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
BATTLEFIELD PRESERVATION PLANNING GRANTS AND
BATTLEFIELD LAND ACQUISITION GRANTS

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

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

WHEREAS, the NPS ABPP administers financial assistance to non-Federal entities in multiple states through two grant programs, the Battlefield Preservation Planning Grants (PLANNING GRANTS), and Battlefield Land Acquisition Grants (BLAGs), 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 ABPP 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. Congress authorized the appropriation of $3,000,000 for each fiscal year with the funds remaining available until expended; and

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

WHEREAS, PLANNING GRANTS proposed project areas must be on American (U.S.) soil and/or within U.S. territorial waters; 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 2021 by the National Defense Authorization Act, 2015 (P.L. 113-291, 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 ABPP to fund its BLAG Program, which assists States and local communities to acquire and preserve threatened Revolutionary War, War of 1812 and Civil War battlefield lands through a competitive process. Congress authorized the appropriation of $10,000,000 to the Secretary of the Interior, acting through the NPS ABPP, for each fiscal year through 2021,with the funds remaining available until expended; and

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

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

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

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

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

WHEREAS, the NPS ABPP recognizes that the preservation activities it funds are not intended to result in Adverse Effects on historic properties and that efforts will be made to achieve a finding of No Adverse Effect or No Adverse Effect with conditions; however, the grant programs are Congressionally authorized to fund projects for battlefield preservation and protection and such projects may sometimes result in Adverse Effects. NPS ABPP may proceed with funding such projects after completing the actions described in 36 CFR § 800.6; and

WHEREAS, the NPS ABPP, NCSHPO, and the ACHP, with the Civil War Preservation Trust, doing business as Civil War Trust, as a Concurring Party, implemented an Interim Programmatic Agreement (IPA), dated May 14, 2015, to implement and formalize the Section 106 review process for ABPP BLAGs in ten states funded with remaining FY 2014 and new FY 2015 money; and

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

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

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

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

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

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

WHEREAS, the NPS ABPP 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 (NHO) may attach religious and cultural significance; and

WHEREAS, because of the sovereign status of federally recognized Indian Tribes, the NPS ABPP has determined, and the ACHP has 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 ABPP (based upon government-to-government consultation) and, hence, no Tribes have been asked to be signatories to this Agreement; and

WHEREAS, the NPS ABPP invited Tribes, THPOs, and NHOs to consult on the development of this Agreement via the ACHP listserve in July 2016 and hosted a Webinar conference call on August 18, 2016 to those interested. Representatives from five Tribes participated in the Webinar and agreed a project by project, government to government consultation for grant projects is appropriate; and

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

WHEREAS, the NPS ABPP consulted with the Civil War Trust (CWT) and Campaign 1776, a project of the CWT, both being major, private, non-profit partner organizations to the NPS ABPP, regarding the potential effects of the two ABPP Grant Programs, and invited them and they agreed to sign this Agreement as a Concurring Party; and

WHEREAS, the NPS ABPP consulted with the following organizations who have a demonstrated interest in battlefield preservation regarding the potential effects of the two ABPP Grant Programs: The Public Archaeology Facility (PAF) at Binghamton University, NY; the South Carolina Institute of Archaeology and Anthropology (SCIAA); the Mashantucket Pequot Museum and Research Center, CT; and Shenandoah Valley Battlefields Foundation, VA. NPS ABPP invited them to sign this Agreement as a Concurring Party, and they will continue to be involved as a Consulting Party in this Agreement at their discretion; and

WHEREAS, the NPS ABPP shall take appropriate measures (e.g. ACHP listserve, PEPC Planning, Environment, and Public Comment website, NPS ABPP e-newsletter, and NPS ABPP website) to notify Tribal governments, local governments and the public of the existence of this Agreement and involve them as appropriate during the implementation of the terms of this Agreement as set forth in Stipulations VI and VII; and

