

**PROGRAMMATIC AGREEMENT BY AND BETWEEN  
ADAMS COUNTY COMMUNITY DEVELOPMENT  
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 13<sup>th</sup> day of January, 2021, by and among ***Adams County Community Development***, a division of the Adams County Community & Economic Development Department of Adams County, 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 Entitlement Community receives funding from HUD's programs; 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 Programs which include but are not limited to, the following programs:

Community Development Block Grant Program  
HOME Investment Partnerships ("HOME") Program

**WHEREAS**, the Entitlement Community has determined that implementation of the HUD Programs may include activities such as rehabilitation (multiple undertakings), energy efficiency retrofits, weatherization, emergency home repairs, 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 has determined that certain activities funded by the HUD Programs may affect Historic Properties and have consulted with the SHPO pursuant to 36 C.F.R. 800.14 of the regulations implementing Section 106; and

**WHEREAS**, the Entitlement Community acknowledges the importance of compliance with 36 C.F.R. Part 800, et al. regarding mandatory consulting 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 notified the Advisory Council on Historic Preservation (“ACHP”) of its intention to enter into a programmatic agreement and submit this Agreement for review and consultation, to which the ACHP declined to participate; and

**WHEREAS**, pursuant to 36 C.F.R.800.14(b) the Entitlement Community has consulted with the appropriate Tribal contacts regarding this Agreement. A thirty (30) day comment period was given for any comments regarding this Agreement. No comments were received regarding this Agreement. The Entitlement Community shall consult with all Indian Tribes that attach traditional religious and cultural significance to historic properties that may be affected by the Entitlement Community undertakings. 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.; and

**WHEREAS**, the Entitlement Community will ensure that the measures contained within this Agreement will be carried out.

**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 Community and HUD.

## **STIPULATIONS**

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

### **I. EXEMPTED AND NON-EXEMPTED ACTIVITIES**

#### **A. Activities Not Requiring Review**

The following proposed undertakings may affect historic properties and may be approved by the Entitlement Community 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 (e.g. lead hazard mitigation or building code egress requirements).

**1. General**

- a) Projects on buildings less than fifty years old that are not listed on, or not previously determined eligible for, the National Register of Historic Places;
- b) Projects on buildings fifty years or older but that have been determined by the SHPO within the past five years (as of the date listed above) as not eligible for the National Register of Historic Places;
- c) Projects not affecting the exterior of a building or site work located in listed or determined National Register-eligible historic districts will follow consultation stipulated in 36 CFR 800;
- d) Refinancing; or
- e) Leasing without rehabilitation or construction.

**2. Site Work** (In the event of discovery of historic or prehistoric archaeological resources during ground disturbing activities, work should stop immediately and shall not recommence until consultation with the SHPO is completed.)

- a) Installation or repair of retaining walls, driveways, curbs and gutters, and parking areas. However, repair of existing rock retaining walls is not an exempt undertaking.
- b) Installation or in-kind repair/replacement of brick or stone sidewalks and alleys.
- c) In-kind repair/replacement of site improvements, including, but not limited to fences, retaining walls, landscaping and steps not attached to any building.
- d) Installation, repair or replacement of gas, sanitary and storm sewer, water, electrical, cable or underground utilities within previously developed land and public rights-of-way.
- e) Installation, repair or replacement of park and playground equipment that is not 50-years old or older, excluding buildings.
- f) Installation of temporary construction-related structures such as scaffolding, screening, fences, protective walkways or dust hazard containment enclosures.
- g) Installation or repair of streets and sidewalks on public rights of way.
- h) Shallow ground disturbance of previously disturbed soil to a depth of twelve (12) inches or less. over one (1) acre or less (i.e. landscaping).
- i) Removal and disposal of superficial on-site abandoned debris and personal property less than fifty (50) years old.

