Programmatic Agreement Among
The National Institute of Standards and Technology
and
The Colorado State Historic Preservation Officer
Regarding the Stewardship and Management
of the
National Institute of Standards and Technology's
Radio Building (Building 1)
at
the Department of Commerce Boulder Laboratories (Boulder Laboratories)
Boulder, Boulder County, Colorado

TABLE OF CONTENTS

I. Roles and Responsibilities 4

II. Management and Treatment of the Built Environment 6

III. Project Reviews 8

IV. Reporting and Documentation 11

V. Unanticipated Discoveries 12

VI. Anti-Deficiency Act 13

VII. Dispute Resolution 13

VIII. Amendment 14

IX. Termination 14

X. Severability 14

XI. Duration and Extension. 14

APPENDICES:

A. Preservation Zone Maps of Building 1
B. Programmatic Allowances
C. Historic Structures Report
D. References
E. Definitions

Boulder Laboratories Building 1

WHEREAS, the mission of the National Institute of Standards and Technology (NIST), a non-regulatory agency of the United States Department of Commerce (DoC), is to promote U.S. innovation and industrial competitiveness by advancing measurement science, standards, and technology in ways that enhance economic security and improve quality of life;

WHEREAS, NIST's - Building 1, located at Boulder Laboratories in Boulder, Colorado was acquired by the Federal government for the National Bureau of Standards in 1951.

WHEREAS, Building 1 was designed by the prominent architectural firm of Luckman and Pereria in 1953 and initially constructed in the 1954 with the addition of Wing 6, and exterior alterations and interior modifications thereafter by others;

WHEREAS, the National Bureau of Standards has hence forth been known as the National Institute of Standards and Technology (NIST) as a result of the Omnibus Trade and Competitiveness Act of 1988, P.L. 100-418;

WHEREAS, NIST, in order to carry out its mission as the Federal agency responsible for advancing measurement science and standards and related technologies, taking a lead role in stimulating cooperative work among private industrial organizations in efforts to surmount technological hurdles, and otherwise engaged in assisting in the improvement of industrial technology, conducts a variety of undertakings, including, but not limited to, operation, management, administration, maintenance, rehabilitation, repair, construction, demolition, replacement of buildings, structures and roads, and work regarding grounds and associated landscaping that may affect Building 1;

WHEREAS, Building 1 has been determined eligible for listing in the National Register of Historic Places (NRHP) under Criteria A and C for its historic and architectural importance, in consultation with the Colorado State Historic Preservation Officer (CO SHPO) in August 2016;

WHEREAS, the period of significance for Building 1 was defined as 1954, when much of Building 1 was corresponds to the initial period of construction (1954-62);

WHEREAS, NIST has consulted the CO SHPO pursuant to Section 106 of the National Historic Preservation Act of 1966, as amended (NHPA), (codified as amended at 54 U.S.C. § 306108) and Section 110 of NHPA (codified as amended at 54 U.S.C. § 306101), and the Advisory Council on Historic Preservation's (ACHP) Section 106 implementing regulations

(36 C.F.R. Part 800);

WHEREAS, pursuant to 36 C.F.R. § 800.14(b)(2), NIST, in consultation with the CO SHPO determined that its Section 106 responsibilities can be more effectively and efficiently implemented if a programmatic approach is used on Building 1;

WHEREAS, this Programmatic Agreement (PA) encompasses the entire Building 1 complex of Wings 1, 2, 3, 4, 5, 6; the Spine; Front of the House; and the associated grounds as illustrated in Appendix A;

WHEREAS, the provisions of the PA only apply to Building 1;

WHEREAS, the signatories of this PA acknowledge the national importance of Building 1 to the history and development of the United States, especially in the area of architecture, and the scientific and technological areas of radio transmission and time measurement;

WHEREAS, NIST, in 2018 conducted a historic structures report of Building 1 and found that given the goals of NIST, the most appropriate treatment approach for Building 1 is Rehabilitation, which would preserve materials and features that convey the building's historical and architectural values, while allowing for the necessary repairs and upgrades;

