**PROGRAMMATIC AGREEMENT**

**BY AND AMONG THE CITY OF COLORADO SPRINGS*,* COLORADO**

**AND**

**THE COLORADO STATE HISTORIC PRESERVATION OFFICER**

**REGARDING THE ADMINISTRATION OF**

**U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT PROGRAMS**

This Programmatic Agreement (hereinafter referred to as “Agreement”) is made this \_\_\_\_day of \_\_\_\_\_\_, 2016, by and among the ***City of Colorado Springs, Colorado*** (hereinafter referred to as “the Entitlement Community”) and the Colorado State Historic Preservation Officer (hereinafter referred to as “SHPO”) regarding the administration of U.S. Department of Housing and Urban Development Programs.

**WHEREAS,** the U.S. Department of Housing and Urban Development (hereinafter referred to as “HUD” and/or “HUD Programs”) provides formula grant funding to cities and counties in Colorado and to the State of Colorado; and

**WHEREAS**, the ***City of Colorado Springs, Colorado*** is an Entitlement Community in Colorado; and

**WHEREAS,** due to their acceptance of federal environmental review responsibility, in accordance with Section 104(g) of the Housing and Community Development Act of 1974 [42 U.S.C. 5304(g)], the above Entitlement Community has assumed federal agency responsibility for compliance with Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470 et seq.] (Section 106); and

**WHEREAS,** the Entitlement Community now, or in the future, administers HUD grant programs which include but are not limited to, the following programs (HUD Programs):

Community Development Block Grant (CDBG)

HOME Investment Partnerships (HOME)

Emergency Solutions Grant (ESG)

Special Projects Under an Appropriations Act for HUD

**WHEREAS,** the Entitlement Community has determined that implementation of the HUD Programs may include activities, such as minor maintenance and repair, rehabilitation (multiple undertakings), acquisition, demolition and new construction, which may have an effect on properties included in or eligible for inclusion in the National Register of Historic Places (Historic Properties); and

**WHEREAS,** the Entitlement Community acknowledges the importance of compliance with 36 C.F.R. Part 800, et al. regarding Section 106 consultation and has implemented policies and procedures regarding such consultation with the SHPO; and

**WHEREAS,** pursuant to 36 C.F.R. 800.14(b) the Entitlement Community will notify the Advisory Council on Historic Preservation (ACHP) of its intention to enter into a programmatic agreement and submit this Agreement for review and consultation; and

**WHEREAS,** pursuant to 36 C.F.R. 800.14(b) the Entitlement Community notified the federally-recognized Indian Tribes known to have an ancestral interest in the Colorado Springs, Colorado, region on February 26, 2016, (see Exhibit A) of its desire to engage in consultation regarding HUD-assisted projects with the potential to affect cultural and/or historical sites of significance to the Tribes. Comments received from the Tribes are included as Exhibit B. The Entitlement Community recognizes the unique legal and political relationship the United States Government has with federally-recognized Indian Tribes, including government-to-government relationships, and consultation responsibilities as set forth in 36 C.F.R. Part 800, et al. Per the terms of this programmatic agreement, the Entitlement Community will continue historic consultation with the Colorado SHPO for projects and activities meeting 36 C.F.R. 800, Historic Preservation Requirements under Section 106 of the Act, including consultation with federally-recognized Indian Tribes in a manner consistent with HUD guidelines and/or agreements established with the individual Tribes.

**NOW, THEREFORE,** the Entitlement Community, and the SHPO agree that HUD Programs shall be administered in accordance with the following stipulations to satisfy the Section 106 responsibilities of the Entitlement Communities and HUD.

**STIPULATIONS**

The Entitlement Community ensures that the following Stipulations will be carried out:

1. **EXEMPTED AND NON-EXEMPTED ACTIVITIES**
2. **Activities Not Requiring Review**

The following proposed undertakings may affect historic properties and may be approved by the Entitlement Communities and/or HUD without further consultation with the SHPO, Indian Tribes or Advisory Council on Historic Preservation.

