

**MEMORANDUM OF AGREEMENT  
AMONG THE FEDERAL EMERGENCY MANAGEMENT AGENCY,  
THE COLORADO STATE HISTORIC PRESERVATION OFFICER,  
THE STATE OF COLORADO DIVISION OF HOMELAND SECURITY AND  
EMERGENCY MANAGEMENT, AND THE TOWN OF LYONS,  
REGARDING TREATMENT OF ADVERSE EFFECTS OF THE BOHN PARK FLOOD  
RECOVERY PROJECT, PHASE II, BOULDER COUNTY, COLORADO**

**WHEREAS**, the Federal Emergency Management Agency (“FEMA”) of the Department of Homeland Security proposes to administer FEMA Public Assistance funding pursuant to Section 428 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93-288, as amended, through the State of Colorado Division of Homeland Security (hereinafter referred to as Recipient or “State”) and to the Town of Lyons (hereinafter referred to as “Sub-recipient” or “Town”) for the Phase II of the reconstruction of facilities at Bohn Park which were damaged as a result of flooding along the St. Vrain Creek in 2013 (hereafter referred to as the “Project”) to protect public infrastructure and related communities; and

**WHEREAS**, the Town, through the State, has requested FEMA funding to aid reconstruction of facilities at Bohn Park, and

**WHEREAS**, FEMA, as the lead Federal agency, has determined that the Project is an Undertaking subject to review under Section 106 of the National Historic Preservation Act (NHPA) (Section 106), 54 U.S.C. § 306108, and its implementing regulations, 36 CFR Part 800; and

**WHEREAS**, FEMA has defined the Undertaking’s Area of Potential Effects (“APE”) as the limits of disturbance from the proposed Undertaking across 16 acres, including the construction limits and areas that may be disturbed by grading and staging; and

**WHEREAS**, FEMA, in consultation with the SHPO, has determined that the Project may have had an inadvertent adverse effect to unidentified historic properties as implementation proceeded prior to the conclusion of Section 106 consultation; and

**WHEREAS**, FEMA has consulted with the SHPO, the State, and the Town to resolve the Project’s potential adverse effects on historic properties; and

**WHEREAS**, FEMA has invited the State and the Town to become signatories to this Memorandum of Agreement (MOA); and

**WHEREAS**, in accordance with 36 CFR Part 800.13(b)(3), FEMA has notified the Advisory Council on Historic Preservation (ACHP) on January 19, 2019, regarding its intent to prepare a MOA to resolve the Adverse Effect and satisfy its Section 106 responsibilities pursuant to the 2014 Colorado Programmatic Agreement and 36 CFR Part 800.6 (a)(1), and the ACHP has declined to participate (letter dated ///////////////), pursuant to 36 CFR Part 800.6(a)(1)(iii); and

**WHEREAS**, FEMA has coordinated appropriate public outreach with the Colorado Council of Professional Archaeologists; the Colorado Archaeological Society; the Colorado State Historical Society; the Office of the Colorado State Archaeologist; the Dougherty Museum; the Boulder Library; the Boulder History Museum; the Lyons Redstone Museum; the

University of Colorado Museum of Natural History; the Longmont Museum; and the Loveland Museum; and

**WHEREAS**, FEMA has coordinated appropriate Tribal consultation with the Southern Ute; Ute Mountain Ute; Eastern Shoshone; Northern Arapahoe; Crow; Northern Cheyenne; Ogallala Sioux; Paiute Tribe of Utah; Rosebud Sioux; and Ute Indian Tribe (Uintah and Ouray Reservation) Tribal Nations; and

**WHEREAS**, the MOA has incorporated comments received from the Tribes and public where received into the final project design of the Undertaking; and

**WHEREAS**, “Signatories” hereafter collectively refers to FEMA, the State, the Colorado SHPO, and the Town; and

**NOW, THEREFORE**, in accordance with 36 CFR Part 800.6(b)(1)(iv), this MOA is being executed to implement the agreed upon resolution of Adverse Effects. FEMA, SHPO, the State, and the Town agree that the Undertaking shall be implemented in accordance with the following stipulations in order to mitigate the adverse effect of the Undertaking on the historic properties.

## **STIPULATIONS**

To the extent of its legal authority and in coordination with the SHPO, the State, and Town, FEMA will require that the following measures are implemented in order to mitigate the adverse effect of the Undertaking on historic properties, and in keeping with the timelines described in Part VI – Duration of Enforcement.

### **I. PROFESSIONAL QUALIFICATIONS**

- A.** All tasks will be completed by personnel meeting the professional qualifications outlined in the Secretary of the Interior’s Standards and Guidelines for Archeology and Historic Preservation as stated in 36 CFR Part 61.
- B.** All background research, fieldwork, analysis, and reporting tasks will be completed according to specifications consistent with the Secretary of Interior’s Standards and Guidelines for Archeological Documentation and Historical Documentation; Standards and Guidelines provided by the Review and Compliance Section; The Colorado Cultural Resource Survey Manual, Office of Archaeology and Historic Preservation (2017, revised); and the By-Laws (2018, revised) and Code of Ethics/Standards of Research Performance (1997, revised) of the Colorado Council of Professional Archaeologists.

