreement upon written notice to all signatories and invited signatories after having consulted 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 NPS 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 Grant Programs located in the jurisdiction of the SHPO(s) that have not withdrawn from this Agreement. If all SHPOs withdraw from this Agreement, this

Agreement will be considered to be terminated.

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

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

- A. This Agreement shall take effect in each State on the date it is signed by the NPS, NCSHPO, and the ACHP. This Agreement shall continue in effect until September 30, 2026, unless otherwise terminated prior to that date. Prior to such time, the NPS, NCSHPO, and the ACHP may agree in writing to extend its duration.
- B. Execution of this Agreement by the NPS, the NCSHPO, and the ACHP and implementation of its terms evidence that the NPS has taken into account the effects of the ABPP Grant Programs on historic properties and afforded the ACHP an opportunity to comment.
- C. 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.

## AMERICAN BATTLEFIELD PROTECTION PROGRAM SECOND PROGRAMMATIC AGREEMENT

### SIGNATORY PARTY:

#### National Park Service

**JOY BEASLEY** Digitally signed by JOY BEASLEY  
Date: 2022.12.09 12:23:29 -05'00' Date: December 9, 2022

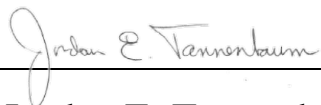
By: Joy Beasley

Associate Director, Cultural Resources, Partnerships, and Science

**AMERICAN BATTLEFIELD PROTECTION PROGRAM  
SECOND PROGRAMMATIC AGREEMENT**

**SIGNATORY PARTY:**

**Advisory Council on Historic Preservation**



Date: December 13, 2022

By: Jordan E. Tannenbaum

Vice Chairman

## **AMERICAN BATTLEFIELD PROTECTION PROGRAM SECOND PROGRAMMATIC AGREEMENT**

### **SIGNATORY PARTY:**

**National Conference of State Historic Preservation Officers**

**Ramona Bartos** Digitally signed by Ramona Bartos  
Date: 2022.11.18 15:38:21 -05'00' **Date:** 11/18/2022

By: Ramona Bartos

President

**AMERICAN BATTLEFIELD PROTECTION PROGRAM  
SECOND PROGRAMMATIC AGREEMENT**

**CONCURRING PARTY:**

**American Battlefield Trust d/b/a Civil War Trust**

James Campi, Jr. Digitally signed by James Campi,  
Jr.  
Date: 2022.12.08 16:50:09 -05'00' Date: 12/8/2022

By: James Campi, Policy and Communications Director

**AMERICAN BATTLEFIELD PROTECTION PROGRAM  
SECOND PROGRAMMATIC AGREEMENT**

**CONCURRING PARTY:**

**South Carolina Institute of Archaeology and Anthropology**

Steven D. Smith Digitally signed by Steven D.  
Smith  
Date: 2022.11.21 09:46:12 -05'00' Date: \_\_\_\_\_

By: Steven D. Smith  
Research Professor



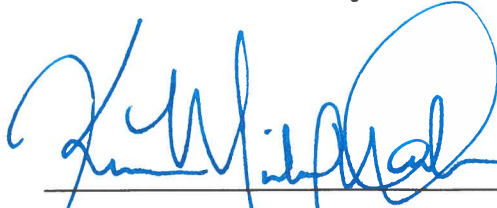
Programmatic Agreement  
October 12, 2022

NPS American Battlefield Protection Program  
Grant Programs

**AMERICAN BATTLEFIELD PROTECTION PROGRAM  
SECOND PROGRAMMATIC AGREEMENT**

**CONCURRING PARTY:**

**Shenandoah Valley Battlefields Foundation, VA**



Date: December 8, 2022

By: Keven Walker  
Chief Executive Officer

**ATTACHMENT A - States with Eligible Sites for Battlefield Land Acquisition Grant Funds**

Land at Revolutionary War, War of 1812, and Civil War battlefields eligible for Battlefield Land Acquisition Grants are identified in the Civil War Sites Advisory Commission's 1993 *Report on the Nation's Civil War Battlefields* and the NPS ABPP's 2007 *Report to Congress on the Historic Preservation of Revolutionary War and War of 1812 Sites in the United States* and located in the following thirty-eight (38) states:

