

**PROGRAMMATIC AGREEMENT BETWEEN
U.S. AIR FORCE ACADEMY AND
COLORADO STATE HISTORIC PRESERVATION OFFICER
FOR POTENTIAL UNDERTAKINGS IDENTIFIED IN THE
JACKS VALLEY DISTRICT PLAN**

WHEREAS, the US Air Force Academy (USAFA), Colorado, as a military installation focused on annually providing military training and education for 4,000+ cadets, plans to prioritize and possibly implement 14 projects to improve cadet training activities in its Jacks Valley area, pursuant to USAFA's training mission (10 USC Ch. 953: United States Air Force Academy) and master plan requirements at 10 USC 2864 plus Department of Defense Instruction 4165.70 for Unified Facilities Criteria (UFC 2-100-01 Installation Master Planning); and

WHEREAS, the projects would involve a range of construction projects at points across the total 3,312 acres of Jacks Valley to provide a well-connected, safe, secure, premier quality training area having multipurpose collaborative and natural open spaces, with itemized project descriptions listed in Attachment 1; and

WHEREAS, the *general* Area of Potential Effects (APE) for the 14 projects addressed by this PA is the total area of the Jacks Valley training area depicted by Attachment 2, though individual projects ultimately would have their project-specific APE further refined; and

WHEREAS, These projects are largely associated with federal Unified Facilities Criteria-related strategic planning aligned with the APE, and the Jacks Valley District Plan (JVDP; United States Air Force Academy Jacks Valley District Plan, Colorado Springs, Co. – Final Submittal September 2020, on file USAFA), yet at present the *schedules* for any of the projects' funding, design, and construction stages cannot be predicted accurately; and

WHEREAS, one goal of the JVDP is to proactively influence planning efforts to avoid or minimize adverse effects to cultural and natural resources, with an associated National Environmental Policy Act (NEPA) environmental assessment under development for JVDP projects including those which the present Programmatic Agreement (PA) supports; and

WHEREAS, with approximately 72 National Register of Historic Places (NRHP) eligible or "needs data" potentially eligible archeological sites, 177 isolated finds that are field not eligible, 107 sites not eligible officially, 2 NRHP-eligible buildings/structures, 64 not eligible officially buildings/structures, and 66 buildings/structures not of age for evaluation to the NRHP, this PA's entire general APE is in effect completely inventoried from archeological surveys of the 1990s, and from recent JVDP-driven surveys concerning both archeological resources and the built-environment, with specific cultural resources comprehensively listed in Attachment 3 which also lists properties determined *ineligible* for the NRHP; and

WHEREAS, USAFA's 10 ABW's Civil Engineering Squadron (10 CES) manages USAFA's built and natural infrastructure for day-to-day operations and long range planning, design, construction, environmental protection, housing, and real property functions, with the 10 ABW commander (10 ABW/CC) designating the 10 CES Base Civil Engineer (BCE) to be a key point

of contact regarding compliance under the NHPA Section 106; and

WHEREAS, in accordance with 36 CFR § 800.14(b)(1)(ii), execution of this PA is appropriate because effects on historic properties from the JVDP's multiple potential undertakings cannot be fully determined prior to USAFA decision-making under the NEPA planning for JVDP; and

WHEREAS, in accordance with 36 CFR § 800.6(c) the BCE by letter dated March 18, 2019, initiated consultation with the Advisory Council on Historic Preservation (ACHP), the Colorado State Historic Preservation Officer (SHPO), and the 34 federally-recognized tribes routinely consulted by USAFA (see Attachment 4); and

WHEREAS, pursuant to 36 CFR § 800.6(a)(1)(iii), the ACHP was notified and chose *not to* participate in the consultation and development of this PA;

WHEREAS, the following Tribes specifically responded and participated in the consultation: the Northern Cheyenne Tribe; the Pawnee Nation of Oklahoma; the Pueblo of Santa Clara; the Rosebud Sioux Tribe of the Rosebud Indian Reservation; the Southern Ute Indian Tribe; Standing Rock Sioux Tribe; the Ute Mountain Ute Tribe, and the Yankton Sioux Tribe; and these tribes desire to be Concurring Parties for this PA; and

WHEREAS, USAFA sought and considered the views of the public on this undertaking through use of the NEPA planning process, including a public notice published in the Colorado Springs Gazette newspaper, USAFA website, and available at the USAFA base library, and any comments communicated regarding cultural resources have been considered; and

NOW, THEREFORE, the USAFA and SHPO 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

The USAFA shall ensure that the following measures are carried out:

I. The 14 projects designated "Section 106 required" in Attachment 1 will receive consultation with the SHPO and Concurring Parties to this PA following standard procedures of NHPA Section 106 at 36 CFR Part 800 "Protection of Historic Properties" (as effective August 5, 2004).

A. Such consultation will occur when sufficient planning information for a given project is of sufficient quality for USAFA to consult SHPO and Concurring Parties under the process of Section 106.

(1) Multiple projects (of the 14 total) may be simultaneously consulted, recognizing that to accommodate such possibilities, USAFA or SHPO may propose this PA be further amended following Stipulation VII.

(2) For each of the 14 projects when sufficient information exists the USAFA, in collaboration with the SHPO and providing an opportunity to comment for the PA's Concurring Parties, will develop a project-specific APE following standard procedures of Section 106.

B. The USAFA will keep this PA active throughout the time required for the 14 projects to have specific planning information sufficient to complete the Section 106 process for each project, or should that become not possible, communicate to the SHPO under provisions of Stipulations VII or VIII.