WHEREAS, the parties further desire that actions affecting built environment covered by this PA be consistent with the *Secretary of the Interior's Standards for Rehabilitation* (SOI Standards) (36 C.F.R. § 68.3(b))*;*

WHEREAS, NIST designates the NIST the Director of the Office of Facilities and Property Management (OFPM Director) as the responsible Agency Official for the Building 1, in accordance with 36 C.F.R. § 800.2(a), the NIST OFPM Director may delegate that authority to the NIST Federal Preservation Officer (FPO), qualified under the *Secretary of the Interior's Professional Qualification Standards* (PQS) (36 C.F.R. Part 61);

WHEREAS, NIST in accordance with 36 C.F.R. § 800.6(a)(l)(iii), invited the ACHP to participate in the Section 106 consultation process; and the ACHP notified NIST that it would not participate in the consultation;

WHEREAS, NIST has determined that there are several Federally-recognized tribes that may have an interest in the development of this PA based upon previously expressed interest in the development of the Tribal MOA governing long-term preservation of the approximately 25 acre protected area at the southeast corner of Boulder Laboratories Campus. These tribes include the: Southern Ute Indian Tribe, Jicarilla Apache Nation, Comanche Nation of OK, Rosebud Sioux Tribe of Indians, City of Boulder , Ute Mountain Ute Tribe, Pawnee Nation of OK, Apache Tribe of OK, Northern Cheyenne Agency, Oglala Sioux Tribe, Eastern Shoshone Tribe, Kiowa Tribe of OK, Cheyenne & Arapaho Tribes, and the Kiowa Tribe of OK;

WHEREAS, NIST has so notified the above tribes and invited them to participate in the development of this PA;

WHEREAS, NIST has provided for public participation in the Section 106 consultation process for this PA through a public notice on the Boulder Laboratories' website as well as the City of Boulder's website;

WHEREAS, in accordance with 36 C.F.R. 800.14(b)(2)(ii), NIST has identified and invited the following parties to participate in the development of this PA as Consulting Parties: the Tribes listed above; The City of Boulder; Historic Boulder; the National Oceanic and Atmospheric Administration; the National Telecommunications and Information Administration; and the General Services Administration;

WHEREAS, on October 8, 2020, NIST initiated Section 106 consultation with, the Apache Tribe of OK, the Cheyenne & Arapaho Tribes, the Comanche Nation of OK, the Eastern Shoshone Tribe, the Jicarilla Apache Nation, the Kiowa Tribe of OK, the Northern Cheyenne Agency, the Oglala Sioux Tribe, the Rosebud Sioux Tribe of Indians, the Southern Ute Indian Tribe, the Ute Mountain, the Ute Tribe, the Advisory Council on Historic Preservation and Historic Boulder and received no response or expression of interest in participating in the consultation;

WHEREAS , On October 8, 2020 the Pawnee Nation of Oklahoma and the City of Boulder who were also notified responded and participated in the November 10, 2020 Consulting Parties Meeting along with the Colorado SHPO; and

NOW, THEREFORE, the NIST and CO SHPO (Signatories) agree that undertakings at Building 1 shall be administered in accordance with the following stipulations to satisfy NIST's responsibilities under Section 106 and 110 of the NHPA.

STIPULATIONS

To the extent of its legal authority, NIST shall ensure that the following measures are carried out:

I. Roles and Responsibilities

The following lists the responsibilities and required qualifications for those individuals responsible for implementing this PA.

A. NIST Federal Preservation Officer (FPO)

The FPO has oversight responsibility for the NIST's historic preservation program and is responsible for coordination of the program and implementation of the terms of this PA, including determining whether undertakings are eligible for Programmatic Allowances (Allowances) as described in Stipulation III.C and Appendix B.

1. The FPO shall meet the Professional Qualification Standards (PQS enumerated in 36 C.F.R. Part 61) and endeavor to ensure that staff are knowledgeable about the SOI Standards.

2. If necessary, per 36 C.F.R. § 800.2(a)(3), the FPO may engage qualified consultants in the relevant discipline to identify, evaluate, and document Historic Properties, to recommend findings of eligibility and effect, and to determine whether treatments of Historic Properties comply with the SOI Standards.