### **II. MITIGATION OF EFFECT TO HISTORIC PROPERTIES**

- A.** The Town shall contract with a qualified archaeological consulting firm whose personnel meet the professional qualifications outlined in Part I to complete the following mitigation measures:
  - 1. Conduct thorough background research. Background research shall, at a minimum, include records held at the Colorado SHPO. The literature review

may also include the National Register of Historic Places (NRHP) online database, General Land Office (GLO) plat maps, local historical societies, and other sources and data repositories, as necessary and where appropriate. Background research already conducted by the Town may fulfill this Stipulation.

2. Conclude consultation under Section 106. Consultation may include a geo-archaeological assessment of the APE to evaluate the potential for buried cultural material and intact Holocene deposits. Assessments and reports already conducted by the Town may fulfill this Stipulation.
- B.** The Town shall, at minimum, create one interpretive sign at Bohn Park. The intent of this sign is to further public education. This sign shall focus on historic and prehistoric use of Bohn Park as well as the St. Vrain creek. Sign content shall be at a 5<sup>th</sup> grade reading level and FEMA shall forward the draft sign design and proposed sign location to the SHPO for review and comment.
- C.** FEMA shall develop and implement a policy education/training program for State, FEMA, Town, and other staff working with the Public Assistance Grant Programs.
1. Trainings will be conducted by FEMA subject matter experts and aimed at clarifying FEMA's policy for dealing with the identification and evaluation of historic properties under Section 106 of the National Historic Preservation Act (NHPA).
  2. Trainings will be presented as in-person lecture/presentation format, and will be made available for later review and reference by staff through recording and/or distribution of training materials.
  3. FEMA shall forward outline and draft content of the trainings to SHPO for review and comment.

### **III. UNANTICIPATED ARCHAEOLOGICAL DISCOVERIES**

Based on the high level of disturbance within the APE, it is not anticipated that any cultural materials identified during construction will be in primary context and considered significant discoveries requiring longer-term work stoppage for consultation. However, in the event that such a discovery should occur, FEMA will consult per 36 CFR Part 800.6 to develop a mitigation plan.

If human remains are discovered under any circumstance, FEMA will ensure that the provisions of Colorado Revised Statute 24-80-1301-1305 are followed. Ground disturbing work in the immediate vicinity of the remains shall cease immediately and the signatories shall consult to develop a written plan of action to manage the discovery in accordance with the *Process for Consultation, Transfer, and Reburial of Culturally Unidentifiable Native American Human Remains and Associated Funerary Objects Originating from Inadvertent Discoveries on Colorado State and Private Lands*. After approval of the plan by FEMA, the State, the Town, the Office of the State Archaeologist, Tribes, and the Colorado Commission of Indian Affairs, implementation

will proceed. Continuation of work following a discovery will be contingent upon approval by the above parties.

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

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

- A.** Forward all documentation relevant to the dispute, including FEMA's proposed resolution, to the ACHP. The ACHP shall provide FEMA 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, FEMA shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP and the Signatories, and

provide them with a copy of this written response. FEMA 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, FEMA may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, FEMA shall prepare a written response that takes into account any timely comments regarding the dispute from the Signatories to the MOA, and provide them and the ACHP with a copy of such written response.
- C.** It will be the responsibility of FEMA to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute.

## **V. 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 submitted to the ACHP.

## **VI. DURATION AND TERMINATION**

- A.** If the terms of this MOA have not been implemented within five (5) years of the execution date, then this MOA shall be considered null and void. In such an event, FEMA shall notify the Signatories to this MOA and, if it chooses to continue with the Project, then it shall reinitiate review of and consultation on the Project in accordance with 36 CFR Part 800.3 through 800.7.
- B.** In the event that FEMA does not carry out the terms of this MOA, the Signatories shall consult to seek amendment to the MOA and proceed in accordance with 36 CFR Part 800.6(c)(8).
- C.** Any signatory to the MOA may terminate this MOA by providing thirty (30) days' notice to the other parties, provided that the parties shall consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. In the event of termination, FEMA shall proceed in accordance with 36 CFR Part 800.6(c)(8), execute a new agreement in accordance with Part 800.6(c)(1) or request comments of the ACHP under Part 800.7(a).

Execution of this MOA by FEMA and Signatories, and implementation of its terms, evidence that FEMA has taken into account the potential adverse effects of the Project on historic properties and has afforded the ACHP an opportunity to comment.

**SIGNATORY PAGE**

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**SIGNATORY**

**FEDERAL EMERGENCY MANAGEMENT AGENCY**

**By:** \_\_\_\_\_

**Date:** \_\_\_\_\_

Thomas Bush  
Public Assistance Branch Chief, Recovery Division, FEMA Region VIII

**By:** \_\_\_\_\_

**Date:** \_\_\_\_\_

Steven E. Hardegen  
Regional Environmental Officer, FEMA Region VIII

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**SIGNATORY**

**HISTORY COLORADO**

**By:** \_\_\_\_\_

**Date:** \_\_\_\_\_

Steven Turner, AIA  
State Historic Preservation Officer

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**SIGNATORY**

**STATE OF COLORADO DIVISION OF HOMELAND SECURITY AND EMERGENCY MANAGEMENT**

**By:** \_\_\_\_\_

**Date:** \_\_\_\_\_

Michael Willis  
Director, Office of Emergency Management  
Colorado Division of Homeland Security and Emergency Management



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**SIGNATORY**

**TOWN OF LYONS**

**By:** \_\_\_\_\_

**Date:** \_\_\_\_\_

Victoria Simonsen  
Town of Lyons, Administrator