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

NPS ABPP, in coordination with Applicants who receive ABPP grants, agrees to carry out the following measures:

I. APPLICABILITY

A. This Agreement shall apply only to the NPS ABPP Battlefield Preservation Planning Grant (PLANNING GRANTS) Program and Battlefield Land Acquisition Grant (BLAG) Program.
B. If other federal agencies are involved in an NPS ABPP 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 ABPP 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. NPS ABPP

1. The NPS ABPP is the federal agency responsible for completing consultation under Section 106 for the activities funded through its PLANNING GRANT and BLAG programs. Staff manages the grant application review, award, and disbursement process, as well as the review of all products of the PLANNING GRANTS (research designs, draft reports, etc.) and the development of agreements and easements for the BLAGs. The NPS has internal management policy documents related to the various elements of the NPS ABPP program (Directors Order 2: Park Planning, Director's Order 6: Interpretation and Education, Directors Order 16A: Reasonable Accommodation for Applicants and Employees with Disabilities, Directors Order 17: Tourism, Directors Order 25: Land Protection, Directors Order 28: Cultural Resource Management, etc.) that provide guidance for NPS ABPP Staff and potential applicants to the program on what are acceptable project proposals.
2. The NPS ABPP will retain staff who meets the Secretary of the Interior's (SOI's) *Professional Qualifications Standards* (*Qualifications*) in order to identify and evaluate historic properties and to provide technical assistance to federal agencies and the ACHP on federal projects that may adversely affect historic battlefields throughout the country.
3. The NPS ABPP will provide grant program guidance to applicants. NPS ABPP SOI-qualified staff will determine which proposals meet programmatic exclusions from the Section 106 review according to Stipulation III, below. For all other proposals the NPS ABPP will advise Applicants that the Section 106 process must be completed for their projects and provide guidance on the materials Applicants will be expected to provide.
4. The NPS ABPP will provide technical assistance to SHPOs, non-profits, local governments, universities, and Tribes on best practices for battlefield preservation, as needed.
5. The NPS ABPP will send letters to the SHPOs/THPOs each February notifying the SHPOs/THPOs of PLANNING GRANT applications received for projects in their states. These letters will include notice of the PLANNING GRANT projects, which qualify under a programmatic exclusion as defined herein and, as such, do not require Section 106 review as defined in Stipulation III.A.

6. The NPS ABPP will include the Section 106 Review status of a BLAG application in the application acknowledgement letter sent to the government sponsor and copied to the Applicant, the SHPO, if the SHPO is not the government sponsor, and the conservation easement holder, if the conservation easement holder is not the SHPO.
7. The NPS ABPP will request the Applicant, or their designee, who meets the SOI's *Qualifications*, to assist the ABPP in carrying out the requirements of 36 CFR §§ 800.4 through 800.6 with the exception of fulfilling the requirements contained in Stipulation VI (Tribal Consultation) of this Agreement for all grant activities that are receiving NPS federal assistance and do not qualify as a programmatic exclusion pursuant to Stipulation III. NPS ABPP will retain oversight responsibilities to ensure the stipulations of this Agreement are met, and must be notified by the Applicant if, after routine consultation or coordination with the SHPO, disputes remain regarding the identification, evaluation or treatment of historic properties.
8. For both PLANNING GRANT and BLAG programs, the NPS ABPP 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). As appropriate, correspondence will be forwarded to the Applicant and, in the case of BLAGs, the Government Sponsor.
9. The NPS ABPP 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 XIV. NCSHPO will distribute the annual report to its member SHPOs.

