

**MEMORANDUM OF AGREEMENT
AMONG
THE FEDERAL HIGHWAY ADMINISTRATION,
THE COLORADO STATE HISTORIC PRESERVATION OFFICER,
AND THE COLORADO DEPARTMENT OF TRANSPORTATION
REGARDING
CDOT PROJECT STA C510-024 (Subaccount #17797), GUARDRAIL REPLACEMENT,
CLEAR CREEK AND JEFFERSON COUNTIES**

WHEREAS, the Federal Highway Administration (FHWA) and the Colorado Department of Transportation (CDOT) propose to construct CDOT Project STA C510-024 (Subaccount #17797), which involves the resurfacing of the highway between mileposts 270.8 to 273.9. Guardrail is subject to replacement between mileposts 269.5 and 271.5 and will be reset with corrosion-resistant rail to improve safety along the top of Floyd Hill; and

WHEREAS, the Colorado Department of Transportation (CDOT) carries out activities for Federal-Aid transportation projects on behalf of FHWA, including consultation under Section 106 of the National Historic Preservation Act (Section 106) (54 U.S.C. § 307108) and the Advisory Council on Historic Preservation's (Council) regulations (36 CFR Part 800), National Environmental Policy Act (NEPA) analysis, and construction contract administration; and FHWA has consulted with CDOT regarding the effects of the Project on historic properties and has invited them to sign this MOA as a signatory; and

WHEREAS, CDOT, in consultation with the Colorado State Historic Preservation Officer (SHPO) and in accordance with 36 CFR § 800.4(a)(1), has established the Project's Area of Potential Effects (APE) as including all areas to be developed as part of the Project, including all right of way, temporary and permanent easements and construction staging areas; and

WHEREAS, CDOT, in consultation with the SHPO and in accordance with 36 CFR § 800.4(b) and § 800.4(c), has inventoried historic properties within the Project APE. A historic survey of the project APE was conducted and resulted in the identification of two segments of US Highway 40: 5JF.2660/5CC.171.6 and 5CC.171.7. 5JF.2660/5CC.171.6 was previously determined in 2013 to support the eligibility of US 40, which is eligible to the National Register of Historic Places (NRHP), and the other segment (5CC.171.7) was determined to support the eligibility of the overall resource in 2015.

WHEREAS, CDOT has determined that the Project will have an adverse effect on the following historic property, and has consulted with the SHPO, pursuant to 36 CFR Part 800, regulations implementing Section 106 of the National Historic Preservation Act (54 U.S.C. § 306108):

US Highway 40 (5CC171/5JF2660): 5CC171/5JF2660 is a section of US 40 in Clear Creek and Jefferson counties constructed between 1936 and 1938 with assistance from the PWA, a program of the New Deal. The overall resource is eligible for inclusion in the National Register of Historic Places (NRHP) and State Register of Historic Places (SRHP) as an Engineered Highway identified by the Multiple Property Documentation Form (MPDF) Colorado's Roads and Highways. The resource is significant under Criterion A in the areas of Transportation and

Politics/Government for its association with early highway construction in the mountains and New Deal-era programs. The resource is also significant under Criterion C in the area of Engineering as a representation of one of six major highway projects undertaken by the Colorado Department of Highways in the late 1930s. The subject segments are considered supporting of the eligibility of the overall resource; and

WHEREAS, in accordance with 36 CFR Section 800.6(a)(1), FHWA has notified the Council in correspondence dated October 14, 2015 of the adverse effect determinations with specified documentation, and in a letter dated October 16, 2015 the Council has elected not to participate in the consultation pursuant to 36 CFR Section 800.6(a)(1)(iii); and

NOW, THEREFORE, FHWA, SHPO, and CDOT agree that the Project shall be implemented in accordance with the following stipulations in order to take into account the effect of the Project on historic properties.

STIPULATIONS

The FHWA shall ensure that the following stipulations are implemented:

I. AREA OF POTENTIAL EFFECT

The Project's APE consists of the existing CDOT ROW between mileposts 269.44 and 273.9. The APE was developed in consultation with SHPO and was defined to consider both direct and indirect effects. The APE is depicted in **Attachment A** to this MOA. Attachment A hereunder may be amended through consultation among the signatory parties without amending the MOA proper.

II. MITIGATION

A. ARCHIVAL DOCUMENTATION

The guardrail between mileposts 269.5 and 271.5 shall be photographed prior to replacement so that there will be a permanent record of its present appearance and setting. Recordation shall consist of archivally-stable medium format photography and a descriptive and historical narrative of the roadway segment within the APE. All documentation must be accepted by the SHPO prior to the start of construction. CDOT shall:

- (i) ensure that *US 40 Segment* will be documented in accordance with the standards required for Level II documentation found in *OAHP form #1595, Historical Resource Documentation: Standards for Level I, II, III Documentation*, and
- (ii) 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 Part 61, Appendix A), and
- (iii) provide originals of the documentation to the SHPO and the Denver Public Library.

III. DISCOVERIES AND UNANTICIPATED EFFECTS

If FHWA, or CDOT on behalf of FHWA, determines the Undertaking will affect a previously unidentified property that may be eligible for the NRHP, or affect a known historic property in an unanticipated manner, these agencies will address the discovery or unanticipated effect in accordance with 36 CFR § 800.13(b).