- j) Site clean-up including trimming trees or other plantings and planting native grasses, shrubs, bushes, and trees, provided that such activity does not change the characteristic size or shape of the tree(s) or planting(s), and replacement of dead trees or other plantings with in-kind species in accordance with any approved planting plan.
- k) Projects involving underground utilities installed by plow on, or immediately parallel to, the previously disturbed existing road or highway right-of-way where the cable will:
  - a. Be on or within five (5) feet of the edge of the right-of-way;
  - b. Be in cultivated land, or in open areas where no tree clearing is needed; and
  - c. Not affect wetlands, rock outcroppings, or human constructions such as stone walls.
- l) Placement of transformers, utility pedestals, or water meters immediately adjacent to installed utility lines.
- m) Decommissioning, plugging and infilling abandoned wells, shafts, and basements when the backfilling does not remove or destroy supporting walls or character defining elements. The feature should be filled but not obliterated. Structural characteristics such as well houses and support walls should be preserved.
- n) Temporary installation of water, sewer or gas lines on the surface of the ground.
- o) Construction of new ancillary facilities adjacent or appurtenant to existing above-ground facilities constructed for replacement of water wells.
- p) Repair or reconstruction of above-ground water storage facilities not involving modification in height or new ground disturbance for the installation of footings or foundation pads.
- q) Test holes and wells. Soil borings and associated tests or drilling exploratory test wells that do not require a temporary or permanent new access road to a site and would not occur on previously undisturbed soils.
- r) In-kind replacement or repair of hardscaping such as paving, driveways, parking lots, walkways, planters, trellises, irrigation systems, and lighting following the existing or historic configuration and with in-kind material.
- s) In-kind replacement or repair of fencing and other freestanding exterior walls not 50-years old or older.
- t) Resurfacing of recreational facilities (e.g. tennis courts, basketball courts or street hockey arenas).
- u) Upgrading existing telecommunications towers where no height increases are proposed and where the same or substantially equivalent support structure will be utilized at the existing tower location.

- v) Repair or replacement of existing wires, anchors, cross-arms and other miscellaneous hardware on existing overhead lines, and of existing poles when conducted at or immediately adjacent to the old pole locations.
- w) Relocation of existing overhead lines or cables resulting from highway reconstruction or improvement adjacent to the new highway easement.
- x) Repair or replacement of subsurface water, sewer, natural gas, electric or telecommunications lines within previously road rights-of-way or utility corridors.
- y) Modifications to existing water, sewer, natural gas distribution, electric or telecommunication facilities where no new above-ground structures are involved and the area where such modifications will occur has been substantially disturbed areas. Repair of existing mechanical or electrical systems if no alterations of character defining features are required in the work plan and the work follows existing pathways. Installation of mechanical equipment which does not affect the exterior of the building or the required installation on new duct work through the interior. Plumbing work limited to upgrading or in-kind replacement. In the case of new plumbing, work shall be situated within existing stud and joist cavities.

### **3. Exterior Rehabilitation**

- a) 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.
- b) 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 Environmental Protection Agency ("EPA") Lead-Based Paint Renovation, Repair and Painting Program ("RRP") (see 40 CFR Part 745).
- c) Application of exterior paint and caulking, other than on previously unpainted masonry.
- d) All lead paint abatement or mitigation that does not involve removal or alteration of exterior features and/or windows.
- e) 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.
- f) 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.

- g) Weatherizing of historic doors and windows, including caulking, insulation and weather stripping of existing frames, and installation of clear glass in existing sashes.
- h) Placement and installation of exterior HVAC mechanical units, vents and exterior electrical and plumbing modifications not on the front elevation of the building.
- i) Installation, replacement or repair of basement bulkhead doors.
- j) Installation of additional decorative or security lights (e.g. sensors, alarms) as long as the installation does not damage historic material.
- k) Securing or mothballing a property by boarding over window and door openings, making temporary roof repairs, and/or ventilating the building.
- l) Testing for removal of any hazardous materials such as lead paint and asbestos provided it does not involve the removal or destruction of character-defining features.
- m) Construction of temporary wooden ramps to one entrance of a given structure. The ramps shall not be attached to the selected building, and the ramps shall not damage the existing material.
- n) Installation of wheelchair ramps on secondary elevations meeting code as long as ramps can be easily removed and are not permanently affixed to the building. Stairs and railings may not be removed to construct a ramp.
- o) Strengthening of foundations and the addition of foundation bolts, provided that visible new work is in kind replacement-
- p) Power washing of exterior features if performed at no more than 600 psi with mild detergent. Refer to National Park Service ("NPS") "Preservation Brief #6: Dangers of Abrasive Cleaning to Historic Buildings".
- q) In-kind replacement, repair, or strengthening of roofing, gutters or downspouts.
- r) Installation of ridge vents or louver-type soffit vents, provided existing styles, dimensions, materials, colors and sheens are maintained.
- s) Fascia/soffit repair or replacement when the new fascia/soffit will be of the same dimensions, configuration, design and material as the original.
- t) In-kind replacement or reconstruction of concrete/masonry walls, parapets, fireplaces, chimneys or cornices including comparable brick and mortar that matches the color, strength, content, rake and joint width. Bracing and reinforcing of chimneys and fireplaces, provided the bracing and reinforcing are either concealed from exterior view or removable in the future.
- u) Repair or partial in-kind replacement of porches, cornices, exterior siding, doors, balustrades, stairs, or other trim when the repair and replacement is done to closely match existing material and design.