B. Applicants

1. In the case of PLANNING GRANTS, eligible applicants are non-profit groups, academic institutions, and local, regional, state, and tribal governments.
   a. The PLANNING GRANT Applicant will submit a complete application by the annual due date to NPS ABPP.
   b. If a proposed project is not considered eligible for a programmatic exclusion in accordance with this Agreement or other subsequent agreement, the PLANNING GRANT Applicant will provide the NPS ABPP with any previous correspondence received from the SHPO about the project in the application, if any exist.
   c. If conditioned as part of a No Adverse Effect determination, the PLANNING GRANT Applicant is delegated to carry out the conditions and may be reimbursed one hundred (100) % of costs associated with identification and evaluation of historic properties to the grant.
   d. The PLANNING GRANT Applicant will be responsible for all costs associated with resolving any Adverse Effects on historic properties.
2. In the case of the BLAG program, eligible applicants are non-profit organizations or state, regional, or local governments seeking to acquire battlefield land or easements on battlefield land.
   a. The BLAG applicant will provide the NPS ABPP and the Government Sponsor all information submitted to or received by the SHPO regarding Section 106 Review as part of the application. The BLAG applicant or their designee, who

meets the SOI's *Qualifications*, will carry out the requirements of 36 CFR §§ 800.4 through 800.6 with the SHPO as defined herein. The BLAG Applicant will also provide the easement holder, in cases where the easement holder is not the SHPO, all information submitted to or received by the SHPO regarding Section 106 Review.

b. If awarded, the BLAG Applicant or their designee, who meets the SOI's Qualifications, will carry out the requirements of 36 CFR §§ 800.4 through 800.6 with the SHPO as specified in the grant agreement.

c. The BLAG Applicant may be reimbursed for up to fifty (50) % of costs associated with identification and evaluation of historic properties, including but not limited to any cultural resource surveys or inventories completed subsequent to land or conservation easement acquisitions. These costs must be included in the application budget information.

d. The BLAG Applicant will be responsible for costs associated with resolving any adverse effects.

3. All work undertaken by the PLANNING GRANT or BLAG Applicant, or its designee, 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). If an Applicant is unable to secure these services, they must notify the ABPP to determine whether or not grant funds are available to assist in conducting the necessary identification and evaluation and avoidance, minimization, or mitigation activities.

C. Government Sponsor

1. BLAGs are awarded to units of State and local governments. In any case where a private non-profit organization seeks to acquire or place a conservation easement on battlefield land with assistance from the BLAG program, that organization must apply in partnership with a State or local government agency sponsor (Government Sponsor).
2. The Government Sponsor may then sub-grant the Federal funds to the non-profit organization.
3. The Government Sponsor will have no role in the Section 106 review process as it relates to submission of documentation unless the Government Sponsor is the SHPO; however, the Applicant will provide all documents related to the Section 106 review that the Applicant has sent to or received from the SHPO, to the Government Sponsor.

D. SHPOs

1. The SHPOs will provide technical assistance to Applicants, as requested, during the PLANNING GRANT and BLAG application process.
2. The SHPOs will consult with the NPS ABPP and Applicants, or their designee, to help the NPS ABPP bring the Section 106 review process to completion.
3. The SHPO will recognize the delegation of Section 106 responsibilities to the Applicant, as provided herein.

4. The SHPO will be offered the opportunity for review and comment on draft products associated with the PLANNING GRANTS and BLAGs as conditioned in a project's grant agreement.
5. The SHPO, regardless of whether it is the easement holder or not, will work with the BLAG applicants and the NPS ABPP 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* as per the NPS ABPP BLAG grant agreement.

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), or any applicant.
3. If requested by the Applicant or Government Sponsor who received a grant, the ACHP will assist in resolving disputes after the grant is completed regardless of whether the NPS ABPP is requested to assist in the dispute.