For purposes of this agreement, the term “in-kind replacement” is defined as installation of a new element that duplicates the material, dimensions, configuration and detailing of the original element. The duplication may take into account technical advances in materials and design while maintaining or exceeding the durability, appearance and function of the original element, while also meeting required energy conservation standards and/or in accordance with mandated health and safety requirements (i.e. lead hazard mitigation or building code egress requirements).

1. General
2. Projects on buildings less than fifty years old;
3. Projects on buildings fifty years old or older that within the last five (5) years have been officially determined by Colorado SHPO as ineligible for the National Register of Historic Places;
4. Refinancing; or
5. Leasing without rehabilitation or construction.
6. Site Work, provided that in the event cultural resources, whether architectural or archeological, both historic or pre-historic, are encountered during a ground disturbing activity of a project, site work will be stopped, be safely secured, and the Colorado SHPO contacted to determine appropriate historic impact and follow up to avoid, minimize and/or mitigate adverse effects.
7. Installation or repair of retaining walls, driveways, sidewalks, curbs and gutters, and parking areas. However, repair of existing rock retaining walls is not an exempt undertaking.
8. Installation or in-kind repair/replacement of brick or stone sidewalks and alleys.
9. In-kind repair/replacement of site improvements, including, but not limited to fences, retaining walls, landscaping and steps not attached to any building.
10. Installation, repair or replacement of gas, sanitary and storm sewer, water, electrical, cable or underground utilities within previously developed land and public right-of-ways.
11. Installation, repair or replacement of park and playground equipment, excluding buildings.
12. Installation of temporary construction-related structures such as scaffolding, screening, fences, protective walkways or dust hazard containment enclosures.
13. Exterior Rehabilitation
14. Installation of exterior storm windows and storm doors, provided they conform to the shape and size of the historic windows and doors, and that the meeting rails of storm windows coincide with that of existing sash.
15. Removal of exterior paint by non-destructive means, provided that the removal method on buildings and components is consistent with the provisions of HUD Office of Healthy Homes and Lead Hazard Control (24 CFR Part 35) and EPA’s Lead-Based Paint Renovation, Repair and Painting Program—RRP (40 CFR Part 745).
16. Application of exterior paint and caulking, other than on previously unpainted masonry.
17. All lead-based paint abatement or mitigation that does not involve removal or alteration of exterior features and/or windows.
18. Repair, installation or partial in-kind replacement (or adding of matching, in-kind elements for safety/code requirements) of existing porch elements such as columns, flooring, floor joists, ceilings, railings, balusters and balustrades, ramps and lattice.
19. Maintenance, repair and in-kind replacement to code of roofing shingles, roof cladding and sheeting, gutters, downspouts and soffits with no change in roof pitch or configuration.
20. Weatherizing of historic doors and windows, including caulking, insulation and weather stripping of existing frames, and installation of clear glass in existing sashes—including retrofitting for energy efficient, sealed, double, low-e glazing.
21. Placement and installation of exterior HVAC mechanical units, vents and exterior electrical and plumbing modifications not on the front elevation.
22. Installation, replacement or repair of basement bulkhead doors.
23. Installation of additional decorative or security lights as long as the installation does not damage historic material.
24. Securing or mothballing a property by boarding over window and door openings, making temporary roof repairs and/or ventilating the building.
25. Interior Rehabilitation
26. Installation, replacement, upgrade or repair of plumbing (including non historic bath and kitchen fixtures, cabinetry and appliances), HVAC systems and units, hot water heaters, electrical and fire protection systems—provided no structural alterations are involved.
27. Repair or partial in-kind replacement of historical interior surface treatment such as floors, walls ceilings, plaster and woodwork. If covering historic features, such as wood floors, carpet and other flooring shall be installed in a reversible manner (i.e. tacking or with an underlayment so historic floors shall not be irreversibly damaged.)
28. Blow-in insulation in ceilings and attic spaces, or interior insulation of basement or crawlspace areas.
29. Restroom improvements for handicapped accessibility, including doorways, provided the work is contained within the existing restroom walls.
30. Installation or repair of concrete basement floor in an existing basement.
31. Structural repairs to sustain the existing structure that does not alter the existing building configuration.
32. Lead, asbestos or other hazardous material abatement, remediation or mitigation that does not involve removal or alteration of interior historic features.
33. **Non-Exempted Activities Requiring Review**

All activities not identified in STIPULATIONS, I., A of this Agreement must be reviewed in accordance with 36 CFR Part 800.

