

PROGRAMMATIC AGREEMENT

BETWEEN U.S. ARMY CORPS OF ENGINEERS - DENVER REGULATORY OFFICE,

THE ADVISORY COUNCIL ON HISTORIC PRESERVATION

AND

THE COLORADO STATE HISTORIC PRESERVATION OFFICER,

**REGARDING EMERGENCY AND MAINTENANCE ACTIVITIES ASSOCIATED WITH THE
COLORADO FLOOD OF SEPTEMBER, 2013**

**WITHIN JACKSON, LARIMER, WELD, MORGAN, LOGAN, SEDGWICK, PHILLIPS,
BOULDER, GILPIN, CLEAR CREEK, PARK, JEFFERSON, ADAMS, ARAPAHOE, DOUGLAS,
ELBERT, WASHINGTON, YUMA, AND KIT CARSON COUNTIES, COLORADO**

WHEREAS, various emergency and maintenance activities are necessary as a result of the Colorado Flood of September, 2013. These activities are proposed by various entities for various single-and-complete projects. These activities may affect properties that are listed or eligible for listing on the National Register of Historic Places (NRHP); or these activities may affect properties that were eligible for listing on the NRHP but are no longer eligible for listing as a result of the flood; and

WHEREAS, U.S. Army Corps of Engineers (Corps) has been asked to verify that the project is authorized, under Section 404 of the Clean Water Act, by the appropriate Department of the Army Permit(s), thereby making the project an undertaking subject to review under Section 106 of the National Historic Preservation Act (16U.S.C.470f), and its implementing regulations "Protection of Historic Properties" (36 CFR Part 800); and

WHEREAS, these activities require a Department of the Army permit(s) therefore a federal undertaking will occur and the Corps is the lead Federal agency at this time; and

WHEREAS, Corps has defined the Area of Potential Effect for these undertakings as 1) any area in which the discharge of dredge and fill material and certain excavation activities will occur within Waters of the US. Waters of the US includes ephemeral, intermittent and perennial streams, their surface connected wetlands and adjacent wetlands and certain lakes, ponds, drainage ditches and irrigation ditches that have a nexus to interstate commerce, 2) any activity that is directly associated and/or integrally related to the discharge of fill material within Waters of the US, 3) any borrow areas, staging areas, and any access roads that are created and/or modified in order to conduct the work within Waters of the US; and

WHEREAS, Corps has determined that these undertakings may affect properties that are listed or eligible for listing on the NRHP, and has consulted with the Colorado State Historic Preservation Officer (SHPO) in accordance to Section 106 of the National Historic Preservation Act; and

WHEREAS, in accordance to Section 106 of the National Historic Preservation Act, the Corps has invited the Advisory Council on Historic Preservation (ACHP) to participate in consultation and the

ACHP has determined its participation is necessary; and

WHEREAS, development of this Programmatic Agreement in accordance with 36 CFR Part 800.14(b) did not involve consultation with all consulting parties as set forth in the regulations due to the exigency of the current disaster situation; and

WHEREAS, upon execution of the PA, the Corps will post and distribute the PA for the benefit of the public and other consulting parties;

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

STIPULATIONS

Corps shall ensure that the following measures are carried out:

- I. Corps will determine if each individual activity is/is not an undertaking subject to the provisions of Section 106 of the National Historic Preservation Act (NHPA). Activities that are not undertakings include immediate rescue and salvage operations conducted to preserve life or property. For all other activities the following Stipulations will be followed;
- II. Corps will ensure that each individual activity is considered to be maintenance and is directly related to the Colorado Flood of September, 2013. Maintenance activities include repair, rehabilitation and replacement or any previously authorized, currently serviceable structure, or fill, or of any currently serviceable structure or fill authorized by 33 CFR 330.3, provided that the structure or fill is not to be put to uses differing from those uses specified or contemplated for it in the original permit or the most recently authorized modification. Minor deviations in the structure's configuration or filled area, including those due to changes in materials, construction techniques, requirements of other regulatory agencies, or current construction codes or safety standards that are necessary to make the repair, rehabilitation, or replacement are also considered to be maintenance.

Maintenance also includes the removal or accumulated sediments and debris in the vicinity of existing structures (e.g., bridges, culverted road crossings, water intake structures, etc.) and/or the placement of new or additional riprap to protect the structure. The removal of sediment is limited to the minimum necessary to restore the waterway in the vicinity of the structure to the approximate dimensions that existed when the structure was built, but cannot extend farther than 200 feet in any direction from the structure. This 200 foot limit does not apply to maintenance dredging to remove accumulated sediments blocking or restricting outfall and intake structures or to maintenance dredging to remove accumulated sediments from canals associated with outfall and intake structures. The placement of new or additional riprap must be the minimum necessary to protect the structure or to ensure the safety of the structure. Any bank stabilization measures not directly associated with the structure will require a separate authorization from the Corps.

- III. Because any historic property that exists/existed within the APE of these undertakings has likely been impacted by the flood, the Corps assumes that each individual undertaking for maintenance conducted during a two-year period immediately following the Colorado Flood will have no

historic properties effected or no adverse effect to historic properties and the SHPO concurs with this determination.

- IV. Any activity that does not meet the criteria of "maintenance" or No Adverse Effect will be subject to further evaluation in accordance to Section 106 of the NHPA. As such, this Programmatic Agreement is not applicable to non-maintenance activities. In this instance, normal procedures for Section 106 of the NHPA will be applied.
- V. Any activity that will result in adverse effects to historic properties will be subject to further evaluation in accordance to Section 106 of the NHPA. As such, this Programmatic Agreement is not applicable to activities that will result in known adverse effects to historic properties. In this instance, normal procedures for Section 106 of the NHPA will be applied.
- VI. All of the above stipulations must be satisfied prior to construction and/or any earth disturbances within the APE of these undertakings.