IV. ADMINISTRATIVE PROVISIONS

A. MONITORING AND REPORTING

Reporting for this agreement shall be included in the Section 106 Annual Tracking Report as provided in Section XIII (B) of the June 2014 *Programmatic Agreement Among the Federal Highway Administration, the Advisory Council on Historic Preservation, the Colorado State Historic Preservation Officer, and the Colorado Department of Transportation Regarding Compliance with Section 106 of the National Historic Preservation Act (NHPA) as it Pertains to the Administration of the Federal Aid Highway Program in Colorado*.

B. CONFIDENTIALITY

The MOA parties acknowledge that the historic properties covered by this MOA are subject to the provisions of Section 304 of the NHPA (54 U.S.C. § 307103), relating to the disclosure of information to the public about the location, character, or ownership of the historic resource. If the federal agency determines, after consultation with the Secretary of Interior, that the disclosure may risk harm to the historic resource, and, having so acknowledged, it will ensure that all actions and documentation prescribed by this MOA are consistent with said sections.

C. DISPUTE RESOLUTION

Should any party to this agreement object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, FHWA shall consult with the objecting party(ies) to resolve the objection. If FHWA determines, within 30 days, that such objection(s) cannot be resolved, FHWA will:

1. Forward all documentation relevant to the dispute to the Council in accordance with 36 CFR Section 800.2(b)(2). Upon receipt of adequate documentation, the Council shall review and advise FHWA on the resolution of the objection within 30 days. Any comment provided by the Council, and all comments from the parties to the MOA, will be taken into account by FHWA in reaching a final decision regarding the dispute.
2. If the Council does not provide comments regarding the dispute within 30 days after receipt of adequate documentation, FHWA may render a decision regarding the dispute.

In reaching its decision, FHWA will take into account all comments regarding the dispute from the parties to the MOA.

3. FHWA'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. FHWA will notify all parties of its decision in writing before implementing that portion of the Project subject to dispute under this stipulation. FHWA's decision will be final.

D. AMENDMENTS

Any signatory party to this MOA may propose that this MOA be amended, whereupon all signatory parties shall consult for no more than 30 days to consider such amendment. If any signatory to this MOA, including any invited signatory, determines that its terms will 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 will be effective on the date a copy signed by all of the original signatories is filed with the Council. If the signatories cannot agree to appropriate terms to amend the MOA, any signatory may terminate the agreement in accordance with Stipulation IV.E, below.

E. TERMINATION

1. If this MOA is not amended as provided for in Stipulation IV.D, or if a signatory party proposes termination of this MOA for other reasons, the signatory party proposing termination shall, in writing, notify the other MOA parties, explain the reasons for proposing termination, and consult with the other parties for at least 30 days to seek alternatives to termination.
2. Should such consultation result in an agreement on an alternative to termination, the signatory parties shall proceed in accordance with the terms of that agreement.
3. Should such consultation fail, the signatory party proposing termination may terminate this MOA by promptly notifying the other MOA parties in writing. Termination hereunder shall render this MOA without further force or effect.
4. If this MOA is terminated hereunder, and if FHWA determines that the Project will nonetheless proceed, then FHWA shall comply with the requirements of 36 CFR800.3-800.6.

F. DURATION


1. This MOA shall take effect when FHWA files it with the Council.
2. Unless terminated pursuant to Stipulation IV.E, or superseded by an amended MOA, this MOA will remain in effect until FHWA, in consultation with the other signatory parties, determines that all of its stipulations have been satisfactorily fulfilled.

EXECUTION of this MOA by FHWA, SHPO, and CDOT, its filing with the Council pursuant to 36 CFR Section 800.6(b)(1)(iv) prior to FHWA's approval of this Project, and implementation of its terms shall evidence that the Corps and FHWA have taken into account the effects of this Project on historic properties and afforded the Council an opportunity to comment.

SIGNATORIES:


Federal Highway Administration

By:  Date 12/17/15

 John M. Cater, P.E., Division Administrator

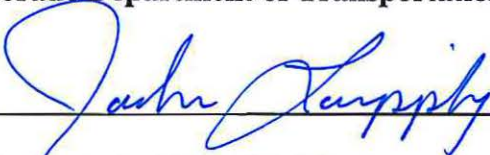
Colorado State Historic Preservation Officer

By:  Date 12/17/15

 Steve Turner, A.I.A., State Historic Preservation Officer

INVITED SIGNATORIES:

Colorado Department of Transportation

By:  Date 12/17/2015

Joshua Laipply, P.E., Chief Engineer

3. The terms of this MOA shall be satisfactorily fulfilled within five years following the date of execution by the signatory parties. If FHWA determines that this requirement cannot be met, the MOA parties will consult to reconsider its terms. Reconsideration may include continuation of the MOA as originally executed, amendment of the MOA, or termination. In the event of termination, FHWA will comply with Stipulation IV.E.4 if it determines that the Project will proceed notwithstanding termination of this MOA.
4. If the Project has not been implemented within five years following execution of this MOA, this MOA shall automatically terminate and have no further force or effect. This time frame can be expanded if agreed to in writing by the signatory parties prior to the expiration date. Prior to such time, FHWA may consult with the signatories to reconsider the terms of the agreement and amend it in accordance with Stipulation IV (C).

ATTACHMENT A
AREA OF POTENTIAL EFFECTS MAP

APE MAP: Project STA C510-024 (17797)
US 40 (5JF2660/5CC171) Guardrail Replacement
Created June 26, 2015



The information contained in this map is based on the most currently available data and has been checked for accuracy. CDOT does not guarantee the accuracy of any information presented, is not liable in any respect for any errors or omissions, and is not responsible for determining "fitness for use."

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Map prepared by Dianna Litvak, D/I Historians

