



APPENDIX H

**Memorandum of Understanding between
Federal Transit Administration and Regional
Transportation District Regarding the
Public/Private Partnership**

NON-BINDING MEMORANDUM OF UNDERSTANDING
Denver Regional Transportation District's Participation
in FTA's Public-Private Partnership Pilot Program

1.0 Purpose

The Federal Transit Administration ("FTA") and the Regional Transportation District of Denver, Colorado, ("Denver RTD") are executing this Non-Binding Memorandum of Understanding ("MOU") to set forth their mutual understandings and expectations concerning FTA's financial support of Denver RTD's East and Gold Line commuter rail lines (collectively, the "Project"), Denver RTD's participation in FTA's Public-Private Partnership Pilot Program (the "Pilot Program"), and the Major Capital Investment ("New Starts") requirements that may apply to the Project. The undersigned acknowledge that this MOU may be amended from time to time by written agreement executed by FTA and Denver RTD to account for any statutory or regulatory change, change to the Project as proposed, or change to Denver RTD's project management or financing plans or as otherwise necessary or appropriate.

2.0 Background

On July 23, 2007, FTA selected the Project as a Pilot Project under the Pilot Program. The Project consists of the East and Gold Line commuter rail lines and their shared commuter rail maintenance facility. The East Line will extend 23.6 miles from Denver Union Station in downtown Denver to Denver International Airport. The Gold Line will extend 11.2 miles from Denver Union Station to the vicinity of Ward Road, passing through northwest Denver, unincorporated Adams County, Arvada and Wheat Ridge. The Project is scheduled to begin construction in 2011 and to be completed by 2015.

Denver RTD plans to deliver the Project as a Public-Private Partnership ("PPP"). A detailed description of the PPP structure planned for this project can be found in Denver RTD's application to the Pilot Project, a copy of which is incorporated into this MOU by reference and attached hereto as Attachment 2.

Denver RTD plans to solicit private-sector partners to design, finance, build, operate and maintain both lines and their shared maintenance facility as a single project. FTA and Denver RTD will consider both lines a single project for purposes of the Pilot Program even though the corridors are separated into two projects for purposes of FTA's New Starts program.

3.0 The Pilot Program

On January 19, 2007, FTA established the Pilot Program to demonstrate the advantages and disadvantages of PPPs for certain new fixed guideway capital

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projects. The Pilot Program is authorized by Section 3011(c) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users ("SAFETEA-LU"). In particular, the Pilot Program is intended to study whether, in comparison to conventional procurements, PPPs better reduce and allocate risks associated with new construction, accelerate project delivery, improve the reliability of projections of project costs and benefits, and enhance project performance. Section 3011(c) of SAFETEA-LU sets forth generally the terms and conditions of the Pilot Program. The definitive terms of the Pilot Program are described in FTA's January 19, 2007, Federal Register Notice, 72 *Federal Register* 2583 (the "Definitive Program Terms"), attached hereto as Attachment 1. Nothing herein shall supersede or modify the Definitive Program Terms.

4.0 Benefits

FTA may confer certain benefits on Denver RTD through the Pilot Program, subject to the Definitive Program Terms. FTA budget recommendations and other final approvals with respect to the Project—together with any procedural or rating benefits received by the Project under the Pilot Program prior to a funding recommendation—will be conditioned on Denver RTD and its private partner(s) entering into a Public-Private Partnership Agreement with respect to the Project that, in the opinion of FTA, safeguards the "Federal interest" in the Project. If Denver RTD fails to enter into such a Public-Private Partnership Agreement, FTA will rescind the procedural and substantive benefits received by Denver RTD and remove the Project from the Pilot Program. Budget recommendations and funding decisions will be subject to approval by the U.S. Office of Management and Budget ("OMB").

Potential benefits include but are not limited to the following:

- 4.1 Federal Financial Assistance.** To the extent the East or Gold Lines are candidates for funding under FTA's New Starts program in an amount of \$25 million or more, FTA will rate and evaluate separate New Starts submissions for each line in accordance with the rating scheme of the New Starts program, as adjusted to account for its "demonstration value," including benefits discussed in the Definitive Program terms. Subject to approval by the OMB, FTA will include each line in the President's Budget to Congress for New Starts funding upon receiving an overall rating of Medium or higher and a cost-effectiveness rating of Medium or higher, as adjusted for demonstration value.