- |                   |                    |
|-------------------|--------------------|
| 1. Alabama        | 20. Mississippi    |
| 2. Arkansas       | 21. Missouri       |
| 3. Colorado       | 22. North Carolina |
| 4. Connecticut    | 23. North Dakota   |
| 5. Delaware       | 24. New Jersey     |
| 6. Florida        | 25. New Mexico     |
| 7. Georgia        | 26. New York       |
| 8. Idaho          | 27. Ohio           |
| 9. Illinois       | 28. Oklahoma       |
| 10. Indiana       | 29. Pennsylvania   |
| 11. Iowa          | 30. Rhode Island   |
| 12. Kansas        | 31. South Carolina |
| 13. Kentucky      | 32. Tennessee      |
| 14. Louisiana     | 33. Texas          |
| 15. Maine         | 34. Vermont        |
| 16. Maryland      | 35. Virginia       |
| 17. Massachusetts | 36. Washington, DC |
| 18. Michigan      | 37. West Virginia  |
| 19. Minnesota     | 38. Wisconsin      |

**ATTACHMENT B - Sample Preservation Letter of Agreement**

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

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

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

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

**NPS ABPP**

**[STATE AGENCY]**

\_\_\_\_\_

\_\_\_\_\_

[NAME]  
[TITLE]

[DATE]

[NAME]  
[TITLE]

[DATE]

**ATTACHMENT C - ACHP Template Agreement Document**

**ACHP Template Agreement Documents**

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

**ACHP Model Two-Party MOA Template:**

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

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

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

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

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

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

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

**WHEREAS, in accordance with 36 CFR § 800.6(a)(1), [Agency abbreviation] has notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect determination with specified documentation, and the ACHP has chosen not to participate in the consultation pursuant to 36 CFR § 800.6(a)(1)(iii); and**

**NOW, THEREFORE, [Agency abbreviation]** and the ["SHPO" or "THPO"] agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties.

#### STIPULATIONS

[Agency abbreviation] shall ensure that the following measures are carried out:

**[1.-111. (Or whatever number of stipulations is necessary) Insert negotiated measures to avoid, minimize, or mitigate the adverse effects on historic properties.]**

#### VI. DURATION

This MOA will expire if its terms are not carried out within five (5) years **[or specify other appropriate time period]** from the date of its execution. Prior to such time, [Agency abbreviation] may consult with the other signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation VIII below.

#### VII. POST-REVIEW DISCOVERIES

If properties are discovered that may be historically significant or unanticipated effects on historic properties found, the [Agency abbreviation] shall implement the discovery plan included as attachment **[insert number of attachment]** of this MOA. **[Insert this stipulation if there is an indication that historic properties are likely to be discovered during implementation of the undertaking.]**

#### VIII. MONITORING AND REPORTING

Each **[insert a specific time period]** following the execution of this MOA until it expires or is terminated, [Agency abbreviation] shall provide all parties to this MOA **["and the ACHP" if appropriate]** 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 [Agency abbreviation]'s efforts to carry out the terms of this MOA.

#### IX. DISPUTE RESOLUTION

Should any signatory \* or concurring party to this MOA object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, [Agency abbreviation] shall consult with such party to resolve the objection. If [Agency abbreviation] determines that such objection cannot be resolved, [Agency abbreviation] will:

A. Forward all documentation relevant to the dispute, including the [Agency abbreviation]'s proposed resolution, to the ACHP. The ACHP shall provide [Agency abbreviation] 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, [Agency abbreviation] 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. **[Agency abbreviation]** 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, **[Agency abbreviation]** may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, **[Agency abbreviation]** shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the MOA, and provide them and the ACHP with a copy of such written response.

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

## VIII. AMENDMENTS

This MOA 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.

## IX. TERMINATION

If any signatory to this MOA 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 VIII, above. If within thirty (30) days **(or another time period agreed to by all signatories)** an amendment cannot be reached, any signatory may terminate the MOA upon written notification to the other signatories.

