



Utah Transit Authority

Board of Trustees

REGULAR MEETING AGENDA

669 West 200 South
Salt Lake City, UT 84101

Wednesday, October 12, 2022

9:00 AM

FrontLines Headquarters

The UTA Board of Trustees will meet in person at UTA FrontLines Headquarters (FLHQ) 669 W. 200 S., Salt Lake City, Utah.

For remote viewing, public comment, and special accommodations instructions, please see the meeting information following this agenda.

1. **Call to Order and Opening Remarks** Chair Carlton Christensen
2. **Pledge of Allegiance** Chair Carlton Christensen
3. **Safety First Minute** Beth Holbrook
4. **Public Comment** Chair Carlton Christensen
5. **Consent** Chair Carlton Christensen
 - a. Approval of September 13, 2022 Board of Trustees Budget Work Session Minutes
 - b. Approval of September 15, 2022 Board of Trustees Budget Work Session Minutes
 - c. Approval of September 16, 2022 Board of Trustees Budget Work Session Minutes
 - d. Approval of September 22, 2022 Board of Trustees Budget Work Session Minutes
 - e. Approval of September 28, 2022, Board Meeting Minutes
 - f. Approval for International Travel to Vancouver, British Columbia, Canada for Planning & Engagement Department Peer Observation
6. **Reports**
 - a. Executive Director's Report Jay Fox
 - Bus Roadeo Winners
 - September 2022 Ridership Update

7. Resolutions

- a. R2022-10-01 - Approving and Adopting a Revised Investment Policy of the Authority's Employee Retirement Plan Ann Green-Barton

8. Contracts, Disbursements and Grants

- a. Contract: Task Ordering Agreement for TOD Station Area Planning Consultant Pool G (Economic & Planning Systems, Inc.) Jordan Swain
- b. Contract: Task Ordering Agreement for Owner Representative for Headquarter Redevelopment Project (MOCA Systems) Sean Murphy
- c. Contract: Polarized Infrared Optical Imaging of Transit Infrastructure Cooperative Agreement (University of Utah and AutoFill Technologies B.V.) Hal Johnson
- d. Contract: Master Electric Service and Facilities Improvement Agreement (Rocky Mountain Power) David Osborn
- e. Change Order: Depot District Clean Fuels Technology Center Contract Change Order No. 29 - Additional Canopy Grading (Big D Construction) David Osborn
- f. Change Order: Closed Captioning Services for UTA Board Meetings (Carahsoft Technology Corporation/Granicus) Kyle Brimley
- g. Change Order: Second Order of Accessible Mini Vans for the Federal Transit Administration (FTA) 5310 Program (Davey Coach Sales, Inc.) Cherryl Beveridge
Tracy Young
- h. Pre-Procurements Todd Mills
- Electric Bus On-Route Chargers
 - Snow Removal for TRAX and Frontrunner

9. Service and Fare Approvals

- a. Fare Agreement: Special Events Complimentary Fare (The Utah Division of Multicultural Affairs) Megan Waters
Kensey Kunkel

10. Budget and Other Approvals

- a. TBA2022-10-01 - Technical Budget Adjustment-2022 Capital Budget Daniel Hofer

11. Discussion Items

- a. Tentative 2023 Budget
Jay Fox
Brad Armstrong
Daniel Hofer
Troy Bingham
- b. Discretionary Grants Update
Patti Garver
- c. UTA Policy - UTA.02.09 - Fuel Price Risk Management Program
Troy Bingham

12. Other Business

Chair Carlton Christensen

- a. Next Meeting: Wednesday, October 26th, 2022 at 9:00 a.m.

13. Adjourn

Chair Carlton Christensen

Meeting Information:

- Members of the Board of Trustees and meeting presenters will participate in person, however trustees may join electronically as needed with 24 hours advance notice.
- Meeting proceedings may be viewed remotely by following the meeting portal link on the UTA Board Meetings page - <https://www.rideuta.com/Board-of-Trustees/Meetings>
- In the event of technical difficulties with the remote live-stream, the meeting will proceed in person and in compliance with the Open and Public Meetings Act.
- Public Comment may be given live during the meeting by attending in person at the meeting location.
- Public Comment may also be given through alternate means. See instructions below.
 - o Comment online at <https://www.rideuta.com/Board-of-Trustees>
 - o Comment via email at boardoftrustees@rideuta.com
 - o Comment by telephone at 801-743-3882 option 5 (801-RideUTA option 5) – specify that your comment is for the board meeting.
 - o Comments submitted before 2:00 p.m. on Tuesday, October 11th will be distributed to board members prior to the meeting.
- Motions, including final actions, may be taken in relation to any topic listed on the agenda.
- Special Accommodation: Information related to this meeting is available in alternate format upon request by contacting adacompliance@rideuta.com or (801) 287-3536. Request for accommodations should be made at least two business days in advance of the scheduled meeting.



