

## **APPENDIX D**

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# **Memorandum of Agreement**



**MEMORANDUM OF AGREEMENT  
BETWEEN THE FEDERAL TRANSIT ADMINISTRATION (FTA)  
AND THE  
UTAH STATE HISTORIC PRESERVATION OFFICER (SHPO)**

**REGARDING  
THE DRAPER TRANSIT CORRIDOR PROJECT  
SALT LAKE COUNTY, UTAH**

**WHEREAS**, FTA has determined that, should FTA provide financial assistance for the Draper Transit Corridor, it will constitute a federal undertaking subject to Section 106 of the National Historic Preservation Act and 36 CFR 800; and

**WHEREAS**, two Rail Build alternatives are being evaluated for the Draper Transit Corridor: the Minimum Operable Segment (MOS) referred to as Rail Build Alternative 1, a distance of 3.7 miles, and the Full Build Alternative, referred to as Rail Build alternative 2, a distance of 8.6 miles. The 3.7 mile MOS is a portion of the 8.7 mile Full Build Alternative, and

**WHEREAS**, the undertaking consists of the Minimum Operable Segment of the Draper Transit Corridor Project (the Project), also referred to as Rail Build Alternative 1, which constitutes a federal undertaking as defined in 36 CFR 800.16(y); and

**WHEREAS**, the FTA, in consultation with the Utah State Historic Preservation Officer (SHPO) and consulting parties, has determined that the Area of Potential Effects (APE), as defined in 36 CFR 800.16(d), to be the area within the 66 foot Utah owned right of way from about 10000 South to about 14600 South, a distance of 8.2 miles, plus all properties directly adjacent to that right of way, all station locations, and a 500 foot buffer around each station location; and

**WHEREAS**, the FTA, in consultation with the Utah SHPO, has determined, pursuant to 36 CFR 800.5(a), that the undertaking (the MOS) will have an adverse effect on two historic properties within the APE: the Southern Utah/Union Pacific Railroad (Site 42SL344), which has been previously determined to be eligible for the National Register of Historic Places (NRHP), and the rail siding connected to the Draper Poultrymen and Egg Producers' Plant, also known as the Intermountain Farmers Association (IFA) building, located at 1071 East 12400 South in Draper, Utah. An additional historic property, the Draper Irrigation Canal (Site 42SL350), will be adversely affected by the Full Build Alternative only; and

**WHEREAS**, this Memorandum of Agreement covers the effects of the MOS Segment only and will need to be amended to cover the additional effects of the Full Build Alternative on the Draper Irrigation Canal at the point in the future when UTA pursues the completion of this additional segment; and

**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 Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment on such undertakings; and

**WHEREAS**, the FTA, in consultation with the Utah SHPO, has notified the ACHP of its adverse effect determination pursuant to 36 CFR 800.6(a) (1) and the ACHP has determined that their participation in the consultation to resolve adverse effects is not needed; and

**WHEREAS**, the public and consulting parties were given an opportunity to comment on the adverse effects of the undertaking and consulting parties were invited to be concurring parties to this MOA; and

**WHEREAS**, the FTA, in consultation with the Utah SHPO, has invited the Utah Transit Authority to become an invited signatory to this MOA;

**WHEREAS**, the UTA has participated with the FTA in the consultation with the SHPO and has been invited to be a signatory to the MOA to reflect its commitment to the measures described in this MOA and to its obligations in a grant that will fund the construction of the Project; and

**NOW, THEREFORE**, the FTA and the Utah SHPO agree that, upon submission of a copy of this executed MOA, as well as the documentation specified in 36 CFR 800.11 (e) and (f), to the ACHP pursuant to 36 CFR 800.6(b)(1)(iv), the FTA shall ensure that the proposed federally assisted undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on the historic properties listed above and identified in the Draft Environmental Impact Statement for the Draper Corridor Transit Project.

