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## M E M O R A N D U M

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**DATE:** December 31, 2003  
**TO:** City Council Members  
**FROM:** Russell Weeks  
**RE:** Master Interlocal Agreement UTA Fixed Guideway Systems  
**CC:** Cindy Gust-Jenson, Rocky Fluhart, Ed Rutan, DJ Baxter, Leroy Hooton, Jeff Niermeyer, Chris Bramhall, Gary Mumford, Mary Guy-Sell, Tim Harpst, Doug Dansie, John Naser

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This memorandum involves issues related to a proposed master interlocal agreement among the Utah Transit Authority and about 40 Wasatch Front communities along UTA's rail corridor between Brigham City and Payson. The proposed agreement is scheduled for a briefing before the Salt Lake City Council on January 6. The proposed agreement has been drafted under the umbrella of the Utah League of Cities and Towns. The proposed agreement is an effort to reach accord among the cities along the corridor and UTA before the Utah Legislature convenes later in January. UTA has contemplated seeking the Legislature's passage of a bill to achieve the same goals as the proposed interlocal agreement.

### **KEY POINTS**

- The Utah League of Cities and Towns has requested that if any communities have suggestions to make regarding the content of the proposed agreement, the communities should forward the suggestions to Layton City Attorney Gary Crane by January 7 so a final draft of the proposed agreement could be prepared on January 9.
- After a final draft is prepared, the City Council would have to adopt the proposed agreement by resolution. A draft copy of the resolution is included in the packet.
- If the City Council adopts the resolution, the City Attorney's Office and the Administration would prepare an amendment to the City's zoning ordinance that would mirror the proposed agreement. The zoning ordinance amendment then would go before the Planning Commission and the City Council for final consideration.
- The purpose of the agreement appears to be found on Page 3. According to part of the agreement's preamble, UTA "desires to enter into this Interlocal Agreement for the purpose of (i) more accurately estimating the costs of the System, (ii) establishing the legal right to construct and operate the System within the Communities, (iii) establishing the parameters of the exercise by the Communities of their planning, zoning, regulatory, and police power authority, and (iv) establishing the extent of the Communities' participation in the planning, design, construction, and operation of the System."

- According to the proposed agreement, nothing in the agreement “is intended to modify the terms or conditions of other agreements presently existing between the Parties.” (Page 12, Section 5-g.)
- The term of the proposed agreement would be 50-years “with an automatic renewal for an additional 50 years if such longer term becomes permissible by law.” (Page 9, Section 4.)
- According to the proposed agreement, “This agreement shall apply solely within the boundaries of the Corridor.” (Page 12, Section 6-a.) The corridor as it pertains to Salt Lake City is depicted in the attached Exhibit D, and described in writing in Exhibit F that is included in the proposed agreement.
- It should be noted that the agreement depicts and describes what is known as the Sugar House spur – about 2.75 miles of rail corridor from roughly behind Granite Furniture in Sugar House west to the north-south rail corridor obtained by the Utah Transit Authority from Union Pacific Railroad as a part of the “Corridor” defined in the Agreement.
- A key portion of the proposed agreement occurs in Section 5-a. The portion reads in part:
 

... Notwithstanding any and all ordinances, rules, regulations, practices and/or procedures existing or prevailing within each of the Communities at the present time or at any time in the future during the term hereof, each of the Communities shall waive the following as the same relate to UTA ownership, planning, design, construction, operation, and maintenance of the System within the Corridor: (i) any requirement to obtain a permit from a Community in connection with the planning, design, construction, operation or maintenance of the System, (ii) any and all administrative fees and other administrative charges otherwise payable by UTA in connection with the planning, design, construction, operation or maintenance of the System, and (iii) any and all other planning, zoning, and regulatory authority under the exercise of its police power to the extent the same (A) is governed by federal or state laws, rules or regulations, (B) materially adversely affects the uniform operation of the System, (C) imposes a cost on UTA which constitutes a Betterment under the terms of this Agreement, or (D) is inconsistent with the terms of this Agreement.
- According to the proposed agreement, “The planning, design, construction and operation of System-related facilities located outside of the Corridor, such as passenger terminals, park and ride facilities, maintenance facilities, or other auxiliary construction, shall not be subject to the provisions of this Agreement, and shall instead be governed by applicable Community ordinances, rules, practices and procedures, or any subsequent agreement between UTA and one or more of the Communities.” (Page 12, Section 6-a.)
- According to the proposed agreement, “Notwithstanding the waiver contained in subsection (a) above, the rights of UTA to plan, design, construct, operate and maintain the System(s) over existing streets within Salt Lake City, Provo City, Salt Lake County and any other city that has the right to require a franchise agreement shall be subject to the terms and conditions of franchise agreements to be entered into between UTA and each of such Communities.” (Page 11, Section 5-d.)