Once the MOA is terminated, and prior to work continuing on the undertaking, **[Agency Abbreviation]** must either (a) execute an MOA 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. **[Agency abbreviation]** shall notify the signatories as to the course of action it will pursue.

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

**SIGNATORIES:**

**[Insert Agency name]**

\_\_\_\_\_Date

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

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

\_\_\_\_\_Date

**[Insert name and title]**

**INVITED SIGNATORIES:**

**[Insert invited signatory name]**

\_\_\_\_\_Date

**[Insert name and title]**

**CONCURRING PARTIES:**

**[Insert name of concurring party]**

\_\_\_\_\_Date

**[Insert name and title]**

*Notes:*

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

*\*\* Remember that the agency must submit a copy of the executed MOA, along with the documentation specified in 36 CFR § 800.11(f), to the ACHP prior to approving the undertaking in order to meet the requirements of Section 106. 36 CFR § 800.6(b)(1)(iv).*

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

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

1. Revise the Title to read:

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

2. Revise the 7th WHEREAS clause to read:

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

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

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

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

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

6. Add the following line to the signatory page

**Advisory Council on Historic Preservation**

\_\_\_\_\_  
\_\_\_\_\_, Executive Director

\_\_\_\_\_  
Date



**Model MOA/Project PA Template Amendment:**

AMENDMENT TO  
[INSERT FULLNAME OF THE AGREEMENT]  
(AGREEMENT)

**WHEREAS**, the Agreement was executed on [insert month and year of execution];  
**WHEREAS**, [insert a concise explanation of the reasons for the amendment];  
**WHEREAS**, [insert the name of the federal agency] will send a copy of this executed amendment to the ACHP [Only use this whereas clause if the ACHP is not a signatory to the Agreement];

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

1. Amend Stipulation [insert the number of the stipulation to be amended] so it reads as follows:  
[Insert the amended text of the stipulation]

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

2. Add new Stipulation [insert the number of the new stipulation]:  
[Insert the text of the new stipulation]

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

3. Delete Stipulation [insert the number of the stipulation to be deleted].

[Repeat #7, 2, and 3 as necessary]

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

1. Amend the Agreement so it reads as follows:  
[Attach the text of the entire, amended agreement]

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

## **ATTACHMENT D - TERMINOLOGY**

### **Participants**

*The following terminology is utilized to reference participants covered by this Agreement.*

**ABPP:** American Battlefield Protection Program, administered by the NPS, 54 U.S.C. § 308101 et seq.

**ACHP:** Advisory Council on Historic Preservation

**Applicant:** An eligible entity applying for one of the four American Battlefield Protection Program (ABPP) grants

**Easement holder:** A qualified organization, either a nonprofit organization or governmental entity, that accepts and enforces a less-than-fee simple conservation easement interest in a property acquired through an Acquisition Grant

**NPS:** National Park Service

**Pass-through entity:** Eligible applicants for Battlefield Land Acquisition Grants are State and local governments. Nonprofit organizations may partner with a governmental sponsor for their applications, the State or local government would function as the pass-through entity

**Recipient:** An entity that has been selected to receive an ABPP grant; recipient is utilized throughout the agreement to acknowledge steps in the Section 106 process are conducted after NPS selects grant proposals

**SHPO:** State Historic Preservation Office

**Subapplicants and/or subrecipients:** Nonprofit organizations that apply for an Acquisition Grant with a Pass-through entity and/or receive a subaward from a pass-through entity

**THPO:** Tribal Historic Preservation Office

### **Grant Programs**

*The following grant programs are covered by this Agreement:*

**Planning Grants:** Preservation Planning Grants, 54 U.S.C. §308102

**Acquisition Grants:** Battlefield Land Acquisition Grants, 54 U.S.C. §308103

**Interpretation Grants:** Battlefield Interpretation Grants, 54 U.S.C. §308104

**Restoration Grants:** Battlefield Restoration Grants, 54 U.S.C. §308105