

APPENDIX 3J

Memorandum of Agreement

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**MEMORANDUM OF AGREEMENT
AMONG
THE UTAH DEPARTMENT OF TRANSPORTATION
AND THE UTAH STATE HISTORIC PRESERVATION OFFICER**

REGARDING

**PROJECT #: S-R399(310)
Heber Valley Corridor (HVC) EIS, Wasatch County, Utah (PIN 17523)**

WHEREAS, the Utah Department of Transportation (UDOT), proposes to undertake **PROJECT #: S-R399(310), Heber Valley Corridor (HVC) EIS, Wasatch County, Utah (PIN 17523)**, which enhances mobility through the Heber Valley and improves the operation of Heber City Main Street (US-40), Wasatch County, Utah.

WHEREAS, in accordance with Parts 3.1.1 and 3.2 of the *Memorandum of Understanding Between the Federal Highway Administration and the Utah Department of Transportation Concerning State of Utah's Participation in the Surface Transportation Project Delivery Program Pursuant to 23 USC §327* (renewed May 26, 2022), the UDOT assumes responsibility, assigned by the Federal Highway Administration (UDOT), for ensuring compliance with Section 106 of the NHPA and with Section 4(f) of the DOT Act of 1966, as amended; and

WHEREAS, the UDOT has taken into account the effects of **PROJECT #: S-R399(310), Heber Valley Corridor (HVC) EIS, Wasatch County, Utah (PIN 17523)** on historic properties and has determined that this undertaking will possibly have an adverse effect on up to four architectural properties eligible for inclusion in the National Register of Historic Places. UDOT has consulted with the Utah State Historic Preservation Officer (SHPO) pursuant to 36 CFR Part 800, regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470f); and

WHEREAS, in accordance with the *Third Amended Programmatic Agreement Among the Federal Highway Administration, the Utah Department of Transportation, the Utah State Historic Preservation Officer, and the Advisory Council on Historic Preservation Regarding Section 106 Implementation for Federal-Aid Transportation Projects in the State of Utah* (executed August 23, 2017) and in accordance with 36 CFR 800.6(a)(1), the UDOT has notified the Advisory Council on Historic Preservation (Council) of its adverse effect determination with specified documentation and the Council has chosen not to participate in the consultation pursuant to 36 CFR 800.6(a)(1)(iii); and

WHEREAS, the UDOT has consulted with the Uintah and Ouray Ute Tribes, the Skull Valley Band of Goshute Indians, the Shoshone-Bannock Tribes, the Eastern Shoshone Tribes, and the Northwestern Band of Shoshone Nation, the Confederated Tribes of the Goshute Reservation; and the Tribes have been afforded an opportunity to review the project and have not responded with objections; and

WHEREAS, the UDOT has consulted with the Heber City Certified Local Government, the Daughters of the Utah Pioneers, and the Heber Valley Heritage Foundation; none have responded with objections and the Heber Valley Heritage Foundation participated in the development of this Agreement; and

NOW, THEREFORE, the UDOT and the Utah SHPO agree that upon UDOT's decision to proceed with the undertaking, UDOT shall ensure that the following stipulations are implemented in order to take into account the effects of the undertaking on historic properties, and the stipulations shall govern the undertaking and all of its parts until this MOA expires or is terminated.

STIPULATIONS

The UDOT shall ensure that the following measures are carried out:

I. MITIGATION OF HISTORIC BUILDINGS

UDOT shall be responsible for the documentation of all buildings impacted by this undertaking, dependent on the preferred alternative identified in the environmental impact statement.

Under Alternative A and B, these buildings include:

- 3570 N Hwy 40, Heber, Utah

Under Alternative A, these buildings include:

- 2300 N Hwy 40, Heber, Utah
- 1543 N Hwy 40, Heber, Utah
- 1340 N Hwy 40, Heber, Utah

The buildings will be documented according to the Utah State Intensive Level Survey Standards (ILS) as required by SHPO. Documentation will include a completed Historic Site Form, which will be based partly on title searches and obituary research, photographs of the exterior of the buildings, a sketch map of the property layout, aerial photograph maps indicating the location of the buildings, and a U.S. Geological Survey map (scale: 1:24,000) indicating the location of the buildings.

II. DOCUMENTATION OF ADDITIONAL HISTORIC SITES

Once the project is funded and before work begins, the UDOT will consult with Heber City, Heber City CLG, and the Heber Main Street organization to create a public interpretive outreach product that is appropriately scaled, with a budget not exceeding \$7,500.

III. REPORTING: The UDOT shall ensure that any/all reports on activities carried out pursuant to this agreement are provided to the SHPO, the Council, the signatories to this MOA, and upon request, to any other interested parties.