### **ISSUES/QUESTIONS FOR CONSIDERATION**

- Is there any estimate available of potential revenue loss to Salt Lake City from the waiver of permits and “any and all administrative fees and other administrative charges

otherwise payable by UTA in connection with the planning, design, construction, operation or maintenance of the System?”

- According to the City’s Public Utilities Department, the Department’s three enterprise funds “have legal restrictions on providing free service to agencies or customers.” The Department also is required under bond resolutions “to collect all normal fees and consider it as revenue.” According to Department officials, Public Utilities has never waived normal and ordinary fees. Public Utilities also notes that state law requires the Department notify all Public Utility customers and hold a public hearing to discuss waivers that support general fund projects.
- When Union Pacific Railroad owned the portion of the corridor did it have to obtain permits and pay administrative fees and administrative charges in connection with its planning, design, construction, operation and maintenance of its rail system? What Salt Lake City regulations was Union Pacific subject to?
- If it is likely that the Sugar House spur would be developed to connect to the existing light-rail system and not the planned commuter rail system should the spur be included in the proposed agreement?
- The proposed agreement contains the following paragraph:  

The Communities acknowledge that UTA does not know with reasonable certainty the technology that may be available at the time of System construction and that available technology will influence System design. The Communities acknowledge that it is therefore impossible for UTA to define with certainty necessary components of System design, including platforms. UTA represents that, to the best of its knowledge, the platform materials and design will be similar in quality, look and feel to the baseline reflected in the North/South light rail corridor operating in Salt Lake County. (Page 14, Section 8-c.)
- Is there a difference between “the baseline reflected in the North/South light rail corridor operating in Salt Lake County” and rail platforms in Salt Lake City? If so, would bringing up the design of future Salt Lake City rail platforms to standards used on existing light-rail facilities be considered “betterments” under the proposed agreement, making the upgrades a Salt Lake City cost?

## **DISCUSSION/BACKGROUND**

As mentioned earlier in this memorandum, the proposed agreement is under consideration for four reasons:

- The Utah Transit Authority says it would like to “identify to a reasonable certainty” all costs associated with building a commuter rail and light rail system largely along a railroad right of way that UTA purchased from Union Pacific Railroad in September 2002. UTA also would like to provide “evidence of its legal right” to build and operate the transit system “within the jurisdictions” of communities along the right of way. (Page 2.)
- UTA wants to accomplish both of the above items before it seeks federal funds to build a transit system. (Page 2.) UTA contends that the items in the first bullet point would improve its chances to obtain federal funding.
- UTA contends that “certain planning, zoning, regulatory and police power authority” of cities and towns along the right of way “is limited by state and federal laws, rules and regulations.” (Page 2.)

- Given the above, UTA has explored pursuing legislation in the UTA Legislature that would pre-empt cities' planning, zoning, regulatory and police powers that might be involved in building a commuter rail and light rail system along the right of way UTA owns.

It might be noted that when UTA purchased the right of way from Union Pacific its main goal was to build a commuter rail line between Ogden and Payson. (UTA plans to share railroad tracks with Union Pacific between Brigham City and Ogden.) The purchase also included other lines and spurs that Union Pacific wanted to sell – including what is known as the Sugar House spur.

Under the proposed agreement, all cities that adopt it by resolution would waive :

1. “Any requirement to obtain a permit in connection with the planning, design, construction, operation or maintenance” of UTA’s rail system.
2. “Any and all administrative fees and other administrative charges otherwise payable by UTA in connection with the planning, design, construction, operation or maintenance of the System.”
3. “Any and all other planning, zoning, and regulatory authority under the exercise of its police power” to the extent that state or federal laws or regulations apply , or local authority “materially adversely affects the uniform operation of the System” or local authority “imposes a cost on UTA which constitutes Betterment under the terms of this Agreement.”