III. PLANNING GRANTS

A. Programmatic Exclusions and Conditions

1. For the following eligible activities, NPS ABPP shall assume there is no potential to cause effect (No Effect) to historic properties and no further consultation is required beyond technical assistance:

    a. Historical research/overviews;
    b. GPS/GIS mapping;
    c. Survey and Inventory (when no ground disturbance is planned);
    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 plan;
    f. Heritage tourism interpretive plan;
    g. Strategic/organizational/administrative planning (when no ground disturbance or alternation 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. For eligible activities for funding **not listed** above in Stipulation III.A.1. that include, or result in, ground disturbing activities, or involve potential preservation treatment recommendations, the NPS ABPP will use the following criteria and conditions:

a. NPS ABPP will send the application to the SHPO for review and comment. If the ABPP and SHPO concur that 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 Secretary of the Interior's *Qualifications*, and (iii) with the SHPO review and approval of grant product(s), then the ABPP will conclude the Section 106 process by making a finding of No Adverse Effect or No Historic Properties Affected.
b. If changes are needed to make the activity meet the three criteria listed herein, the SHPO will provide NPS ABPP and Applicant with any additional recommended conditions. These may include SHPO/THPO, Tribes, or other Consulting Parties review of the research design and/or resulting reports, treatment plans or other documents. NPS ABPP will make a conditional No Adverse Effect finding and include the agreed upon changes or conditions in the Grant Agreement, if awarded.

3. The list of grants awarded not subject to Section 106 review will be included in the Annual Report (Stipulation XIV).

B. Planning Grants Subject to Section 106.

1. The NPS ABPP shall encourage Applicants to design their projects to avoid Adverse Effects on historic properties. The ABPP will also advise Applicants about the applicability of Section 110(k) of the National Historic Preservation Act and inform Applicants that ground disturbing activities and preservation treatments must not commence until completion of the Section 106 review.

2. For projects that do not meet any of the exclusions of Stipulation III.A.1. above, the NPS ABPP will initiate consultation with the SHPO in accordance with 36 CFR § 800 and Director's Order #28, Cultural Resource Management.

3. NPS ABPP 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.

4. No further Section 106 review will be required if the NPS ABPP and the SHPO agree that the project is designed and planned in accordance with the Secretary of Interior's *Standards* (35 CFR § 68, July 12, 1995 *Federal Register)* and those conditions in Stipulation III.A.2. and will result in No Historic Properties Affected or No Adverse Effects.

5. The NPS ABPP and the SHPOs will make best efforts to expedite reviews through a finding of No Adverse Effect, with conditions, when the NPS ABPP 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 ABPP will, if intended to be awarded, proceed in accordance with Stipulation V, below.

IV. BATTLEFIELD LAND ACQUISITION GRANTS (BLAGs)

A. Initiation of the Section 106 Process for BLAGs

1. The NPS ABPP shall encourage Applicants to consult with the appropriate SHPO prior to submitting a BLAG application to NPS ABPP. The Applicant will undertake the following preliminary measures with regard to Section 106:
    a. The Applicant, or their designee, shall define the scope of the identification efforts, seek information from identified Consulting Parties, following confidentiality measures approved by NPS ABPP per Stipulation VII of this Agreement, and identify historic properties for submittal to the SHPO, along with the draft application for information purposes. The SHPO will review the information within thirty (30) days of receipt. A letter from the SHPO regarding this step in the Section 106 review process must be included in the application to the NPS ABPP.
    b. If applicable to the proposed project, the Applicant will also request a letter from the SHPO, or other potential easement holder, agreeing to hold a conservation easement on the land or other property interests acquired in perpetuity.
    c. Once the above mentioned letters are secured by the Applicant, the Applicant will complete the BLAG application and submit to the NPS ABPP. The Applicant will include in the BLAG application the level of urgency to secure funding to acquire the property and the priority ranking of the subject property according to the Battlefield Reports.

2. After a complete application is received by the NPS ABPP, the NPS ABPP shall request the comments of any Indian Tribe(s) that may attach religious and cultural significance on or near land associated with the project.