U T A

Utah Transit Authority

669 West 200 South
Salt Lake City, UT 84101

MEETING MEMO

Board of Trustees

Date: 10/12/2022

TO: Board of Trustees
THROUGH: Jana Ostler, Board Manager
FROM: Jana Ostler, Board Manager

TITLE:

Approval of September 13, 2022 Board of Trustees Budget Work Session Minutes

AGENDA ITEM TYPE:

Minutes

RECOMMENDATION:

Approve the minutes of the September 13, 2022 Board of Trustees Budget Work Session

BACKGROUND:

A Budget Work Session of the UTA Board of Trustees was held in person on Monday, September 13, 2022 at 9:00 a.m. Minutes from the meeting document the actions of the board and summarize the discussion that took place in the meeting. A full audio recording of the meeting is available on the [Utah Public Notice Website <https://www.utah.gov/pm/sitemap/notice/780417.html>](https://www.utah.gov/pm/sitemap/notice/780417.html) and the [UTA Board Meetings page <https://rideuta.com/Board-of-Trustees/Meetings>](https://rideuta.com/Board-of-Trustees/Meetings).

ATTACHMENTS:

1. 2022-09-13_BOT_Budget_Work Session_Minutes_UNAPPROVED



Utah Transit Authority

Board of Trustees

MEETING MINUTES - Draft

669 West 200 South
Salt Lake City, UT 84101

Tuesday, September 13, 2022

9:00 AM

FrontLines Headquarters

Budget Work Session

Present: Chair Carlton Christensen
Trustee Beth Holbrook
Trustee Jeff Acerson

Also in attendance were UTA staff members.

1. Call to Order and Opening Remarks

Chair Christensen welcomed attendees and called the meeting to order at 9:13 a.m. He announced this is an in-person meeting with audio recording and no live video stream.

2. Pledge of Allegiance

Attendees recited the Pledge of Allegiance.

3. Safety First Minute

Brad Armstrong, UTA Budget & Financial Analysis Senior Manager, delivered a brief safety message.

4. Discussion Items

a. 2023 Budget Overview

Presenters: Jay Fox, UTA Executive Director; Bill Greene, UTA Chief Financial Officer; Nichol Bourdeaux, UTA Chief Planning & Engagement Officer.

Mr. Fox provided an overview of the budget work session for the day. He then proceeded to summarize some of the agency's 2022 highlights key and accomplishments with an accompanying video.

Ms. Bourdeaux detailed the process for designing a service plan and referred to the various steps in the annual change planning process.

Mr. Fox talked about the evaluation process used by the Executive Team to rank their requests. He mentioned directors were not able to rank their own requests. From the 100 proposals received, 21 initiatives were developed.

Mr. Greene provided a general overview of the 2023 budget request. He mentioned each department will outline their budgets during the course of the presentation.

Discussion ensued. Several questions were posed by the board and answered by staff. Topics included:

- Service constraints (resources, people, vehicles)
- Labor shortage
- Positive financial impact
- Criteria for prioritizing initiatives
- Logistics of consolidation of positions and relocation of staff (Grants, Capital teams)
- Tracking workforce innovation program savings
- Contracting out Fleet management
- Camera monitoring and video equipment
- Inflation costs
- Sales Tax Forecasting
- Fuel prices and policy
- Lower utility costs

The Trustees provided recommendations relating to the 2023 Budget Review as follows:

- Articulate the service constraints and resource issues in the budget and communications strategy to highlights the challenges with hiring staff and adding additional service. Create talking points for external dialogues so people can understand the service challenges.
- Develop an external communications piece on Transit-Oriented Communities
- Provide full staffing costs in budgets.
- Provide an explanation for lower than anticipated utility costs.

A recess was called at 10:42 a.m. with the meeting reconvening at 10:51 a.m.

b. Chief Service Development Officer Budget

Presenters: Mary DeLoretto, UTA Chief Service Development Officer; Paul Drake, UTA Director of Real Estate and TOD, and Service Development Office staff.

Ms. DeLoretto summarized accomplishments, initiatives and budget information relating to the Service Development Office which included: Delivery on 2022 Commitments, 2023 Key Initiatives, 2023 Operating Budget: Expenses by category, 2022 Budget and 2023 Proposed Budget, and 2023 Budget Changes and Overview.