3. The FPO shall ensure that Section 106 reviews conducted pursuant to this PA will be carried out by qualified preservation professionals who meet PQS, as determined by the FPO.

4. When clarification of the SOI Standards is needed, the FPO shall consult with CO SHPO regarding their opinions about proper treatment of the Building 1.

5. The FPO shall coordinate with the CO SHPO, as appropriate, regarding general planning and development efforts that may have the potential to affect the Building 1.

6. The FPO shall maintain a file on all work accomplished under the Allowances, as described in Stipulation IV.A.

7. The FPO will provide the CO SHPO an annual report for the Building 1 in accordance with Stipulation IV.B.

8. The FPO shall convene and participate in meetings with CO SHPO in accordance with Stipulation IV.C.

B. CO SHPO

1. As requested, CO SHPO staff will be available to provide technical assistance, guidance, and training. In those instances where consultation with the CO SHPO has occurred, a written notice (via e-mail or regular mail) will be generated and sent to confirm any decisions that were reached.

2. As requested, CO SHPO shall consult with the FPO, to identify consulting parties, including any communities, organizations, or individuals that may have an interest in individual undertakings and their effects on Building 1.

3. The SHPO shall participate in meetings convened by FPO in accordance

with Stipulation IV.C.

C. Public Participation

NIST will ensure that an appropriate level of public involvement is provided in accordance with 36 C.F.R. § 800.2(d)(1-3) and 36 C.F.R. § 800.3(e) during implementation of actions pursuant to this PA.

D. Training

NIST shall ensure that key maintenance staff receive historic preservation training needed to carry out their responsibilities and provide opportunities for other involved staff to receive preservation training as funding opportunities permit.

E. Notifications, Timeframes, and Responses

1. Notifications and consultation pursuant to this PA shall be via electronic mail or in writing. All formal submittals to the CO SHPO for official review shall be via electronic mail unless otherwise specified. Large files (*e.g.*, plans, maps, drawings, and photographs) will be submitted via hard copy.

2. All time periods shall be counted in calendar days unless specifically stated otherwise.

3. All CO SHPO reviews pursuant to this PA shall be completed within thirty (30) days of its receipt of appropriate documents to be reviewed, unless otherwise specified. If the CO SHPO does not respond in writing within the specified time frame, CO SHPO review shall be deemed complete, and NIST shall assume the CO SHPO's concurrence.

F. Regulations, Standards and Guidelines

Regulations, standards and guidelines relevant to this PA and its purposes, as applicable, include the documents in Appendix D, as may be revised from time to time.

II. Management and Treatment of the Built Environment

A. Boulder Laboratories Campus Master Plan

1. As necessary, when NIST update(s) its June 2017 approved Boulder Laboratories Campus Master Plan (Master Plan), the provisions regarding Building 1 in the Master Plan will be updated with input from the CO

SHPO, who will assist in considering potential adverse effects on Building 1 and in identifying ways to minimize adverse effects, when possible.

2. CO SHPO shall have thirty (30) days to review Master Plan proposed update(s) regarding Building 1 and provide comments regarding Building 1. NIST shall consider these comments in finalizing any updates to the Master Plan.

3. Should NIST decide to vary from or amend discussion of the Building 1 in its approved Master Plan, NIST shall notify CO SHPO and will submit the proposed variances/modifications to the CO SHPO for a thirty-day (30) review and comment period, as necessary. NIST shall consider these comments before modifying provisions regarding Building 1 in the Master Plan or adopting actions for Building 1 that vary from the Master Plan.

B. Development of Design Guidelines for Boulder Laboratories Campus

1. As found in the current Master Plan, NIST shall use relevant provisions in its Design Guidelines for the Boulder Laboratories Campus to ensure a thoughtful and visually pleasing environment by planning for consistent architectural themes that will preserve the look of the historic Building 1 while allowing for compatible future growth and development and fulfilling NIST's program and scientific mission.

2. NIST shall establish a Design Review Board to administer, guide and enforce the Design Guidelines for capital projects affecting the all of the Boulder Laboratories, including Building 1.