According to UTA and the proposed agreement, the waiver does not apply to Salt Lake City’s right to require a franchise agreement between the City and UTA. A franchise agreement would involve the planning, design, construction, operation and maintenance of UTA’s transit systems over Salt Lake City streets. (Page 11, Section 5-d.) According to UTA, the proposed agreement also would not affect existing light rail facilities and projects in Salt Lake City, including a proposed extension of light rail from the Delta Center stop to the intermodal hub on 600 West 200 South and future extensions to the Salt Lake City International Airport.

Perhaps one overarching item to consider is the “Corridor” as defined in the agreement really is the 20-foot or so right of way that runs parallel to Union Pacific’s main north-south freight railroad line through Salt Lake County. Given that, it is uncertain as of the writing of this memorandum how much effect the proposed agreement will have on Salt Lake City because it is uncertain as of this writing whether Union Pacific has obtained permits and “any and all administrative fees and other administrative charges” from Salt Lake City in the design, planning, building, operation and maintenance of its railroad system.

It is possible that the largest impact to the City could involve the future use of what is known as the Sugar House Spur. Again, the spur is about 2.75 miles of rail corridor from roughly behind Granite Furniture in Sugar House west to UTA’s north-south commuter-rail corridor. It is Council staff’s unconfirmed understanding that the spur is more likely to be developed as a light-rail spur connecting to the north-south light rail line than as a portion of UTA’s commuter rail line.

If the spur is developed as part of the light-rail system, the proposed agreement probably would apply for two reasons:

First, as previously mentioned, the spur is depicted and defined in the proposed agreement as part of the agreement’s “Corridor.”

Second, the proposed agreement in part defines “System” as “a surface public transportation facility which occupies a separate railroad right-of-way exclusively for public transportation, or a shared railroad right-of-way with access rights for public transportation, including, by way of example, *light rail*, commuter rail, *trolleys*, guided busways, or similar technology for surface transportation purposes.” (*Italics: Council staff.*) (Page 6.)

It should be noted that another part of the definition of “System” includes the following language: “System does not include construction or operation of public transportation facilities located outside a Corridor, such as passenger terminals, park and ride facilities, maintenance facilities, or other auxiliary construction; nor does System include development and use of facilities by UTA within a Corridor for purposes other than public transportation, such as billboards, telecommunication towers, and signage, provided further that any regulation of such facilities would not interfere with the operation of the System.” (Page 6.)

Nevertheless, if the Sugar House Spur is included as part of the “Corridor,” it raises questions about whether future development of the spur will conform to design and material standards on existing Salt Lake City light-rail lines and, if not, who would pay to bring them up to those standards.

As mentioned previously, part of the agreement says, “UTA represents that, to the best of its knowledge, the platform materials and design will be similar in quality, look and feel to the baseline reflected in the North/South light rail corridor operating in Salt Lake County.” (Page 14, Section 8-c.) Council Members may wish to ask whether the Salt Lake County baseline for the north-south light-rail corridor is the same design and material as rail platforms in Salt Lake City. If it is not, then it appears that the City would pay to bring up the rail platforms to Salt Lake City standards.

According to the proposed agreement, the term “Betterment” means “any Change requested by any Community that is beyond the scope of work necessary to complete the System according to applicable federal and state requirements.” (Page 4.) The term “Change” means “any deviation from the Standard, other than a deviation which is *de minimus*.” (Page 5.) The term “Standard” means “the design, specifications, construction techniques, sequencing or similar items or matters for any proposed construction or maintenance work.”

For purposes of comparison, the 1997 interlocal agreement between Salt Lake City and Utah for the north-south light rail line and the 1999 interlocal agreement among Salt Lake City, UTA and the Utah Department of Transportation for the University line required UTA to obtain permits and pay fees either to Salt Lake City or UDOT.

The 1997 agreement the authority to approve design plans. The 1999 agreement defined “Betterment” in part as “any change in the Project requested by any Stakeholder other than UTA after execution of the Design/Build Contract where the total of the changes requested within the same change order result in a net increase to the contract price for the Project under the Design/Build Contract ...”

It should be noted that the two previous agreements involved the use of City streets or streets maintained by UDOT.