Mr. Fox invited Mr. Drake to talk about real estate planning. Mr. Drake explained the planning efforts involved within his team to assist cities with the development of their Station Area Plans (SAPs). Development of these plans is a legislative requirement. Mr. Drake mentioned this is a large amount of work for his small team and is requesting an additional full-time staff to support Jordan Swain, UTA TOD Project Manager.

Discussion ensued and questions relating to UTA's involvement with these planning efforts and required resources were posed by the board and answered by Mr. Drake.

Additional discussion took place with questions posed by the board and answered by staff. The topics included:

- Rail Vehicle Procurement
- Rental space to re-locate the customer service department
- Cost tracking systems and reconciliation with the general ledger
- Tracking of capital assets by project managers

The Trustees provided recommendations relating to the Chief Service Development Officer Budget:

- Provide anticipated salary information for new FTE's
- Mr. Drake to keep Ms. DeLoretto and Mr. Fox apprised of his department's workload and staffing needs

c. Chief People Officer Budget

Presenters: Kim Shanklin, UTA Chief People Officer and People Office staff.

Ms. Shanklin presented the Chief People Office budget which included delivery on 2022 commitments, 2023 key initiatives, and a 2023 proposed operating budget.

Ms. Shanklin highlighted major staffing challenges and the need to retain and attract new staff. She mentioned working environment and expectations have changed within the workforce over the past two years with staff wanting a better work life balance. Ms. Shanklin said her team have reviewed their business model in a bid to reduce challenges and attract new staff in addition to improving conditions to retain current staff.

Discussion ensued. Several questions were posed by the board and answered by staff. The topics included:

- Staff retention
- Staff turnover percentage
- 85 new operators needed by December to run service
- Retirement training
- 360 degree training for positions below mid-level management
- HR Reporting structure
- Total Rewards benefits and insurance, including high deductible medical health plan
- Training and Development Budget
- Insurance premium forecast

The Trustees provided recommendations relating to the Chief People Officer Budget:

- Make employees aware they can make an appointment with a retirement consultant at any time.
- Clarify the budget including contingency to ensure all 2023 headcount hires are included.

5. Other Business

- a. Next Meeting: Budget Work Sessions
 - Thursday, September 15th, 2022 at 10:00 a.m.
 - Friday, September 16th, 2022 at 9:00 a.m.

6. Adjourn

A motion was made by Trustee Holbrook and seconded by Trustee Acerson to adjourn the meeting. The motion carried by a unanimous vote and the meeting adjourned at 11:47 a.m.

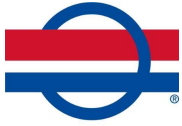
Transcribed by Hayley Mitchell
Executive Assistant to the Board
Utah Transit Authority

This document is not intended to serve as a full transcript as additional discussion may have taken place; please refer to the meeting materials and audio located at <https://www.utah.gov/pmn/sitemap/notice/780417.html> for entire content.

This document along with the digital recording constitute the official minutes of this meeting.

Approved Date:

Carlton J. Christensen
Chair, Board of Trustees



U T A

Utah Transit Authority

669 West 200 South
Salt Lake City, UT 84101

MEETING MEMO

Board of Trustees

Date: 10/12/2022

TO: Board of Trustees
THROUGH: Jana Ostler, Board Manager
FROM: Jana Ostler, Board Manager

TITLE:

Approval of September 15, 2022 Board of Trustees Budget Work Session Minutes

AGENDA ITEM TYPE:

Minutes

RECOMMENDATION:

Approve the minutes of the September 15, 2022 Board of Trustees Budget Work Session

BACKGROUND:

A Budget Work Session of the UTA Board of Trustees was held in person on Thursday, September 15, 2022 at 10:00 a.m. Minutes from the meeting document the actions of the board and summarize the discussion that took place in the meeting. A full audio recording of the meeting is available on the [Utah Public Notice Website <https://www.utah.gov/pmn/sitemap/notice/780419.html>](https://www.utah.gov/pmn/sitemap/notice/780419.html) and the [UTA Board Meetings page <https://rideuta.com/Board-of-Trustees/Meetings>](https://rideuta.com/Board-of-Trustees/Meetings).

ATTACHMENTS:

1. 2022-09-15_BOT_Budget Work Session_Minutes_UNAPPROVED



Utah Transit Authority

Board of Trustees

MEETING MINUTES - Draft

669 West 200 South
Salt Lake City, UT 84101

Thursday, September 15, 2022

10:00 AM

FrontLines Headquarters

Budget Work Session

Present: Chair Carlton Christensen
Trustee Beth Holbrook
Trustee Jeff Acerson

Also in attendance were UTA staff members.