3. NIST shall keep a record of decisions regarding Building 1 made by the Design Review Board, and upon request provide copies of those records regarding Building 1 to the CO SHPO.

C. Preservation Principles

1. NIST recognizes and accepts its responsibilities under Sections 106 and 110 of the NHPA and is committed to ensuring that these compliance responsibilities are fulfilled for Building 1.

2. To the extent practicable, NIST shall treat Building 1 in accordance with the SOI Standards*;* provided, however, that nothing contained herein shall require NIST to restore rather than rehabilitate those properties as defined in the SOI Standards.

3. NIST shall avoid adverse effects Building 1 where possible, and when

avoidance of adverse effects is not possible, shall minimize or mitigate the effects in accordance with this PA.

4. Whenever feasible, NIST shall endeavor to keep Building 1 in productive use by maintaining its historic function as a research laboratory and campus gathering area.

5. NIST shall actively encourage the continuing and adaptive use of Building 1 in carrying out its mission at the Boulder Laboratories.

6. Alterations needed to ensure continued use shall not radically change, obscure, or demolish Character-defining features (as defined in Appendix E), spaces, materials, or finishes of Building 1.

7. Additions to Building 1 may be necessary to fulfill NIST's program and scientific mission. If, after thorough consideration, alterations to a Building 1 are judged to be essential, they shall be designed in consultation with the CO SHPO so that, to the greatest extent possible, Character-defining features are not radically changed, obscured, damaged or destroyed.

8. NIST shall give particular attention to avoiding undertakings that may directly or indirectly adversely affect the Character-defining features of Building 1.

9. New construction, additions, and exterior modifications to Building 1 will take into consideration the recommended approaches in the "Setting" and "New Additions to Historic Buildings" sections of the SOI Standards and will consider the NRHP eligible Building 1's significant characteristics, including location, design, setting, and feeling, along with the guidance on scale, massing, setback, and related critical design elements.

10. NIST shall undertake reasonable measures to preserve any unused portion of Building 1 and shall develop a plan to mothball that portion of the building that have been or are to remain vacant for twelve months or longer, according to the general guidance found in National Park Service (NPS) *Preservation Brief 31: Mothballing Historic Buildings, Technical Preservation Services*.

III. Project Reviews

NIST shall use the following review process for undertakings at Building 1.

A. Determine the Undertaking

1. Consistent with 36 C.F.R. § 800.3(a), the FPO shall determine whether the proposed activity constitutes an undertaking.

    a. If the activity is not an undertaking, NIST has no further obligations under Section 106 or this PA.

    b. If the activity is an undertaking, the FPO will proceed to Stipulation

B. Determine if there is No Potential to Cause Effects

1. Pursuant to 36 C.F.R. § 800.3(a)(1), if the FPO determines that the undertaking is the type of activity that has no potential to cause effects, NIST has no further obligations under Section 106 or this PA.

2. If the FPO determines that the undertaking has the potential to cause effects, the FPO will proceed to Stipulation III.C or III.D, as applicable.

C. Programmatic Allowances

1. The FPO shall review the undertaking to determine if the undertaking falls within one or more of the Allowances listed in Appendix B to this PA. Undertakings qualifying for the Allowances must be implemented as specified in Appendix B and shall adhere to SOI Standards. Unless otherwise noted in Appendix B, the Allowances are applicable anywhere at Building 1 and the associated grounds as illustrated in Appendix A to this PA.

    a. If the FPO finds that the undertaking falls within one or more Allowances, NIST shall follow the procedure set forth in Stipulation III.C.2 below.

    b. If the FPO is unclear whether a particular undertaking falls within one or more of the Allowances the FPO will proceed in accordance with Stipulation III.D below.

    c. Programmatic Allowances may be revised and added to this PA in accordance with Stipulation VIII. Appendix B will be amended upon receipt of written concurrence from all signatories, in accordance with Stipulation VIII of this PA.