C. Through the life of this PA, the USAFA will preserve and maintain full documentation of the Section 106 process for each of the 14 projects regarding key records of communications, data, records, reports, and the like, and should SHPO or any Concurring Parties so request, the USAFA Cultural Resources Manager (CRM) will make copies of such documentation available.

D. The USAFA in addressing these 14 projects will follow all pertinent State of Colorado and federal guidelines appropriate to the Section 106 process, with the understanding that should new, presently unknown, guidelines become issued during the life of this PA, the USAFA or SHPO may propose to amend the PA to account for such changes.

II. AVOIDANCE OF PRE-CONTACT ARCHAEOLOGICAL SITES

There are approximately 39 pre-contact period archaeological sites within the Jack Valley APE. This includes sites eligible, needs data, and not eligible to the NRHP. It is USAFA Cultural Resources Program policy to avoid these sites. To facilitate avoidance, a 50 foot buffer around each site will be protected during execution of the projects covered by this PA, when necessary.

III. DURATION

This PA will expire if its terms are not carried out within five (5) years from the date of its completed execution by USAFA and SHPO. Prior to such expiration, USAFA may consult with the SHPO to amend the PA to continue to function for an additional specified time.

IV. POST-REVIEW DISCOVERIES

If obvious or potential historic properties (defined at 36 CFR § 800.16) not previously inventoried in the APE are discovered during the Section 106 Post-Review stage (36 CFR § 800.13(b)) for any of the 14 projects, the USAFA will within 24 hours notify by telephone and/or email the SHPO and Concurring Parties, and explain the discovery and recommended next steps. As part of such response the USAFA may propose amending this PA in reference to Stipulation VII.

A. In responding to such discoveries, the USAFA will follow other applicable state or federal laws in the Archaeological Resources Protection Act (16 U.S Code 470aa-470mm) and the Native American Graves Protection and Repatriation Act (Public Law 101-601; 25 U.S.C. 3001-3013).

V. MONITORING AND REPORTING

The 10 ABW and BCE anticipate no need for specific monitoring and reporting on this PA's activities. Field monitoring of specific construction for any of the 14 projects may be negotiated

among USAFA, SHPO, and Concurring Parties utilizing the Section 106 process, with amendment to this PA if the USAFA and SHPO so desire. If SHPO or any Concurring Party to this PA requests the USAFA to provide a status report on this PA's activities, the CRM will strive to communicate such a status report by mutually agreeable means within ten (10) Federal workdays following receipt of request, and offering such briefing to all parties to the PA. As each of the 14 projects covered by the PA are consulted on, a list of completed projects from the PA will be included in the consultation package.

VI. DISPUTE RESOLUTION

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

A. Forward all documentation relevant to the dispute, including USAFA's proposed resolution, to the ACHP. The ACHP shall provide USAFA 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, USAFA shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, the SHPO, and Concurring Parties, and provide them with a copy of this written response. The USAFA then will 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, USAFA may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, USAFA shall prepare a written response that takes into account any timely comments regarding the dispute from the SHPO and Concurring Parties to the PA, and provide them and the ACHP with a copy of such written response.

C. The USAFA's responsibility to carry out all other actions subject to the terms of this PA that are not the subject of the dispute remain unchanged.

VII. AMENDMENTS

This PA may be amended when such an amendment is agreed to in writing by both Signatories (USAFA and SHPO). The amendment will be effective on the date a copy signed by the Signatories is filed with the ACHP.

VIII. TERMINATION

If either Signatory to this PA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other Signatory to attempt to develop an amendment per Stipulation VII, above. If within thirty (30) days (or another time period agreed to by both Signatories) an amendment cannot be reached, either Signatory may terminate the PA upon written notification to the other Signatory, with the USAFA informing the PA's Concurring Parties on such a matter.

Once the PA is terminated, and assuming that at such time the JVDP's 34 projects and therefore the conditions of this PA remain incomplete, the USAFA shall either (a) execute a new PA

pursuant to 36 CFR § 800.6 or (b) if applicable, take into account and respond to comments of the ACHP under 36 CFR § 800.7. The USAFA shall notify the SHPO as to the course of action it will pursue.

Execution of this PA by the USAFA and SHPO and implementation of its terms evidence that USAFA has taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment.

SIGNATORIES:

United States Air Force Academy

_____	_____
Christopher J. Leonard, Colonel, USAF Commander, 10th Air Base Wing	Date

Colorado State Historic Preservation Officer

_____	_____
Steve Turner, AIA State Historic Preservation Officer	Date

CONCURRING PARTIES:

Northern Cheyenne Tribe

_____	_____
Teanna Limpy, Tribal Historic Preservation Officer Northern Cheyenne Tribe, Montana	Date

Pawnee Nation of Oklahoma

Matt Read, Tribal Historic Preservation Officer
Pawnee Nation of Oklahoma

Date

Pueblo of Santa Clara

Ben Chavarria, Tribal Historic Preservation Office
Pueblo of Santa Clara, New Mexico

Date

Rosebud Sioux Tribe of the Rosebud Indian Reservation

Ione Quigley, Tribal Historic Preservation Officer
Rosebud Sioux Tribe of the Rosebud Indian Reservation
South Dakota

Date

Southern Ute Indian Tribe

Shelly Thompson, Director, Cultural Department
Southern Ute Indian Tribe, Colorado

Date

Standing Rock Sioux Tribe

Jon Eagle, Tribal Historic Preservation Officer
Standing Rock Sioux Tribe, North Dakota

Date

Ute Mountain Ute Tribe

Terry Knight, Sr., Tribal Historic Preservation Officer
Ute Mountain Ute Tribe, Colorado

Date

Yankton Sioux Tribe

Kip Spotted Eagle, Tribal Historic Preservation Officer
Yankton Sioux Tribe, South Dakota

Date