1. Call to Order and Opening Remarks

Chair Carlton Christensen welcomed attendees and called the meeting to order at 10:00 a.m. He announced this is an in-person meeting with no video stream. The audio recording will be available within two days following the meeting.

2. Pledge of Allegiance

Attendees recited the Pledge of Allegiance.

3. Safety First Minute

Cherryl Beveridge, UTA Chief Operating Officer, provided a brief safety message.

4. Discussion Items

a. Chief Operating Officer Budget

Ms. Beveridge was joined by Nichol Bourdeaux, UTA Chief Planning & Engagement Officer; Michelle Wallace, UTA Acting Regional General Manager - Mt. Ogden Business Unit; Lorin Simpson, UTA Regional General Manager - Salt Lake Business Unit; Andres Colman, UTA Acting General Manager - Light Rail; Bruce Cardon, UTA General Manager - Commuter Rail; Ryan Taylor, UTA General Manager - Special Services; Dalan Taylor, UTA Chief of Police & Public Safety Manager; Brian Sawyer, UTA Director of Fleet Engineering; and Kevin Anderson, UTA Director of Maintenance Support. She highlighted the agency-wide operations achievements in 2022 then she, along with staff, summarized achievements specific to each business unit as well as the public safety, fleet engineering, and maintenance management departments.

Ms. Beveridge outlined the 2023 strategic service strategy, which includes attention to areas such as extra board scheduling, supervisor ratios, 2023 service implementation, and 2024 service "ramp up." She spoke about funding key initiatives and reviewed the

operating budget by office, category, and full-time employee (FTE) totals. She also reviewed changes in the budget from 2022 to 2023.

After the more comprehensive operating budget overview, Ms. Beveridge provided information on the proposed chief operating officer, business unit, public safety, fleet engineering, and maintenance support priorities and budgets.

Discussion ensued. Several questions were posed by the board and answered by staff. Topics of inquiry included:

- Timpanogos:
 - 900 East UVX station in Provo
 - WINS program savings
 - Wage increases
 - Capitalized costs
 - UTA financial obligations in Utah County
- Mt. Ogden:
 - Electric bus testing
 - Employee suggestion process
 - FTE additions
- Salt Lake:
 - Ridership transition from discontinued routes to new routes
 - Timeline for opening the Depot District facility
 - Electric bus charging capacity in Salt Lake County
 - Administration change
 - Utilities increase
 - Plan for the Central Garage facility
- Light Rail:
 - Cultural improvements
 - Light rail vehicle seat replacement
 - Utilities costs
- Commuter Rail:
 - Seating capacity
 - Reliability following the opening of Vineyard Station
 - Locomotive and bi-level overhauls
 - Staffing successes
 - Coordination with the Utah Department of Transportation (UDOT)
 - Comet car disposal
 - Parts costs
- Special Services:
 - Meeting passenger needs using private companies (e.g., Uber or Lyft)
 - Challenges with contracted service providers
 - Paratransit service obligations
 - On Demand connection improvements
- Public Safety:

- Operator safety
- Cameras supporting law enforcement activities
- Software upgrades
- Equipment needs
- Fleet Engineering:
 - Staffing
 - Supply chain concerns
 - Vehicle overhaul program
 - Original equipment manufacturer (OEM) coordination with other agencies
 - Exchange of innovations with organizations similar to UTA
 - Positive train control requirements
- Maintenance Management:
 - Utilities management efforts
 - Utility costs
 - In-house fabrication needs
- 2023 Service Strategy
 - Supervisor/operator relationships
 - Supervisor staffing
 - Supervisor training
- 2023 Key Initiatives
 - Extra board
 - Contingency allocations
 - Staffing needs
- 2023 Proposed Operations Budget
 - Fuel/power increases
 - Martin Luther King observance distribution rates
 - Utility cost allocations
- 2023 Proposed COO Operating Budget
 - Supplies

Trustees also provided recommendations related to the chief operating officer budget. They suggested:

- A case study on the impact of route changes on ridership for the routes that were adjusted in the Avenues in Salt Lake City
- Providing travel training to seniors living in Tooele County and incorporating family members of seniors in the training, particularly the younger generation, to assist in supporting seniors with their mobility needs
- A campaign to communicate changes that are being made to supervisor and operator working conditions
- Sharing the UTA overhaul more broadly
- Internal coordination on future plans for the Central Garage site

Trustee Acerson mentioned several concerns related to the Vineyard Station.

