

Appendix B
106 Memorandum of Agreement between FTA, RTD, and
SHPO

**MEMORANDUM OF AGREEMENT
REGARDING THE EAST CORRIDOR COMMUTER RAIL PROJECT
IN DENVER, AURORA, AND ADAMS COUNTY, COLORADO**

IMPACTS TO:

5DV840.13: Derby Lateral (High Line Canal Lateral A Extension/Segment "The Doherty Ditch")

5DV9309: 35th and Blake St. LLC

5DV9501: Freedom Cab Company

The Parties to this Memorandum of Agreement (MOA) are the Federal Transit Administration (FTA), the Colorado State Historic Preservation Officer (SHPO), and the Denver Regional Transportation District (RTD), a regional transit authority organized and existing under the laws of the State of Colorado.

WHEREAS, Section 106 of the National Historic Preservation Act, 16 USC 470 *et seq.* requires Federal Agencies to take into account the effects of their undertakings on historic properties and afford the ACHP a reasonable opportunity to comment on such undertakings; and

WHEREAS, the proposed federally assisted undertaking is the construction and operation of the East Corridor (the Project), for which the National Environmental Policy Act (NEPA) process is currently underway; and

WHEREAS, the Project consists of the construction of a two-track commuter rail line that will begin at Denver Union Station (DUS) and follow the Union Pacific railroad (UPRR) corridor north and east between DUS and Airport Boulevard. At Airport Boulevard near Smith Road, the alignment heads north and then east to terminate at Denver International Airport (DIA) for a total distance of 22.8 miles. The Project also includes a Commuter Rail Maintenance Facility (CRMF) at the Fox North site. Mitigations for impacts resulting in adverse effects to resources by the CRMF are included in the Memorandum of Agreement Regarding the Gold Line Preferred Alternative; and

WHEREAS, the FTA has determined that the construction of the Project in Denver and Aurora, Colorado, will have adverse effects on historic properties (5DV840.13, 5DV9309, and 5DV9501) which are included in or have been determined to be eligible for inclusion in the National Register of Historic Places, and has consulted with the SHPO, consulting parties, and the ACHP pursuant to 36 CFR Part 800, regulations implementing Section 106 of the National Historic Preservation Act (16 USC 470f); and

WHEREAS, the SHPO is authorized to enter into this MOA in order to fulfill its role of advising and assisting Federal agencies in carrying out their Section 106 responsibilities under the following federal statutes: Section 101 and 106 of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. § 470f, and pursuant to 36 CFR Part 800, regulations implementing Section 106 at §§ 800.2(c)(1)(i) and 800.6(b); and

WHEREAS, in accordance with 36 CFR 800.6(a)(1), FTA has notified ACHP of its adverse effect determination by providing the documentation specified in Sec. 800.11(e) on May 7, 2009. The Advisory Council on Historic Preservation did not reply with a request to participate in the consultation process, and

WHEREAS, 36 CFR 800.6(b)(iv) provides that if the agency official and the SHPO/THPO agree on how the adverse effects will be resolved, they shall execute an MOA; and

WHEREAS, RTD has participated with the FTA, and consulting parties in the consultation with the SHPO and has been invited to concur in the MOA to reflect its commitment to the measures described in this agreement;

NOW THEREFORE, FTA, SHPO, and RTD hereto agree to a resolution of the adverse effects of the undertaking to be implemented in accordance with the following stipulations:

STIPULATIONS

FTA shall ensure that the following measures are implemented:

I. MITIGATION

A. RESOURCE PROTECTION

FTA has determined in consultation with the SHPO that the construction of the Project will have an adverse affect on the 35th and Blake St. LLC and the Freedom Cab Company.

5DV9309: 35th and Blake St. LLC. The Project would cross through the northern edge of the property as it approaches the 38th/Blake station. The Project would require a potential partial acquisition of approximately 0.27 acres of the property (34 percent), resulting in an adverse effect.

5DV9501: Freedom Cab Company. Roadway improvements associated with the Project would shift the existing alignment of Smith Road south onto the north edge of the resource property. The roadway improvements would require a potential partial acquisition of approximately 0.08 acres (18 percent) from the property, resulting in an adverse effect.

The parties have developed the following mitigation measures to reduce or mitigate the identified adverse effects on the properties:

1. RTD shall incorporate special conditions into the construction documents to ensure that the affected resource is protected during construction.

B. ARCHIVAL DOCUMENTATION

FTA has determined in consultation with the SHPO that the construction of the Project will have an adverse affect on the Derby Lateral (High Line Canal Lateral A Extension/Segment "The Doherty Ditch").

5DV840.13: Derby Lateral (High Line Canal Lateral A Extension/Segment "The Doherty Ditch"). The Derby Lateral is recorded as eligible for the NRHP under the name High Line Canal Lateral A Extension/Segment "The Doherty Ditch". The Project would adversely affect 0.23 acres of the Derby Lateral where the mainline crosses the canal on the east side of Peña Boulevard. The canal would likely be enclosed underground through a culvert at this location, which is an adverse effect to this resource.