- v) In-kind replacement or repair of historic door and window hardware.
- w) Installation of wood storm windows and doors that match the dimensions and arrangement of the primary sashes and/or doors.
- x) Repair of windows including caulking and weather stripping of existing window frames and installation of new, clear glass in existing sashes.
- y) Windows and doors will be repaired to the extent reasonably possible. Storm windows and doors will be used whenever possible to improve energy efficiency and protect historic materials. If it is determined by staff of the Entitlement Community to be beyond repair, in-kind replacement is permitted using the same materials, style, dimensions and profile. If using the same kind of material is not technically or economically feasible, then using a compatible substitute material is permitted.
- z) Installation of security devices such as dead bolts, door locks, window latches and door peepholes.
- aa) Repair of existing, deteriorated materials with sound material of like species, grade, dimension, composition, and finish in a manner which duplicates the existing design of the deteriorated feature.
- bb) Repair or replacement of roofing material with like materials or substantiated historic materials.
- cc) Repainting painted surfaces with chemically compatible paint in the historic colors.
- dd) Placement and installation of solar panels on elevations not visible from the public right-of-way..

#### **4. Interior Rehabilitation**

- a) Installation, replacement, upgrade or repair of plumbing (including non-historic bath and kitchen fixtures, cabinetry, and appliances), HVAC systems and units, electrical and fire protection systems—provided no structural alterations are involved.
- b) 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 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.)
- c) Blow-in insulation in ceilings and attic spaces, or interior insulation of basement or crawlspace areas.
- d) Restroom/bathroom improvements for handicapped accessibility including doorways, provided the work is contained within the existing restroom/bathroom walls.
- e) Installation or repair of concrete basement floor in an existing basement.
- f) Structural repairs to sustain the existing structure that does not alter the existing building configuration.

- g) Lead, asbestos or other hazardous material abatement, remediation or mitigation that does not involve removal or alteration of interior historic features.
- h) Correcting structural deficiencies in basements, crawl spaces, and beneath porches.
- i) Interior lead paint abatement when it is limited to washing, scraping and repainting, wallpapering, and chemical stripping of lead-painted surfaces. Installation of new window jambs or jamb liners, installation of metal panning in window wells and replacement of non-significant flat stock trim. Exterior lead paint abatement that includes scraping and repainting of exterior wood and masonry surfaces.
- j) Installation of grab bars and other minor interior modifications for accessibility.
- k) Installation of temporary structures for such uses as classrooms or offices, provided they are not placed adjacent to a listed or eligible property or in a historic district.
- l) In-kind replacement of insulation systems, provided that decorative interior plaster, woodwork, or exterior siding is not altered. Installation of insulation in the attic, basement, crawl space, under floor, and around pipes and ducts in such cases where the installation can be accomplished without permanent visual changes to character defining features of the exterior or interior. Refer to NPS "Preservation Bulletin #3: Conserving Energy in Historic Buildings".
- m) Repairing, in-kind replacing, retaining, preserving, protecting, or maintaining of materials or features of historic interior floors, walls, ceilings, stairs, plaster and wallboard: floor refinishing and the replacement of non-historic flooring materials.
- n) Repairing and retaining non-significant interior historic trim including moldings, doors, baseboards, chair rails, wainscoting, paneling, cornice trim, fireplace mantels, stair balusters, newel posts, window and door casings and other decorative features or replacement of non-significant flat stock trim.
- o) Repair, replacement, and installation of the following systems provided that such work does not affect the exterior or require the installation of new ducts throughout the interior: electrical work, plumbing pipes and fixtures; HVAC system improvements; installation of fire and smoke detectors; fire suppression (e.g. security alarm systems, ventilation systems, furnaces and water heaters); and bathroom improvements where work is contained within the existing building.
- p) Installation of carbon monoxide, fire, or smoke detectors.

## **5. Loan Making and Servicing Activities**



- a. The legal transfer of ownership between private parties through acquisition, sale, transfer, and/or assumption of an existing property where no physical improvements or change in use is proposed or is reasonably foreseeable.
- b. Technical assistance or predevelopment grants provided the services will not result in an adverse effect on a property listed in, or eligible for, listing to the National Register of Historic Places. These grants are typically used for planning, feasibility studies, engineering studies, environmental reviews, managing and other service types of assistance. These programs involve no construction or real property acquisition.
- c. Intermediary relending programs to intermediary lenders.
- d. Loans or grants not involving any construction. These types of activities include loans and grants for equipment, working capital, debt restructure, emergency vehicles, motor vehicles and/or servicing activities.
- e. Project management activities relating to invitations for bids and contract awards.
- f. Project management of construction activities.
- g. Additional financial assistance that does not alter the purpose, operation, location or design of an approved project.