VII. PUBLIC OBJECTION

If during the course of the implementation of this agreement, if a member of the public objects to a finding or an undertaking, then the Corps shall consult with the objecting party and the SHPO to resolve the objection. If needed, the ACHP can provide dispute resolution pursuant to Stipulation XI.

VIII. DURATION

This agreement will be null and void if its terms are not carried out within two (2) years from the date of its execution. Prior to such time, the Corps may consult with the other signatories to reconsider the terms of the agreement. Unless terminated pursuant to Stipulation XIII, below, this PA will be in effect through Corps' implementation of the stipulations of this PA and will terminate and have no further force or effect when the Corps, in consultation with the SHPO, determines that the terms of this PA have been fulfilled in a satisfactory manner. The Corps will provide the SHPO, and the Permittee with written notice of its determination and of termination of this PA.

IX. POST-REVIEW DISCOVERIES

A. In the event that previously unidentified cultural resources are discovered during ground disturbing activities in the vicinity of the APE of these undertakings, or in the event that other unanticipated adverse effects to historic properties occur, the contractor shall halt all construction work involving subsurface disturbance in the area of the newly identified cultural resource and in the surrounding area where further subsurface remains can reasonably be expected to occur. The Permittee and the Corps shall notify and consult with federally recognized Indian Tribes and the SHPO about the discovery, following Corps protocols and State laws regarding disposition of human remains.

B. The Corps, or a qualified archaeologist retained by the Permittee and approved by the Corps, will immediately inspect the work site and determine the extent of the affected archaeological resource. Following agreement between the Corps and the SHPO, construction work may continue in the area outside of the newly identified resource.

C. Within 14 calendar days of the original notification of discovery, the Corps and Permittee, in consultation with the SHPO, shall determine the National Register eligibility of the resource unless the Corps and applicant conclude that an extension is necessary. In that instance, an additional 7-day extension may be obtained by providing written notice to the SHPO prior to the expiration date of said 14-day calendar period.

D. If the resource is determined eligible for the NRHP, the Corps and Permittee shall prepare a plan for its avoidance or mitigation and submit it to the SHPO for approval.

E. Following consultation with the SHPO, work in the affected area shall resume pending either:

1. Development and implementation of an appropriate data recovery or other recommended mitigation procedures, approved by the Corps, or
2. Determination by the Corps that the located cultural resources are not eligible for inclusion on the National Register.
3. Appropriate measures are followed by the Corps to address reburial of human remains.

X. MONITORING AND REPORTING

Each year following the execution of this PA until it expires or is terminated, the Permittee shall provide all parties to this PA a summary report detailing work carried out pursuant to its terms. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes and objections received in the Permittee's efforts to carry out the terms of this PA. This Stipulation only applies to post-review discoveries.

XI. DISPUTE RESOLUTION

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

A. Forward all documentation relevant to the dispute, including the Corps proposed resolution, to the ACHP. The ACHP shall provide Corps 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, Corps 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. The Corps 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, the Corps may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the Corps shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories to the PA, and provide them and the ACHP with a copy of such written response.

C. It is Corps responsibility to carry out all other actions subject to the terms of this PA that are

C. It is Corps responsibility to carry out all other actions subject to the terms of this PA that are not the subject of the dispute.

XII. AMENDMENTS

This PA 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.

XIII. COORDINATION WITH OTHER FEDERAL REVIEWS

In the event that the applicant or other agency applies for additional federal funding or approvals for the undertaking and the undertaking remains unchanged, such funding or approving agency may comply with Section 106 by agreeing in writing to the terms of this PA and notifying and consulting with SHPO and ACHP. Any necessary modifications will be considered in accordance with Stipulation XII.

XIV. TERMINATION

If any signatory to this PA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other parties to attempt to develop an amendment per Stipulation XII, 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 PA upon written notification to the other signatories.

Once the PA is terminated, and prior to work continuing on the undertaking, the Corps must either (a) execute a PA in accordance to Section 106 of the National Historic Preservation Act, or (b) request, take into account, and respond to the comments of the ACHP in accordance to Section 106 of the National Historic Preservation Act. The Corps shall notify the signatories as to the course of action it will pursue.

EXECUTION of this PA by the Corps and SHPO and implementation of its terms evidence that Corps has taken into account the effects of these undertakings on historic properties and afforded the ACHP an opportunity to comment. Nothing in this PA alters or relieves the duties and responsibilities of Corps under Section 106 of the National Historic Preservation Act and its associated regulations.

SIGNATORIES:

COLORADO STATE HISTORIC PRESERVATION OFFICER

Richard A. Williams (deputy SHPO)
Date Sept. 20, 2013
for Edward C. Nichols, State Historic Preservation Officer

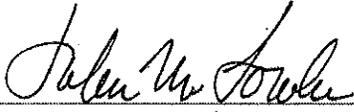
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UNIVERSITY OF MICHIGAN LIBRARY
DATE 9/24/13
UNIVERSITY OF MICHIGAN LIBRARY

Date

Martha Chieply, Chief, Regulatory Branch, Omaha District

ADVISORY COUNCIL ON HISTORIC PRESERVATION



Date

9/24/13

John Fowler, Executive Director, Advisory Council on Historic Preservation