3. In emergency purchase situations, the NPS ABPP may, at its discretion, reimburse Applicants for the cost of acquisition, when the closing of the property is set to happen before a full application can be submitted to the NPS ABPP. The Applicant must notify the NPS ABPP, the SHPO, and ACHP at least forty-five (45) days prior to settlement. NPS ABPP, SHPO, and ACHP will each have 15 days to review the documentation and render a decision in writing. The Applicant's submittal must reference the fifteen (15)-day review period by the NPS ABPP, SHPO, and ACHP in accordance with this Agreement. Provided that no objections are received from the SHPO or ACHP, the NPS ABPP will approve the acquisition reimbursement, with the following conditions:

    a. The Applicant shall fulfill all documentation as required under the NPS ABPP grant application and this agreement;
    b. The Applicant shall ensure that there is no activity on the battlefield land property, including activity to any extant buildings or structures, until the NPS ABPP grant is awarded and the Section 106 process is concluded.

B. Section 106 for BLAG Fee Simple Acquisitions and Easements

1. With the exception of situations where a State government agency will acquire and manage the property with BLAG funding, if NPS ABPP determines in consultation with the SHPO/THPO, appropriate federally recognized Indian Tribes, and Consulting Parties that the project will have No Adverse Effect on historic properties pursuant to 36 CFR § 800.5(b), the Applicant, or purchaser, shall 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. If the SHPO is not the proposed easement holder, NPS ABPP will condition its determination of No Adverse Effect process in the grant agreement and in a notification letter to the proposed easement holder with, but not limited to, the requirement of the SHPO being written into the easement as a technical reviewer/approver of certain activities, as appropriate.

3. 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)). Conservation easements must be sent to the NPS ABPP and SHPO for review and approval prior to their execution and recordation.

4. The grant agreement shall be null and void if its conditions regarding Section 106 review are not carried out within three (3) years from the date of its execution, if not amended. At such time, and prior to any ground disturbing activities or alterations to historic buildings or structures occurring within the project area, the NPS ABPP shall either execute an amendment to the grant agreement extending its duration or consult with the SHPO/THPO, Indian Tribes, and Consulting Parties to comply with 36 CFR § 800.6 Resolution of Adverse Effects, as outlined in Stipulation V.

C. Section 106 for State Government Agency Property Manager.

1. In cases where a State government agency will acquire and manage the property acquired by BLAG funding, if NPS ABPP determines, in consultation with the SHPO/THPO and appropriate federally recognized Indian Tribes, that the project will have No Adverse Effect on historic properties, the NPS ABPP may complete the Section 106 process by entering into a preservation letter of agreement with the State government agency (See sample in Attachment B). The preservation letter of agreement will be required in the grant agreement.

2. 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. 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.

3. 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.

V. RESOLVING ADVERSE EFFECTS

A. With respect to both PLANNING GRANTS and BLAGs, if NPS ABPP determines that the project will have an Adverse Effect on historic properties and the SHPO concurs, the NPS ABPP will then continue consultation with the SHPO, Applicant and other appropriate Consulting Parties, including appropriate federally recognized Tribes and NHOs in accordance with 36 CFR § 800.6, to develop alternative or modifications to the project that could avoid, minimize or mitigate effects on historic properties. NPS ABPP 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 ABPP 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 ABPP, SHPO, and the Applicant, 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 NPA ABPP will request the staff comments of the ACHP.

C. NPS ABPP 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.

VI. TRIBAL CONSULTATION

A. After PLANNING GRANT and BLAG applications are received, the NPS ABPP shall ensure that Indian Tribe(s) and/or NHOs that may attach cultural and religious significance to properties affected by the proposed grant activities have been or are notified and invited to consult on the proposed activities. In addition, the NPS ABPP shall conduct government-to-government consultation with Indian Tribe(s) and/or NHOs that attach significance to historic properties that may be affected by PLANNING GRANT and BLAG proposed post-acquisition activities.