Specifically:

- There is a sign that has blown over and needs to be replaced.
- Challenges with crossing malfunctions yesterday made trains late and caused issues with bus connections.
- The parking lot at Vineyard Station is full. If the contingency plan is for patrons to park on the streets, the streets may become too narrow for buses traveling through the area.
- There are a lot of insects at the station. (Chair Christensen recommended contacting the local mosquito abatement district to assist with mitigation.)

Jay Fox, UTA Executive Director, committed to providing the board with more information on the distribution of the Martin Luther King, Jr. holiday observance allocations.

Recesses

The meeting recessed at 11:57 a.m. during the chief operating office budget presentation and reconvened at 2:00 p.m., at which point the chief operating office budget presentation resumed.

The meeting recessed a second time at 3:41 p.m. and reconvened at 3:50 p.m. for the chief planning and engagement officer budget presentation.

b. Chief Planning and Engagement Officer Budget

Nichol Bourdeaux, UTA Chief Planning & Engagement Officer, was joined by Jaron Robertson, UTA Acting Planning Director; Cindy Medford, UTA Manager of Customer Service; Megan Waters, UTA Community Engagement Director. Ms. Bourdeaux highlighted the planning and engagement achievements in 2022. She then outlined key initiatives for the overall planning and engagement function in 2023 and reviewed the proposed combined budget for this office by department, category, and FTE totals.

Ms. Bourdeaux went on to discuss the budgets specific to the planning and engagement, community engagement, customer experience, customer service, innovative mobility services, service planning, and strategic planning departments. She also described changes in the budget from 2022 to 2023.

Discussion ensued. Several questions were posed by the board and answered by staff. Topics of inquiry included: transportation network company (TNC) service support pilot, small area studies, OGX, customer service database improvements, onboard survey, transit connection program pilot, community outreach staffing, customer service employee working conditions, innovative mobility solutions expenses by category (wages and fuel/power), capitalized expenses in the planning functions, wayfinding improvements.

The board requested an update from the customer experience team on wayfinding

improvement plans and suggested connecting with the Olympics planning organizations to identify potential synergies on signage.

5. Other Business

- a. Next Meeting: Budget Work Session
- Friday, September 16th, 2022 at 9:00 a.m.

6. Adjourn

A motion was made by Trustee Holbrook, and seconded by Trustee Acerson, to adjourn the meeting. The motion carried by a unanimous vote and the meeting adjourned at 4:48 p.m.

Transcribed by Cathie Griffiths
Executive Assistant to the Board Chair
Utah Transit Authority

This document is not intended to serve as a full transcript as additional discussion may have taken place; please refer to the meeting materials and audio located at <https://www.utah.gov/pmn/sitemap/notice/780419.html> for entire content.

This document along with the digital recording constitute the official minutes of this meeting.

Approved Date:

Carlton J. Christensen
Chair, Board of Trustees



U T A

Utah Transit Authority

669 West 200 South
Salt Lake City, UT 84101

MEETING MEMO

Board of Trustees

Date: 10/12/2022

TO: Board of Trustees
THROUGH: Jana Ostler, Board Manager
FROM: Jana Ostler, Board Manager

TITLE:

Approval of September 16, 2022 Board of Trustees Budget Work Session Minutes

AGENDA ITEM TYPE:

Minutes

RECOMMENDATION:

Approve the minutes of the September 16, 2022 Board of Trustees Budget Work Session

BACKGROUND:

A Budget Work Session of the UTA Board of Trustees was held in person on Friday, September 16, 2022 at 9:00 a.m. Minutes from the meeting document the actions of the board and summarize the discussion that took place in the meeting. A full audio recording of the meeting is available on the [Utah Public Notice Website <https://www.utah.gov/pmn/sitemap/notice/780421.html>](https://www.utah.gov/pmn/sitemap/notice/780421.html) and the [UTA Board Meetings page <https://rideuta.com/Board-of-Trustees/Meetings>](https://rideuta.com/Board-of-Trustees/Meetings).

ATTACHMENTS:

1. 2022-09-16_BOT_Budget Work Session_Minutes_UNAPPROVED



Utah Transit Authority

Board of Trustees

MEETING MINUTES - Draft

669 West 200 South
Salt Lake City, UT 84101

Friday, September 16, 2022

9:00 AM

FrontLines Headquarters

Budget Work Session

Present: Chair Carlton Christensen
Trustee Beth Holbrook
Trustee Jeff Acerson

Also in attendance were UTA staff members.

1. Call to Order and Opening Remarks

Chair Christensen welcomed attendees and called the meeting to order at 9:02 a.m. He announced this is an in-person meeting with audio recording and no live video stream.

2. Pledge of Allegiance

Attendees recited the Pledge of Allegiance.