**B. 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.

**C. Annual Report**

By June 30 of every year under this Agreement, the Entitlement Community will file a report on projects of which consultation was not required as per this Agreement completed in the previous year to the SHPO which will include Project Addresses, Years Built, Nature of Work and reference the appropriate exempted activity as detailed in STIPULATIONS, 1., A. of this Agreement. SHPO may terminate this Agreement if an annual report is not filed in a timely manner.

**II. 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 Historic Property may be affected in an unanticipated manner, the Entitlement Community will assume its responsibilities pursuant to 36 CFR Part 800.13(b).

**III. EMERGENCY SITUATIONS**

As defined in 36 C.F.R. Part 800.12, emergencies are separated into two categories:

- A) Disasters or emergencies declared by the President, a tribal government, or the Governor of a State or which respond to other immediate threats to life or property. These occurrences can require emergency highway system and facility repairs that are necessary to 1) protect the life, safety, or health of the public; 2) minimize the extent of damage to the highway system and facility; 3) protect remaining highway facilities; and/or 4) restore essential traffic.

In situation where this definition applies:

1. Repairs can occur regardless of funding category, and regardless of declarations made by federal, state, or local agencies. These emergency repairs, including temporary traffic operations, are typically undertaken during or immediately following the occurrence that necessitated the action.
  2. For repairs initiated within the first thirty (30) days of the declaration, the processing of environmental documentation will happen concurrently or after the fact. In these cases, the Entitlement Community shall comply to the extent possible with the stipulations of this Agreement, but reviews will likely be conducted after the emergency work is completed. For projects taking longer than thirty (30) days to initiate the repair, this Section of the Agreement will not apply.
  3. Notification in writing or electronic mail (when appropriate) of an emergency action shall be provided to the SHPO within forty-eight (48) hours of the initial report. The notification will be clearly identified as an emergency situation and shall include an explanation of how the action meets the requirements for emergency situation and shall include an explanation of how the action meets the requirements for emergency as defined herein. The notification shall also include a brief description of the resource(s) involved, the anticipated effect of the emergency action on the resource(s), and the anticipated time frame available for comment.
  4. Work required to restore a damaged resource or facility to its original condition that is beyond the scope of the emergency repair will comply with the procedures of this Agreement. In these situations, the Entitlement Community may request an expedited review by the SHPO and consulting parties.
- B) In accordance with 36 C.F.R. Part 800.12(d), emergencies that are defined by immediate rescue and salvage operations conducted to preserve life or property such as necessitated by natural disaster or other catastrophic events are exempt from the provisions of Section 106 and this Agreement.

#### **IV. DISPUTE RESOLUTION**

If any interested party objects in writing to either the Entitlement Community or the SHPO regarding any action carried out or proposed with respect to the implementation of this Agreement, then the Entitlement Community shall consult with the objecting party to resolve the objection. If after such consultation, the Entitlement Community determines that the objection cannot be resolved through consultation, the Entitlement Community shall forward all documentation of the objection to the SHPO, including the Entitlement Community's proposed response to the objection within thirty (30) days after receipt of all pertinent documentation, the SHPO shall exercise one of the following options:

- A. Advise the Entitlement Community that the SHPO concurs in the Entitlement Community's proposed response to the objection, whereupon the Entitlement Community will respond to the objection accordingly; or
- B. Provide the Entitlement Community with recommendations, which the Entitlement Community shall consider, in reaching a final decision regarding its response to the objection.

Should the SHPO not exercise one of the above options within thirty (30) days after receipt of all pertinent documentation, the Entitlement Community may assume the SHPO's concurrence with the proposed response to the objection. If a consulting party or a member of the public objects to actions proposed by the Entitlement Community for an undertaking carried out under this Agreement, the Entitlement Community will consult with the objecting party to resolve the objection in accordance with the requirements set forth in 36 C.F.R. Parts 800.4 through 800.6.

#### **V. AMENDMENT**

Any Party may request that this Agreement be amended, whereupon the SHPO will consult with the other interested parties in accordance with 36 C.F.R. 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.

#### **VI. TERMINATION**

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

the SHPO will nullify this Agreement, and any future obligations contained in the Agreement, upon all parties.

**VII. 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.

**VIII. NOTIFICATION**

Notification or other communication between parties to this Agreement should be made in care of the addresses provided in Exhibit A.

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.

**STATE HISTORIC PRESERVATION OFFICER**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_

**ADAMS COUNTY**

\_\_\_\_\_, 2020

Attest:

\_\_\_\_\_

Approved as to Form:

\_\_\_\_\_