B. The NPS ABPP may develop protocols with individual Indian Tribe(s) or NHOs, or agree to have government-to-government consultation for each PLANNING GRANT and BLAG 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 ABPP, a copy of the protocols shall be forwarded by the NPS ABPP to the ACHP for its records and a copy to NCSHPO for distribution to the SHPOs.

C. SHPOs may be involved in the consultations described in Stipulation VI.A at the discretion of the Indian Tribes or NHOs, and following notification to NPS ABPP 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 both ABPP Grant Programs.

VII. INVOLVEMENT OF CONSULTING PARTIES AND THE PUBLIC

A. The NPS ABPP 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 Applicant has concerns regarding confidentiality or the disclosure of discretionary information, they must consult with NPS ABPP to develop procedures that will not compromise financial and real estate acquisition concerns related to the BLAG project.

VIII. PREPARATION AND REVIEW OF DOCUMENTS

A. When the grant agreement for any PLANNING GRANT so stipulates, the Applicant shall submit a draft of all technical reports, treatment plans and other documentation to the NPS ABPP, SHPO/THPO, and Consulting Parties.

B. Final payment will be denied if the PLANNING GRANT Applicant does not correct or address all comments received on the technical report, treatment plans or other documentation. Following approval in writing by the NPS ABPP, PLANNING GRANT Applicant shall provide final reports, treatment plans or other documentation to the SHPO/THPO and other Consulting Parties in an agreed upon format.

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 ABPP may assume the non-responding party has no comments.

IX. CURATION

A. Within thirty (30) days of the NPS ABPP's approval of the final technical report, the Applicant 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 C.F.R. Part 79, Curation of Federally Owned and Administered Archeological Collections. Any Applicant 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 C.F.R. Part 10). The Applicant shall provide the NPS ABPP 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.

X. 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 BLAG projects 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 ABPP with copies of the MOU. The MOU shall not interfere with existing policies or programs of the easement holder or this Agreement.

XI. POST-REVIEW DISCOVERIES

A. PLANNING GRANTS

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

1. The Applicant shall ensure that the following provision is included in all contracts: "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 Applicant 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 XI.A.1.), the Applicant 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 archeologist, meeting the Secretary of the Interior *Professional Qualifications Standards*, 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 C.F.R. Part 10), if applicable. Any Applicant 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 ABPP, 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 Applicant, 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 ABPP, the SHPO and other Consulting Parties shall respond to the Applicant's assessment within 48 hours of receipt.

3. The NPS ABPP will take into account the SHPO/THPO and other Consulting Parties' recommendations on eligibility and treatment of the discovery and will notify the Applicant of its eligibility determination and its decision regarding the proposed treatment plan within fifteen (15) days. The Applicant must comply with the required actions, if any, and provide the NPS ABPP, the SHPO/THPO and other Consulting Parties with a report on the actions when implemented. Any actions that the NPS ABPP deems appropriate for the Applicant to take with regard to such discovery will automatically become additional conditions to the grant agreement. If the Applicant fails to comply with such actions, such failure will constitute a breach of the grant agreement and potential denial of final payment.

4. Construction activities may proceed in the area of the discovery when the NPS ABPP 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 ABPP.

B. BLAGs

1. Grant Agreements for BLAGs shall require that no activity involving 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 ABPP shall ensure that the grant agreements for PLANNING GRANTS and BLAGs shall address post review discoveries of human remains by including, at a minimum, the following language:

    a. Applicants, 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; http://www.achp.gov/docs/hrpolicy0207.pdf).

    b. All human remains encountered during the course of actions taken as a result of activities arising from a PLANNING GRANT or BLAG shall be treated in accordance with NAGPRA, its regulations, and the laws and regulations of the state in which the project is located. The Applicant shall be responsible for all reasonable costs associated with treatment of human remains and associated funerary objects.

XII. 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 ABPP and the Applicant agree that an emergency undertaking that involves an NPS ABPP grant 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 ABPP 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 ABPP shall take into account any comments received in reaching a decision on how to proceed with the emergency undertaking.