IV. PERSONNEL QUALIFICATIONS: The UDOT shall ensure that all historic work carried out pursuant to this agreement is completed by or under the direct supervision of a person or persons meeting or exceeding the Secretary of the Interior's Historic Preservation Professional Qualification Standards for History (36 CFR 61 Appendix A).

V. DURATION: This agreement will be null and void if its terms are not carried out within ten (10) years from the date of its execution. Prior to such time, the UDOT may consult with the other signatories to reconsider the terms of the agreement and amend it in accordance with Stipulation VII below.

VI. DISCOVERY: The following measures regarding inadvertent discoveries of historic properties, archaeological sites, and paleontological resources will be implemented:

- A. In accordance with Stipulation XI.B of the *Third Amended Programmatic Agreement among the FHWA, the Utah State Historic Preservation Officer, the Advisory Council on Historic Preservation, the USACE Sacramento District, and the UDOT Regarding Section 106 Implementation for Federal-Aid Transportation Projects in the State of Utah* (executed August 23, 2017), and pursuant to 36 CFR 800.13(b), the UDOT is providing for the protection, evaluation, and treatment of any historic property discovered prior to or during construction. Should a discovery occur, construction will stop immediately and the UDOT will consult with the SHPO, Native American tribes, and any other identified interested parties, toward developing and implementing an appropriate treatment plan prior to resuming construction. If neither the SHPO nor a Tribe files an objection within 72 hours to UDOT's plan for addressing the discovery, UDOT may carry out the requirements of 36 CFR 800.13 on behalf of FHWA, and the Council does not need to be notified.

- B. UDOT Standard Specifications Section 01355, Part 1.12, Discovery of Historical, Archaeological or Paleontological Objects, Features, Sites, or Human Remains, will be enforced during this project. This specification stipulates procedures to be followed should any archaeological, historic, or paleontological resources be discovered during construction of the project. These procedures are as follows:
- 1) Immediately suspend construction operations in the vicinity of the discovery if a suspected historic, archeological or paleontological item, feature, or site is encountered or if suspected human remains are encountered.
 - 2) Verbally notify the engineer of the nature and exact location of the findings.
 - 3) The Engineer contacts the UDOT region staff archaeologist, who will assess the nature of the discovery and determine the necessary course of action.
 - 4) Protect the discovered objects or features and provide written confirmation of the discovery to the Engineer within two calendar days.
 - 5) The Engineer keeps the Contractor informed concerning the status of the restriction:
 - 1) the time necessary for the Department to handle the discovered item, feature, or site is variable, dependent on the nature and condition of the discovered item; and
 - 2) the Engineer will provide written confirmation when work may resume in the area.

VII. 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, the UDOT shall consult with the objecting parties to resolve the objection. If the UDOT determines, within 30 days, that the objection(s) cannot be resolved, the UDOT will:

- A. Forward all documentation relevant to the dispute to the Council in accordance with 36 CFR 800.2(b)(2). Upon receipt of adequate documentation, the Council shall review and advise the UDOT 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 UDOT 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 UDOT may render a decision regarding the dispute. In reaching its decision, the UDOT will take into account all comments regarding the dispute from the parties to the MOA.
- C. The UDOT's 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 UDOT will notify all parties of its decision in writing before implementing that portion of the undertaking subject to dispute under this stipulation. The UDOT's decision will be final.
- D. Further, at any time during implementation of the measures stipulated in this agreement should an objection to any such measure be raised by a member of the public, the UDOT shall take the objections into account and consult as needed with the objecting party, the SHPO, or the Council to resolve the objection.

VIII. 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 the agreement in accordance with Stipulation IX, below.

IX. TERMINATION: If an MOA is not amended following the consultation set out in Stipulation VII and Stipulation VIII, it may be terminated by any signatory or invited signatory. Within 30 days following termination, the UDOT 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.

X. EXECUTION: Execution of this Memorandum of Agreement by the UDOT and the Utah SHPO and the submission of documentation and filing of this Memorandum of Agreement with the Council pursuant to 36 CFR 800.6(b)(1)(iv) prior to UDOT's approval of this undertaking, and implementation of its terms, serves as evidence that the UDOT has taken into account the effects of this undertaking on historic properties, and has afforded the Council an opportunity to comment on **PROJECT#: S-R399(310), Heber Valley Corridor (HVC) EIS, Wasatch County, Utah (PIN 17523)**.

SIGNATORIES:

UTAH DEPARTMENT OF TRANSPORTATION

Robert Clayton, UDOT Region Director Date

UTAH STATE HISTORIC PRESERVATION OFFICE

Christopher Merritt, Utah SHPO Date