1. **Resolution of Adverse Effects**

Unless a project/activity is exempted as set forth in Section I., A of this Agreement above, and approved by HUD for funding, the Entitlement Community shall consult with the SHPO to evaluate alternatives or modifications to the undertaking that could avoid, minimize or mitigate adverse effects on historic properties pursuant to 36 C.F.R. 800.6(a). The Entitlement Community made contact with, and will continue to consult with, Indian Tribes as mandated under 59 C.F.R. 2295 in order to ensure continued public participation as provided by 36 C.F.R. 800.6 (a)(4)(5) and to gather comments from both the general public and from federally-recognized Tribes that may have an interest in projects with the potential to affect historic and/or cultural resources.

1. **Annual Report**

Every year by April 30th, provided this Agreement remains in effect, the Entitlement Community will file a report on projects impacted or completed in the previous year pursuant to 36 C.F.R. 800.11(d)(e) – Documentation Standards. The report may include but is not limited to; HUD Program, Project Address, Year Built, Nature of Work and referencing of the appropriate 36 C.F.R. 800.11(a)(1), Section 106 requirements (see Exhibit C for a sample report). This Agreement will automatically terminate if an annual report is not submitted in a timely manner.

1. **DISCOVERIES AND UNFORESEEN EFFECTS**

If, during the implementation of these programs, a previously unidentified property that may be eligible for inclusion in the National Register is encountered, or a known National Register historic property may be affected in an unanticipated manner, the Entitlement Community will assume its responsibilities pursuant to 36 CFR Part 800.13(b).

1. **AMENDMENT**

Any party may request that this Agreement be amended, whereupon the SHPO will consult with the other parties in accordance with 36 CFR Part 800.14(b) to consider an amendment. Amendments will only be considered if made in writing and must be approved in writing by all parties to this Agreement to go into effect.

1. **TERMINATION**

Any party to this agreement may terminate its participation by providing thirty (30) days written notice to all other parties. In the event of termination, the terminating party will comply with 36 CFR Part 800.3 through 800.7 with respect to individual undertakings covered by this Agreement. Termination by the SHPO will nullify this Agreement upon all parties.

1. **TERM OF THE AGREEMENT**

Following signature by the Entitlement Community and the SHPO, this Agreement will be binding on a party upon the date of its signature and shall be in force for a term of five (5) years thereafter, unless the parties agree to extend it. The previous Agreement, signed by the State Historic Preservation Officer on February 17, 1987, will be terminated.

1. **NOTIFICATION**

Notification or other communication between parties to this agreement should be made in care of the addresses provided below.

**EXECUTION AND IMPLEMENTATION** of this Agreement evidences that the Entitlement Community and the SHPO have satisfied their responsibilities under Section 106 for undertakings funded by the HUD Programs. This Agreement may be executed in counterpart.

**COLORADO STATE HISTORIC PRESERVATION OFFICER**

By:

Title: Colorado State Historical Preservation Officer

Date:

**CITY OF COLORADO SPRINGS**

By:

Printed Name/Title: John W. Suthers, Mayor

Date:

ATTEST:

By:

Printed Name/Title:

Date:

APPROVED AS TO FORM:

By:

Printed Name/Title:

Date:

MAILING ADDRESSES OF SIGNATORIES

**COLORADO STATE HISTORIC PRESERVATION OFFICE**

Office of Archaeology and Historic Preservation

History Colorado

1200 Broadway

Denver, CO 80203

**CITY OF COLORADO SPRINGS**

Office of the Mayor

30 S. Nevada Avenue, Suite 601

Colorado Springs, CO 80903