2. Undertakings Meeting Allowances

    a. The FPO shall document the determination that the undertaking falls

within one or more Allowances in the undertakings file. The FPO shall include this determination in its annual report to the CO SHPO, in accordance with Stipulation IV.B of this PA. No additional consultation is required, and NIST has no further obligations under Section 106 (36 C.F.R. Part 800).

b. Per Stipulation IV.A, the FPO shall maintain appropriate files on all undertakings that fall within the Allowances. Such files will include, at a minimum, the location (*e.g.*, Wings 1, 2, 3, 4, 5, 6; the Spine; Front of the House; or the associated grounds), a description of the proposed undertaking, the name of qualified personnel who provided review, and documentation that the undertaking falls within the Allowances.

3. Changes to an Approved Scope of Work:

The FPO shall enact the following actions to address proposed changes to an approved scope for an undertaking:

a. If the FPO, determines that the change(s) is eligible for the Allowances in Appendix B or has no effect on the property, they will approve the change, document the change, and conclude the Section 106 review responsibilities.

b. If the FPO, determines that the change is not eligible for the Allowances in Appendix B, NIST shall follow the Standard Project Review process (Section 106 process at 36 C.F.R. Part 800).

D. **S**tandard Project Reviews

1. All undertakings that are not eligible for the Allowances as described in Stipulation III and Appendix B, will be reviewed in accordance with the Standard Project Review (Section 106 process at 36 C.F.R. Part 800). Undertakings shall not be segmented into separate undertakings to fit within the Allowances. NIST will follow the Standard Project Review for the following undertakings:

a. Additions or alterations to Building 1; or

b. Where there is a significant change in use of Building 1; or

c. Where a series of individual projects cumulatively results in the complete rehabilitation or restoration of Building 1; or

d. New Construction; or

2. NIST may choose to follow the Standard Project Review process for any undertaking subject to this Agreement.

3. If warranted due to unusual circumstances, the CO SHPO may request that NIST follow the Standard Project Review process for any undertaking subject to this Agreement and NIST shall take under consideration such a request. Any request by the CO SHPO for a Standard Project Review shall be made in writing to the FPO. Any dispute regarding this provision will be governed by Stipulation VII of this Agreement (Dispute Resolution).

F. Adding to List of Allowances in Appendix B

Allowances may be revised and new Allowances may be added to this PA in accordance with Stipulation VIII (Amendment).

G. Emergency Actions

In the case of an emergency, which shall be defined as situations in which there is an immediate threat to life and/or property, affecting Building 1, NIST shall first perform those undertakings necessary to protect life and property. As soon as possible, given the emergency situation and conditions, NIST shall assess the status of Building 1, with on-site monitoring by the FPO. Where practicable, emergency undertakings shall be carried out in a manner that is consistent to the extent practicable with the SOI Standards. This emergency provision is limited to work initiated within ten (10) days of an emergency. Should NIST determine that the ten-day (10) period is insufficient, NIST shall notify and consult with the CO SHPO to extend the emergency period. If an emergency undertaking is required and carried out, NIST shall notify the CO SHPO, in writing, as soon as practical of the need for said emergency undertaking. As part of the notification, NIST shall provide a plan on how the emergency was addressed and shall document any application of the Allowances in Appendix B. The CO SHPO shall have three (3) days to review and comment on the plan to address the emergency.

IV. Reporting and Documentation

A. Documentation

The FPO shall maintain a file on all work accomplished using the Allowances in Appendix B. Such files will include, at a minimum, the property name and number, a description of the proposed undertaking, the name of qualified personnel who provided

review, and documentation that the undertaking falls within the Allowances.

B. Annual Reporting

1. The FPO shall provide to the CO SHPO an annual report on January 31, and every twelve (12) months thereafter until it expires or is terminated. The annual status report will address the following:

a. Undertakings implemented at Building 1 during the reporting period that conformed to the Programmatic Allowances as set forth in Stipulation III.C.2 and Appendix B, including, at a minimum, the project's common name, location at Building 1, a short description of the undertaking, and the Allowance utilized;

b. Undertakings implemented during the reporting period under Stipulation III.D, including, at a minimum, the building name and number, and a short description of the undertaking;

c. The number of Standard Project Reviews conducted during the reporting period;

d. Any cases of post-review discovery or unanticipated effects;

e All training activities related to the implementation of this PA, during the reporting period; and

f A summary of anticipated projects and issues in the coming year.