3. Safety First Minute

Alisha Garrett, UTA Chief Enterprise Strategy Officer, delivered a brief safety message.

4. Discussion Items

a. Chief Enterprise Strategy Officer Budget

Presenters: Alisha Garrett, UTA Chief Enterprise Strategy Officer was joined by Enterprise Strategy office staff including Kyle Brimley, UTA IT Director.

Ms. Garrett highlighted the overall Enterprise Strategy office achievements for 2022, key initiatives for 2023, and shared the Enterprise Strategy office organizational chart including vacant positions.

Ms. Garrett proceeded to present the 2022 budgets and 2023 proposed operating budgets for each of the key areas within her department, including Enterprise Strategy, Organizational Excellence, Operation Analysis, Data Quality and Ridership, and Information Technology. The information technology budget was broken down into several sub-categories including IT director, information security, project management, network support, business communications, App development, and radio communications, and quality assurance. 2022 deliverables and 2023 key initiatives were also presented under the IT category.

Discussion ensued. Several questions were posed by the board and answered by staff.

Topics of inquiry included:

- Records Assessment (archiving)
- Improved service, delivery, and relationships with Attorney General's office
- Workforce Initiative (WINS) program
- Necessity for additional 2 FTE IT/Data staff
- Status on policy reviews
- Technical debt
- CAD ADL System
- IT Risks
- Evaluating software
- Intern positions
- Office 365 Migration
- Departmental budget management

The Trustees requested more information to better understand the various groups and initiatives relating to the organization's data.

A recess was called at 10:08 a.m. with the meeting reconvening at 10:20 a.m.

b. Chief Financial Officer Budget

Presenters: Bill Greene, UTA Chief Financial Officer, Monica Morton, UTA Fares Director, and Brad Armstrong, UTA Senior Manager - Budget & Financial Analysis.

Mr. Greene shared a general overview of the department's 2022 deliverables and 2023 key initiatives.

He then presented the Chief Financial Officer Operating Budget for 2022, the 2023 proposed budget and 2023 budget changes.

These were followed by individual 2023 budget presentations in the following areas:

- CFO Operating Budget
- Supply Chain
- Claims and Insurance
- Fares Operations
- Farebox Services
- Accounting
- Budget and Financial Analysis

Discussion ensued. Several questions were posed by the board and answered by staff.

Topics of inquiry included:

- Fare Collection system

- Zero Fare Study
- Medicaid electronic fare passes
- Payment controls for direct deposits and checks
- TVM maintenance performance
- New Requisition to PO software
- Asset and inventory management (parts)
- Tenanting for administration building
- Supply chain issues
- Fuel Prices
- Lease software
- Reduced utility costs

The Trustees provided the following recommendations relating to the Chief Financial Operating Budget:

- Consider the impact of the zero fare study outcome on the proposed farebox system (look at scenarios and exit strategies if needed)

c. Chief Communications Officer Budget

Presenters: Steven Wright, UTA Chief Communications Officer and Andrea Parker, UTA Communications Director.

Mr. Wright provided a detailed presentation of activities within the communications and marketing department. These included:

- Delivery on 2022 commitments
- Previous organizational structure (PR & Marketing)
- Findings from 2021 Assessment relating to structure
- Organization restructuring actions
- Proposed organization structure and focus
- 2023 key initiatives
- 2023 proposed budget

Discussion ensued. Several questions were posed by the board and answered by staff. Topics of inquiry included:

- Restructuring, next steps and timelines
- Data analytics
- Overlap with community engagement
- Customer testimonials
- Ambassador program

The Trustees provided the following recommendations relating to the Communications Officer Budget:

- Digitally capture customer (and staff) testimonials of success stories.

- Add an events page on the UTA website.

A recess for lunch was called at 11:51 a.m. with the meeting reconvening at 12:34 p.m.

d. Executive Director Budget

Presenters: Jay Fox, UTA Executive Director; David Wilkins, Utah Attorney General; Sheldon Shaw, UTA Safety & Security Director.

Mr. Fox provided a progress report on the Executive Director's 2022 commitments in addition to sharing the key initiatives for 2023. He then presented the proposed Executive Director 2023 Operating Budget by division, category, and FTE, as compared to the 2022 budget.

Mr. Wilkins presented the 2023 Legal Services budget.

Discussion ensued. Several questions were posed by the board and answered by staff. Topics of inquiry included:

- Fleet strategy
- Resources and strategy for unhoused population
- Resources for an additional attorney (if needed)

Mr. Shaw summarized the 2022 Safety and Security delivery of commitments and shared three key initiatives for 2023. He then presented the 2023 proposed budget.