The parties have developed the following mitigation measures to reduce or mitigate the identified adverse effects on the properties:

1. Prior to commencing construction, RTD will conduct Colorado Historical Society, Office of Archaeology and Historic Preservation (OAHP) Level II documentation to accurately record the features of each impacted segment of the historic linear resources identified above.
2. RTD shall ensure that this historic resource is documented in accordance with the guidance for Level II documentation found in *OAHP form #1595, Historical Resource Documentation: Standards for Level I, II, III Documentation*. RTD shall consult with the SHPO to determine appropriate Level II recordation measures.
3. RTD shall ensure that all documentation activities will be performed or directly supervised by, architects, historians, photographers, and/or other professionals meeting the qualification standards for their field in the Secretary of Interior's Professional Qualifications Standards (36 CFR 61, Appendix A).
4. RTD shall provide originals of all documents resulting from the documentation to the SHPO and to a local library or archive.

C. REVIEW AND COMMENT

RTD shall afford the SHPO thirty (30) days from the date of transmittal to review and respond to any reports, plans, specifications or other documentation provided for review pursuant to this MOA.

II. DURATION

This MOA shall be null and void if its terms are not carried out within five (5) years from the date of its execution. Prior to such time, FTA may consult with the other signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation V below. This MOA shall be effective upon signing by all parties (FTA, SHPO, and RTD).

III. POST-REVIEW DISCOVERIES

In the event that one or more historic properties, other than those discussed in this MOA, are discovered or that unanticipated effects on historic properties are found during the implementation of this MOA, the FTA shall follow the procedure specified in 36 C.F.R. 800.13.

This stipulation specifies procedures to be followed by all RTD employees and all RTD contractors and subcontractors should any archaeological, historic, or paleontological resources be discovered during construction of the project.

- A. Immediately suspend construction operations in the vicinity of the discovery if a suspected historic, archeological, or paleontological item, feature, prehistoric dwelling site or artifact of historic or archeological significance is encountered.
- B. Notify the RTD Project Manager for the project verbally of the nature and exact location of the discovery.
- C. The RTD Project Manager for the project immediately will contact the SHPO and will consult with a qualified historian or archeologist to advise SHPO and RTD regarding the significance and recommended disposition of the discovery. The RTD Project Manager for the Project will protect the discovered objects from damage, theft, or other harm while the procedures of this stipulation are being carried out.

IV. MONITORING AND REPORTING

Each year following the execution of this MOA until it expires or is terminated, RTD, on behalf of FTA, shall provide all parties and signatories to this MOA a summary report detailing work undertaken pursuant to its terms. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes and/or objections received regarding RTD and FTA's efforts to carry out the terms of this MOA. Failure to provide such summary report may be considered noncompliance with the terms of this MOA pursuant to Stipulation V, below.

V. DISPUTE RESOLUTION

Should any signatory to this MOA, including the invited signatory, object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, FTA and SHPO shall consult and attempt to resolve the dispute. If FTA determines, within 30 days, that the dispute cannot be resolved, FTA, may:

- A. Forward all documentation relevant to the dispute to ACHP in accordance with 36 CFR 800.2(b)(2). Upon receipt of adequate documentation, ACHP shall review and advise FTA on the recommended resolution of the dispute within 30 days. Any comment provided by the ACHP shall be taken into account by FTA in reaching a final decision regarding the dispute.
- B. If ACHP does not provide comments regarding the dispute within 30 days after receipt of adequate documentation pursuant to 36 CFR 800.11, FTA may render a decision regarding the dispute. In reaching its decision, FTA shall take into account all comments from other signatories regarding the dispute.
- C. FTA's responsibility to carry out all other actions subject to the terms of this MOA, that are not the subject of the dispute, remain unchanged. FTA shall notify the SHPO of its decision in writing before implementing that portion of the undertaking subject to dispute under this Stipulation. FTA's decision shall be final.

VI. AMENDMENTS AND NONCOMPLIANCE

If any signatory to this MOA, including the invited signatory, determines that its terms shall not or cannot be carried out or that an amendment to its terms must be made, that party shall immediately consult with the other parties to develop an amendment to this MOA pursuant to 36 CFR 800.6(c)(7) and 800.6(c)(8). The amendment shall be effective on the date a copy signed by all of the original signatories is filed with ACHP. If the signatories cannot agree to appropriate terms to amend the MOA, any signatory may terminate the MOA in accordance with Stipulation VII, below.

VII. TERMINATION

If the MOA is not amended following the consultation set out in Stipulations V and VI above, it may be terminated by any signatory. Within 30 days following the termination, the FTA shall notify the SHPO whether or not it shall initiate consultation to execute a new MOA under 36 CFR 800.6(c)(1) and proceed accordingly.

Execution of this MOA by FTA, SHPO, RTD and the other parties and submission of this MOA to ACHP pursuant to 36 CFR 800.6(b)(1)(iv) prior to FTA's approval of this undertaking, and implementation of its terms evidence that FTA has taken into account the effects of this undertaking on historic properties and afforded ACHP an opportunity to comment.

SIGNATORIES:

FEDERAL TRANSIT ADMINISTRATION, REGION VIII

By: Charmaine Knudtson Date: 8/14/09
Terry J. Rosapep, Regional Administrator

COLORADO STATE HISTORIC PRESERVATION OFFICER

By: AWF Date: 8/27/09
Edward C. Nichols, SHPO

INVITED SIGNATORIES:

REGIONAL TRANSPORTION DISTRICT

By: Phillip A. Washington Date: 9/11/09
Phillip A. Washington, Interim General Manager