C. Meetings

1. The FPO and the CO SHPO shall meet twice annually during the first year of this PA and thereafter on an as-needed basis but not less than once annually to review the work pursuant to this PA.

2. NIST shall schedule and host the meetings.

V. Unanticipated Discoveries

A. In the event of an unexpected discovery, or if it appears that an undertaking has affected a previously unidentified property or affected Building 1in an unanticipated manner, the FPO shall as appropriate, within 48 hours, notify CO SHPO and:

1. Take all reasonable measures to avoid or minimize harm to the property until NIST has completed consultation with the CO SHPO.

2. Consult with the CO SHPO to evaluate the effects of the undertaking on Building 1.

3. If human remains are discovered, notify the local law enforcement office and coroner/medical examiner and consult with the Colorado State Archeologist, in accordance with applicable law.

VI. Anti-deficiency Act

NIST's obligations under this PA are subject to the availability of appropriated funds, and the stipulations of this PA are subject to the provisions of the Anti-Deficiency Act. NIST shall make reasonable and good faith efforts to secure necessary funds to implement this PA in its entirety. If compliance with the Anti-Deficiency Act alters or impairs NIST's ability to implement the stipulations of this PA, NIST shall consult to develop an amendment in accordance with Stipulation VIII of this PA. No provision of this PA will be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341.

VII. 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, NIST shall consult with such party to resolve the objection. If NIST determines that such objection cannot be resolved NIST will:

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

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

VIII. Amendment

A. Any signatory to this PA may request that it be amended, whereupon the parties shall consult to consider the proposed amendment. This PA may be amended only upon written concurrence of all signatory parties.

B. The Appendices may be amended at the request of NIST in the following manner:

1. NIST shall notify the CO SHPO of the intent to modify the current Appendix and shall provide a draft copy of the updated Appendix to the CO SHPO.

2. If the CO SHPO does not object in writing within 30 days of receipt of NIST's proposed modification, NIST shall date and sign the amended Appendix and provide a copy of the amended Appendix the CO SHPO.

IX. Termination

NIST or the CO SHPO may terminate this PA by providing thirty (30) days notice to the other signatory provided that the parties will consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. In the event of termination, NIST will comply with 36 C.F.R. § 800.4 through 36 C.F.R. § 800.6 regarding individual undertakings covered by this PA.

X. Severability

In the event any provision of this PA is deemed to be contrary to, or in violation of any applicable existing law or regulation of the United States of America, only the conflicting provision(s) shall be deemed null and void, and the remaining provisions of the PA shall remain in effect.

XI. Duration and Extension

This PA shall become effective upon execution by CO SHPO and NIST and shall remain in effect until December 31, 2030. At any time in the six-month period prior to this date, the signatory parties shall consult to consider an extension or amendment of the PA. The PA may be extended for additional terms upon the written agreement of NIST and the CO SHPO.

Execution of this PA by NIST and the CO SHPO, and implementation of its terms evidence that NIST has afforded the ACHP a reasonable opportunity to comment on management of Building 1 at NIST’s Boulder Laboratories and that NIST has taken into account the effects of its ongoing management on Building 1 and fully satisfies its responsibilities under Section 106 of the NHPA for all individual undertakings subject to review under this PA.

NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY

By: ROBERT VAUGHN Digitally signed by ROBERT VAUGHN Date: 2020.12.23 08:09:42 -05'00' Date: _____

Robert (Skip) Vaughn
Chief Facilities Management Officer and the
Director of the Office of Facilities and Property Management

COLORADO STATE HISTORIC PRESERVATION OFFICER

By: Dr. Holly Kathryn Norton Digitally signed by Dr. Holly Kathryn Norton Date: 2020.12.22 08:47:42 -07'00' Date: _____

Steve W. Turner, AIA
State Historic Preservation Officer

APPENDIX D

Programmatic Agreement Between NIST and CO SHPO