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**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, the undertaking consists of the Minimum Operable Segment of the Draper Transit Corridor Project (the Project) 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 defined this undertaking's 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 found that the following historic property is within the APE: five historical features associated with the Southern Utah/Union Pacific Railroad, which railroad has been previously determined to be eligible for the National Register of Historic Places (NRHP), and the features should be considered contributing elements of that site; and

WHEREAS, the FTA, in consultation with the Utah SHPO, has determined, pursuant to 36 CFR 800.5(a), that the undertaking will have an adverse effect on the above-named historic property, 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

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WHEREAS, the public and consulting parties were given an opportunity to comment on the adverse effect 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 a 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 property 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 features of 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 that is eligible for inclusion on the National Register of Historic Places:

- I. DOCUMENTATION OF THE HISTORIC RAILROAD. UTA shall produce the following documentation of the affected portion of the historic railroad site prior to site preparation and construction:
 - A. Completion of Intermountain Antiquities Computer System (IMACS) site form;
 - B. Mapping of site boundaries using GPS equipment;
 - C. Photographs taken of the historic railroad site and features. Color and/or black-and-white 35 mm (4x6 prints with accompanying negatives) photos will be produced. At least 3 photos of each feature will be taken from various angles. Photographs shall be numbered and labeled with a location and date the photograph was taken. All prints and negatives shall be submitted in archivally stable protective storage pages;
 - D. Repository: All materials shall be submitted to the Division of State History, Historic Preservation Office to be placed on file.

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- II. 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

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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, FTA and UTA will follow the procedures laid out in the Federal Native American Protection and Repatriation Act (NAGPRA) of 1990 and any state equivalent.

- III. 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..
- IV. 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.
- V. 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.
- VI. 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.

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- 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.

VII. 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.

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.

VIII. 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 concurrence:

UTAH TRANSIT AUTHORITY

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By: _____ Date: _____
John M. English, CEO and General Manager

Concurring Parties:

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