## STIPULATIONS

The FTA shall ensure that the following measures are carried out for the affected historic properties: the Southern Utah/Union Pacific Railroad located in Sandy City and Draper City, Utah between 10000 South in Sandy City, Utah and 12400 South in Draper City, Utah and the Draper Poultrymen and Egg Producers' Plant located at 1071 East 12400 in Draper, Utah:

- I. For the adverse effects to the historic features of the Southern Utah/Union Pacific Railroad, the FTA and UTA shall ensure that an art installation will be created and erected at the Draper Town Center Station. This exhibit will reference the significance of the Railroad to the development of Sandy, Draper and/or the Draper Poultrymen and Egg Producers' Plant. The materials for the exhibit will be made available to transit patrons and the public by being displayed on an actual full-scale, historic-type railroad car.

The details of the design of the interpretive exhibit will be determined during the Final Design phase of the Draper Transit Corridor Project. During this phase, UTA will employ its Art in Transit program as the forum for determining the design details for the use of the rail car in expressing the historic significance of the Railroad development of Sandy, Draper, and/or the Draper Poultrymen and Egg Producers' Plant. The program will include a selection committee with representatives from UTA, FTA, Draper City, Utah SHPO, and the Utah Heritage Foundation. UTA will administer and oversee the Art in Transit Program. UTA and the Art Selection Committee will not prescribe a particular outcome but rather provide the selected artist(s) with particular criteria, thematic elements, and other guidance as needed. Design of the exhibit will consider durability, maintenance, and safety. UTA will implement the exhibit with oversight from FTA and input from the Utah SHPO, City of Draper and the Utah Heritage Foundation, along with the selected artist(s).

UTA commits to locate the exhibit in the adjacent proximity of the Draper Station platform and park-and-ride area (as shown on the attached figure), although the exact location will be determined during Final Design phase of the project.

- II. For the adverse effect to the Draper Poultrymen & Egg Producers' Plant due to removing the rail track siding, the FTA and UTA shall ensure that thematic elements related to the history of the site shall be incorporated into the Art in Transit Program, as noted above to mitigate for the adverse effect to this site. During Final Design of the project, UTA will determine if the siding track will be removed, pending successful negotiations with the IFA. FTA and UTA will ensure that additional mitigation beyond what is stated in Section I above will be implemented in consultation with the SHPO and Consulting Parties. Examples may include providing a series of etched glazings on the shelter, free-standing interpretive signs along the platform or conducting public outreach activities focused on the area's history, etc. as approved by FTA in consultation with SHPO and consulting parties. (Documentation of this site has already been completed, and therefore other activities will be required.)
- III. POST REVIEW DISCOVERY (UTA Employees and Contractors): In accordance with 36 CFR 800.13(b), the UTA is providing for the protection, evaluation, and treatment of any historic property discovered prior to or during construction. This stipulation specifies procedures to be followed by all UTA employees and all UTA contractors and subcontractors should any archaeological, historic, or paleontological resources be discovered during construction of the project. The procedures, which will be incorporated into all construction contracts, are as follows:
  - 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 UTA Project Manager for the project verbally of the nature and exact location of the discovery.
  - C. The UTA Project Manager for the project immediately will contact the SHPO (and ACHP within 48 hours of the discovery if the effect is adverse) and will consult with a qualified historian or archaeologist to advise the Utah SHPO, UTA, and FTA regarding the significance and recommended disposition of the discovery.
  - D. The UTA 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.
  - E. UTA and FTA will consult with the SHPO in accordance with 36 CFR 800.13(b) (3) toward developing and implementing an appropriate treatment plan prior to resuming construction. SHPO will expedite its response time in consideration of the cost of the suspension of construction activities. The time necessary for the SHPO to advise UTA and FTA, and for UTA to handle the discovered item, feature, or site is variable and will depend on the nature and condition of the discovered item. The FTA will not allow work to resume in the vicinity of the adverse effects have been resolved and UTA will not resume construction until SHPO and FTA have agreed in writing to that resumption.
  - F. Should human remains be inadvertently discovered during construction, all project-related ground disturbances within 300 feet of the discovery shall cease immediately. The UTA Project Manager shall notify the SHPO, the FTA, and most likely descendent Native American Tribes as soon as possible. The county sheriff or coroner with jurisdiction shall also be notified as soon as practicable. The UTA and FTA shall consult with these agencies and Tribes to determine the appropriate treatment of the remains. If it is determined that the remains are Native American, no project-related ground disturbance shall resume in the area of the discovery until written permission to do so is provided by FTA in consultation with SHPO. If Native American human remains are discovered, UTA will adhere to State NAGPRA as outlined in Utah State Code Annotated 9-8-309 and 9-9-400.
- IV. REPORTING: As long as this MOA or its Amendments are in effect, UTA shall provide an annual report to FTA and the SHPO of any and all activities carried out pursuant to this MOA and, upon request, to signatories and consulting parties.
- V. PERSONNEL QUALIFICATIONS: UTA shall ensure that all work carried out pursuant to this MOA is completed by or under the direct supervision of a person or persons meeting or exceeding the *Secretary of the Interior's Professional Qualification Standards for History and/or Archaeology* (36 CFR Part 61) as appropriate to the specific task.

