

**MEMORANDUM OF AGREEMENT  
AMONG  
THE U.S. ARMY CORPS OF ENGINEERS,  
THE COLORADO STATE HISTORIC PRESERVATION OFFICE,  
AND PARKER JORDAN METRO DISTRICT  
FOR  
SITE 5AH3216, ARAPAHOE COUNTY, COLORADO**

WHEREAS the US Army Corps of Engineers (Corps) may issue permits pursuant to Section 404 of the Clean Water Act (as amended by P.L. 91-604), and the issuance of these permits constitutes a federal undertaking; and

WHEREAS the undertaking consists of the issuing a Regulatory permit to Parker Jordan Metropolitan District (PJMD) for proposed work along Cherry Creek in Arapahoe County, Colorado, and is geared towards making it more compatible with the aquatic environment; and

WHEREAS, Corps has defined the undertaking's area of potential effect (APE) as the permit area (the location of the segment of the canal to be relocated and the adjacent uplands); and

WHEREAS, the Corps has determined that the undertaking, the applicant's proposal to conduct work along Cherry Creek, will have an adverse effect upon Site 5AH3216 which is eligible for listing on the National Register of Historic Places (Register) and has consulted with the Colorado State Historic Preservation Office (SHPO) regarding the proposed relocation;

WHEREAS, the Corps has consulted with the SHPO pursuant to 36 CFR Part 800, regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. S 470f); and

WHEREAS, the Corps has contacted the Northern Cheyenne and the Northern Arapahoe Tribes and they have not expressed an interest in participating; and

WHEREAS, in accordance with 36 C.F.R. § 800.6(a)(1), the Corps has notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect determination with specified documentation and the ACHP has chosen not to participate in the consultation pursuant to 36 CFR § 800.6(a)(1)(iii); and

WHEREAS the Corps shall ensure that the following stipulations are carried out; and

NOW THEREFORE, the Corps, PJMD, and the 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 the historic property:

I. STIPULATIONS

The Corps will ensure that the proposed Parker Jordan Centennial Open Space Project permit issued by the Corps to PJMD will require that PJMD carry out the following measure:

The impacted segment of Site 32AH3216 will be mitigated according to the mitigation plan attached hereto as Appendix A.

Execution of this Memorandum of Agreement by the Corps, PJMD, and the SHPO and carrying out the terms of the Memorandum of Agreement evidences that the Corps has satisfied its Section 106 compliance responsibilities for the permit number NWO-2009-02909-DEN and that the Corps has taken into account the effects of the project on historic preservation.

## II. DURATION OF AGREEMENT

This agreement will be null and void if its terms are not carried out within three years of the project contract award date. Prior to such time, PJMD may consult with the other signatories to reconsider the terms of the agreement and amend this document in accordance with *Amendments and Noncompliance* section below. The completion of all stipulations to the satisfaction of the signatory parties will constitute fulfillment of this agreement and its termination.

## III. MONITORING AND REPORTING

Any signatory party may request the Corps provide all parties to this agreement an annual summary report detailing work undertaken pursuant to its terms. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes and objections received in the Corps efforts to carry out the terms of this agreement. Failure to provide such summary report may be considered noncompliance with the terms of this MOA pursuant to the *Amendments and Noncompliance* section below.

## IV. DISPUTE RESOLUTION

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

- a. 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 the Corps 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 the Corps in reaching a final decision regarding the dispute.
- b. If the Council does not provide comments regarding the dispute within 30 days after receipt of adequate documentation, the Corps may render a decision regarding the dispute. In reaching its decision, the Corps will take into account all comments regarding the dispute from the parties to the MOA.
- c. The Corps' responsibilities to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remain unchanged. The Corps will notify all parties of its decision in writing before implementing that portion of the

undertaking subject to dispute under this stipulation. The Corps' decision will be final.

V. AMENDMENTS AND NONCOMPLIANCE


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 this agreement in accordance with the Termination section below.

VI. TERMINATION

If an MOA is not amended following the consultation set out in the Dispute Resolution section, it may be terminated by any signatory or invited signatory. Within 30 days following the termination, the Corps shall notify the signatories if it will initiate consultation to execute an MOA with the signatories under 36 CFR 800.6(c) (1) or request the comments of the Council under 36 CFR 800.7(a) and proceed accordingly.


**SIGNATORIES:**

**COLORADO STATE HISTORIC PRESERVATION OFFICER**

By:   
for Edward C. Nichols Deputy SHPO  
Colorado State Historic Preservation Officer

Date: 8-2-2011

**US ARMY CORPS OF ENGINEERS**

By:   
Robert J. Ruck  
Colonel, Corps of Engineers  
District Commander

Date: 12 August 11

**INVITED SIGNATORIES:**

**PARKER JORDAN METROPOLITAN DISTRICT**

CONCUR:   
Bob Blodgett  
District Manager

Date: 8-26-11