    2. These emergency procedures apply only to undertakings that must be implemented within 30 calendar days after the disaster or emergency has been formally declared by the appropriate authority. The NPS ABPP 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 ABPP shall notify the ACHP of disaster and emergency situations related to an NPS ABPP grant project and the action that has been proposed or already taken pursuant to Stipulations III-V.

XIII. 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 ABPP shall consult with such party to resolve the objection. If the NPS ABPP determines that such objection cannot be resolved, the NPS ABPP will:

1. Forward all documentation relevant to the dispute, including the NPS ABPP's proposed resolution, to the ACHP. The ACHP shall provide the NPS ABPP 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 ABPP 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 ABPP 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 ABPP 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 ABPP 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 ABPP 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 ABPP responsibility to carry out all other actions subject to the terms of this Agreement that are not the subject of the dispute remains unchanged.

XIV. ANNUAL REPORTING

A. The NPS ABPP 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 NPS ABPP web site. The report will include, but is not limited to:
   1. A list of the PLANNING GRANTS and BLAGs awarded in each state and on Tribal lands, including the name of the Applicant and, in the case of BLAGs, the Government Sponsor; exact amount of the award; and the exact acreage acquired with ABPP funding, along with any changes made to the grant project's scope of work. The list should also include the exempted PLANNING GRANT projects and under what exemption, along with BLAGs awarded and funds dispersed with no easement recorded and why.
   2. A report, as appropriate, identifying any issues, initiatives or goals the NPS ABPP will address in the coming year with regard to its two grant programs, and any guidance or assistance that the ACHP or NCSHPO may provide to help make

compliance activities more effective and efficient.

3. A discussion identifying any problems the NPS ABPP encountered in carrying out the terms of this agreement that need to be addressed by the signatories through amendments or development of guidance documents.
4. Any other information the NPS ABPP 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 ABPP shall invite the signatories to this Agreement, SHPOs and Consulting Parties concurring in this Agreement to a meeting to facilitate review of the Agreement, the performance of NPS ABPPs 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 that such a meeting is not necessary at that time, the meeting may be waived.

XV. 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 XV.B, below.

B. The ACHP may be asked by any signatory to this Agreement to review its terms and its implementation by the NPS ABPP 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 ABPP shall comply with subpart B of 36 CFR § 800 prior to carrying out any individual undertakings of the NPS ABPP 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 ABPP will comply with Section 106 for the undertaking in accordance with 36 CFR §§ 800.3 through 800.7 or execute a new agreement in accordance with 36 CFR § 800.14(b) for that State. This Agreement will remain in effect with regard to the two NPS 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.

XVI. 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 ABPP has taken into account the effects of the two ABBP 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.

SIGNATORIES:

National Park Service

Joy Beasley _____ Date: 9/28/2016

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

Advisory Council on Historic Preservation

_____ Date: 9/28/16

By: John M. Fowler
Executive Director

National Conference of State Historic Preservation Officers

Elizabeth Hughes Date: 9.27.2016

By: Elizabeth Hughes
President

CONCUR:

Civil War Preservation Trust, d/b/a Civil War Trust

_____ Date: 9/27/2016

By: James Campi, Jr.
Policy and Communications Director

[PAGE INTENTIALLY LEFT BLANK]

South Carolina Institute of Archaeology and Anthropology

_ _____Date: _September 30, 2016_

By: Steven D. Smith
Director

[PAGE INTENTIALLY LEFT BLANK]

Shenandoah Valley Battlefield Foundation, VA

_____ Date: 9-27-16

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

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)(l), [**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)(l)(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:

[I.-III. (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 Section 800.1 1(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 g 800.6(a)(1)(iii); and

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

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

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

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

6. Add the following line to the signatory page

Advisory Council on Historic Preservation

_____Date
John M. Fowler, Executive Director

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.]