- VI. DURATION: This MOA will be null and void upon completion of the undertaking, as evidenced by FTA close-out of all grants related to the project, or ten (10) years from the date of execution of the MOA, whichever occurs first. Prior to such time, any of the Parties hereto may consult to reconsider the terms of the MOA and amend it in accordance with Stipulation VII below.
- VII. DISPUTE RESOLUTION: Should any signatory or concurring party to this MOA object at any time to any actions proposed in this manner in which the terms of this MOA are implemented, FTA shall consult with such party to resolve the objection. If FTA determines that such objection cannot be resolved, FTA will:
- A. Forward all documentation relevant to the dispute, including the FTA proposed resolution, to the ACHP. The ACHP shall provide the FTA with advice on the resolution of the objection within thirty days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the FTA 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 a copy of this written response. FTA will then proceed according to its final decision.
  - B. If the ACHP does not provide its advice regarding the dispute within the thirty day time period, the FTA may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the FTA shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the MOA, and provide them and the ACHP with a copy of such written response.
  - 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.
- VIII. AMENDMENTS AND NONCOMPLIANCE: If any signatory to this MOA determines that its terms will not or cannot be carried out, that party shall immediately consult with other parties to develop an amendment pursuant to 36 CFR 800.6(c)(7) and 800.6(c)(8) and Stipulation VI above. The Amendment will be effective on the date a copy, signed by all of the original signatories is filed with ACHP. If within 30 days, or another time period agreed to by all signatories, agreement to the terms of an amendment cannot be reached, any signatory may terminate the MOA in accordance with Stipulation VIII below and upon written notification to the other signatories.

In the event the UTA applies for additional federal funding from another agency, such as the Federal Railroad Administration, and the undertaking remains unchanged, such additional approving agency may comply with Section 106 by agreeing in writing to the terms of this MOA and notifying and consulting with the SHPO. Any necessary modifications will be considered in accordance with the original Memorandum of Agreement and 36 CFR 800.6(c)(7) and 800.6(c)(8).

Once the MOA is terminated, and prior to work continuing on the undertaking, the FTA must either (a) execute an MOA pursuant to 36 CFR § 800.6 or (b) request, take into account, and respond to comments of the ACHP under 36 CFR § 800.7. The FTA shall notify the signatories as to the course of action it will pursue.

- IX. **TERMINATION:** If an MOA is not amended following the consultation set out in Stipulation VII, it may be terminated by any signatory.

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

THE FEDERAL TRANSIT ADMINISTRATION

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Terry J. Rosapep, FTA Region VIII Administrator