Discussion ensued. Several questions were posed by the board and answered by staff. Topics of inquiry included:

- Internal Audit
- UTA Safety Culture
- Video Security and ARC Flash program
 - Security study recommendations
 - Active monitoring of cameras
 - Analytical software recognition
 - Sensor audio capabilities

e. Board of Trustees Office Budget

Presenters: Carlton Christensen, UTA Board Chair; Board of Trustees Staff; Annette Royle, UTA Director of Board Governance; Mike Hurst, UTA Internal Audit Director; Shule Bishop, UTA Government Relations Director.

Staff shared delivery on 2022 commitments and key initiatives for 2023 in their respective areas, (Board Office, Government Relations, and Internal Audit), in addition

to the 2023 proposed budgets.

Discussion ensued. Several questions were posed by the board and answered by staff. Topics of inquiry included:

- Online Board meeting viewership
- Strategic plan metrics and public communication
- Federal grants
- Communication structure and strategy (legislative)

Summarize Requests for Follow Up Session

Ms. Royle summarized questions and items for follow up from the budget work sessions. The trustees requested that staff provide more detailed information for discussions at the budget work session follow up meeting next week and budget review in October 2022.

5. Other Business

- a. Next Meeting: Budget Work Session
- Thursday, September 22nd, 2022 at 11:00 a.m.

6. Adjourn

A motion was made by Trustee Holbrook and seconded by Trustee Acerson to adjourn the meeting. The motion carried by a unanimous vote and the meeting adjourned at 2:21 p.m.

Transcribed by Hayley Mitchell
Executive Assistant to the Board
Utah Transit Authority

This document is not intended to serve as a full transcript as additional discussion may have taken place; please refer to the meeting materials and audio located at <https://www.utah.gov/pmn/sitemap/notice/780421.html> for entire content.

This document along with the digital recording constitute the official minutes of this meeting.

Approved Date:

Carlton J. Christensen
Chair, Board of Trustees



U T A

Utah Transit Authority

669 West 200 South
Salt Lake City, UT 84101

MEETING MEMO

Board of Trustees

Date: 10/12/2022

TO: Board of Trustees
THROUGH: Jana Ostler, Board Manager
FROM: Jana Ostler, Board Manager

TITLE:

Approval of September 22, 2022 Board of Trustees Budget Work Session Minutes

AGENDA ITEM TYPE:

Minutes

RECOMMENDATION:

Approve the minutes of the September 22, 2022 Board of Trustees Budget Work Session

BACKGROUND:

A Budget Work Session of the UTA Board of Trustees was held in person on Thursday, September 22, 2022 at 11:00 a.m. Minutes from the meeting document the actions of the board and summarize the discussion that took place in the meeting. A full audio recording of the meeting is available on the [Utah Public Notice Website <https://www.utah.gov/pm/sitemap/notice/782819.html>](https://www.utah.gov/pm/sitemap/notice/782819.html) and the [UTA Board Meetings page <https://rideuta.com/Board-of-Trustees/Meetings>](https://rideuta.com/Board-of-Trustees/Meetings).

ATTACHMENTS:

1. 2022-09-22_BOT_Budget Work Session_Minutes_UNAPPROVED



Utah Transit Authority

Board of Trustees

MEETING MINUTES - Draft

669 West 200 South
Salt Lake City, UT 84101

Thursday, September 22, 2022

11:00 AM

FrontLines Headquarters

Budget Work Session

Present: Chair Carlton Christensen
Trustee Beth Holbrook
Trustee Jeff Acerson

Also in attendance were UTA staff members.

1. Call to Order and Opening Remarks

Chair Carlton Christensen welcomed attendees and called the meeting to order at 11:06 a.m. He announced that this is an in-person meeting with audio recording and no video stream.

2. Pledge of Allegiance

Attendees recited the Pledge of Allegiance.

3. Safety First Minute

Paul Drake, UTA Director of Real Estate & Transit-Oriented Development, delivered a brief safety message.

4. Discussion Items

a. Budget Work Session Follow Up

Jay Fox, UTA Executive Director, was joined at the table by Bill Greene, UTA Chief Financial Officer.

Capital Position Discussion

Dave Hancock, UTA Acting Chief Service Development Officer, was joined by Bryan Sawyer, UTA Director of Fleet Engineering, and Sheldon Shaw, UTA Director of Safety & Security. Mr. Hancock reviewed capital staffing requests for service development, safety and security, and operations.

Discussion ensued. Questions on project manager division of duties, camera system state of good repair, video security technician responsibilities, fleet engineering division of duties, in-house overhaul advantages, and bus overhaul process were posed by the board and answered by staff.