In the event the East and/or Gold Lines qualify for funding under the New Starts program and a Letter of Intent (LOI) is issued, FTA may allocate funds from amounts appropriated for the New Starts

program for Fiscal Year 2009 or subsequent Fiscal Years, in each case subject to approval by OMB.

4.2 Procedural and Regulatory Benefits. FTA may afford Denver RTD certain procedural and regulatory benefits, including but not limited to streamlining environmental review and approval; expediting and consolidating preliminary engineering and final design approvals; expediting right-of-way acquisition approvals; issuing LOIs to allocate New Starts funds prior to signing Full Funding Grant Agreements; relying on contractual terms and conditions, cost and schedule controls, and cost and performance guarantees in the Public-Private Partnership Agreement instead of FTA's standard Risk Assessment and financial reviews; accepting without further review projections of transportation user benefits on the basis of which cost-effectiveness and mobility measures for the Project's rating will be developed, subject to Denver RTD's Public-Private Partnership Agreement.

5.0 Project Development and Reporting

Denver RTD will submit grant applications to FTA by December 31, 2009. Such applications shall include an updated project schedule, finance plan, description of the Project and other reasonably significant updated Project information. The conditions for funding for the Project may include a number of mutually agreeable reporting requirements for purposes of FTA's evaluation of the Project as a Pilot Project.

6.0 Information

With its application to the Pilot Program, Denver RTD submitted a schedule and finance plan for the construction and operation of the Project and an analysis of the costs, benefits, and efficiencies of the proposed Public-Private Partnership Agreement (the "Application Documents"). FTA expects Denver RTD promptly to provide FTA and its consulting contractors all successive iterations of the Application Documents prior to FTA's approval of the Project for funding, together with any amendments to (or notice of disputes arising under) any of the Application Documents once executed. FTA expects Denver RTD to make available to FTA and its consulting contractors all documents and information that FTA deems necessary for an evaluation of the Project as a Pilot Project, subject to FTA entering into confidentiality agreements with Denver RTD or other parties, as appropriate.

7.0 Review and Comment

FTA and Denver RTD will expedite their review of the administrative drafts of NEPA documents, if applicable, project management and financing plans, scopes of work, budgets, schedules, and the like by forwarding those documents to the contact persons identified below. FTA and Denver RTD will make every reasonable effort to complete their reviews of study deliverables, technical reports, and the like, within thirty days of receiving the material for review.

8.0 Contacts

FTA and Denver RTD have designated contact persons who will act as day-to-day liaisons on all matters related to the Pilot Program. The contact persons shall be available, with adequate notice, to attend and participate in coordination meetings or otherwise provide timely input into the preparation and review of all documents necessary to the development of the Project.

FTA has designated David Beckhouse as the contact person for FTA who will act as FTA's day-to-day liaison with RTD and whose contact information is:

David Beckhouse
12300 West Dakota Ave.
Suite 310
Lakewood, CO 80228-2583
(720) 963-3306
david.beckhouse@dot.gov

Denver RTD has designated Bill Van Meter as the contact person for Denver RTD, whose contact information is:

Bill Van Meter
1560 Broadway
Suite 700
Denver, CO 80202
(303) 299-2448
Bill.VanMeter@rtd-fastracks.com

9.0 Amendments

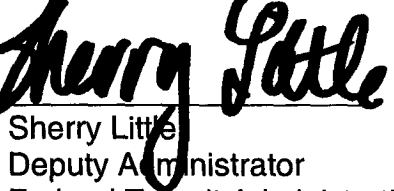
Amendments to this MOU may be proposed at any time by either party and will become effective only upon approval in writing by both FTA and Denver RTD.

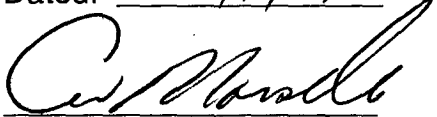
10.0 Attachments

For reference by the parties, the attachments identified below are made part of this MOU.

Attachment 1 January 19, 2007, Federal Register Notice Establishing the
Public-Private Partnership Pilot Program

Attachment 2 Denver RTD's Pilot Program Application

Dated: 12/6/2007

Sherry Little
Deputy Administrator
Federal Transit Administration

Dated: 12/10/07

Clarence W. Marsella
General Manager
Denver Regional Transportation District