UTAH STATE HISTORIC PRESERVATION OFFICER

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Wilson G. Martin, Utah SHPO

**Invited signatory:**

UTAH TRANSIT AUTHORITY

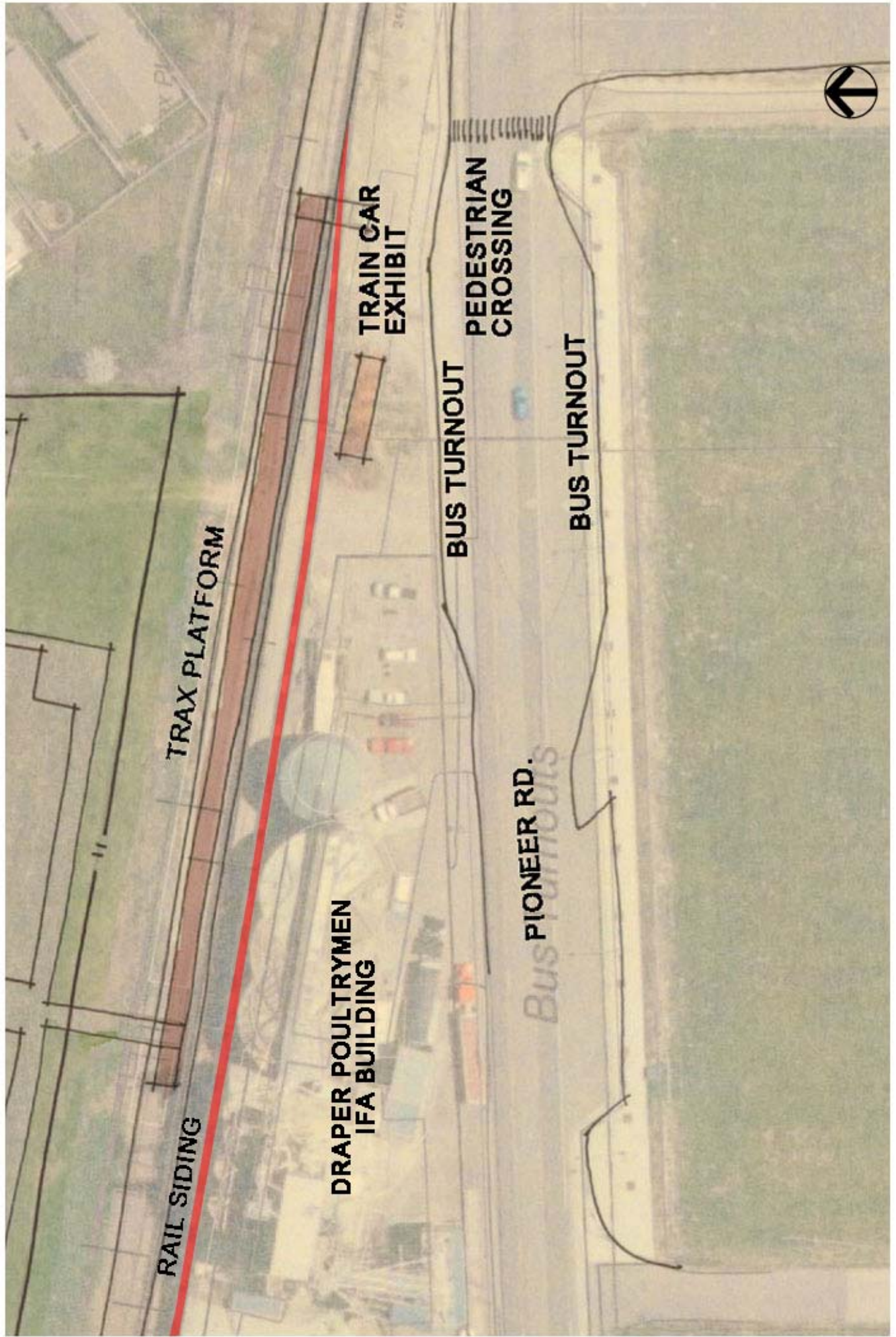
By: \_\_\_\_\_ Date: \_\_\_\_\_  
Michael Allegra, CEO and General Manager



**Concurring Parties:**

UTAH HERITAGE FOUNDATION

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Kirk Huffaker, Executive Director



**RAIL SIDING**

**TRAX PLATFORM**

**DRAPER POULTRYMEN  
IFA BUILDING**

**TRAIN CAR  
EXHIBIT**

**BUS TURNOUT**

**PEDESTRIAN  
CROSSING**

**BUS TURNOUT**

**PIONEER RD.**  
*Bus Turnouts*