Trustee Holbrook requested more public discussion on state-of-good repair needs.

Utility Analysis

Kevin Anderson, UTA Director of Maintenance Support, was joined by Hal Johnson, UTA Manager - Project Research & Development; Mr. Hancock; and Mr. Drake. Mr. Anderson explained UTA's strategy to capitalize on utility efficiencies. Mr. Johnson then reviewed the agency's utility usage dashboard (which was distributed as a handout). The dashboard reflects facility electricity usage, facility natural gas usage, and greenhouse gas emissions.

Discussion ensued. Questions on the utilities audit process, facilities state of good repair opportunities, fiber optic maintenance, planning for future facility utilization capacity, needed space projections, facility electricity usage trends, and facility natural gas usage trends were posed by the board and answered by staff.

The board suggested:

- Creating a detailed plan for equipment replacements and other measures that will help the agency realize savings in facilities costs
- Including fiber in the utilities plan
- Looking at facilities standards holistically and incorporating flex space in future planning
- Considering upgrades such as HVAC systems with air purifiers and optimal space planning in new facilities
- Ensuring facilities standards reflect employee preferences regardless of trends

Fuel and Power Use

Brad Armstrong, UTA Senior Manager - Budget & Financial Analysis, reviewed the price and volume fuel variance between the 2022 and 2023 budget (i.e., inflation versus utilization cost increases).

Discussion ensued. Questions on the impact of wayside power on commuter rail costs and elimination of diesel fuel vehicles at Riverside were posed by the board and answered by staff.

Trustee Holbrook requested more information on the impact of transit signal prioritization on fuel usage.

Recess

Chair Christensen called for a recess at 12:08 p.m.

The meeting reconvened at 12:35 p.m.

Enterprise Strategy

Alisha Garrett, UTA Chief Enterprise Strategy Officer, reviewed the organizational structure of the enterprise strategy office.

Information Technology (IT)

Ms. Garrett was joined by Kyle Brimley, UTA IT Director; Nichol Bourdeaux, UTA Chief Planning & Engagement Officer; and Kim Shanklin, UTA Chief People Officer. Ms. Garrett provided an overview of the bus communications, radio communications, enterprise applications, application development, information security, project management, network, and help desk

departments. She then spoke about 2023 IT priorities.

Discussion ensued. Several questions were posed by the board and answered by staff. Topics of inquiry included:

- In-house technology development
- Wi-Fi service
- Technology needs
- Radio replacement schedule and costs
- Continued need for radio communication towers
- Property management functions in the JD Edwards software
- Third-party fiber usage
- Software purchasing process
- Enterprise licensing
- Internal and external customer experience
- Wayfinding signage upgrade timeline
- IT/customer experience team coordination
- People office software improvements
- JD Edwards software usage

The board requested an update on the agency's wayfinding plan and suggested ensuring wayfinding solutions are consistent across the system.

Ms. Garrett was joined by Jeanette Lancaster, UTA Acting Sr. Manager of Operations Analysis and Solutions. Ms. Garrett described the composition and work of the ridership team, system monitor team, business solutions, and business and quality analyst functions in the operations analysis and solutions department.

Discussion ensued. Questions on the automated passenger counter (APC) validation process and business and quality analyst responsibilities were posed by the board and answered by staff.

Ms. Garrett was joined by Edison Pascascio, UTA Special Projects Manager. Ms. Garrett provided information on the data team composition and function, data strategy objectives, and architecture for reporting and analytics.

Discussion ensued. Questions on the data strategy decision process, data accessibility, report generation tools, dashboard generation responsibilities, and data report management were posed by the board and answered by staff.

Recess

Chair Christensen called for a recess at 1:53 p.m.

The meeting reconvened at 2:04 p.m.

Service Strategy

Ms. Bourdeaux was joined by Cheryl Beveridge, UTA Chief Operating Officer, Ms. Shanklin, and Mr. Greene. Ms. Bourdeaux highlighted the 2023 service strategy budget, including operating contingency budget. Ms. Shanklin spoke about potential extra board scheduling improvements and Ms. Beveridge covered supervisor ratios.

Discussion ensued. Questions on the operator employee pool, hiring needs, TRAX operator schedules (full-time or part-time), and supervisor responsibilities were posed by the board and answered by staff.

Transit-Oriented Communities (TOC) and Station Area Planning (SAP)

Mr. Drake was joined by Jordan Swain, UTA TOD Project Manager. Mr. Drake spoke about the SAP process, including the roles of participants, process requirements, and related workload. He then highlighted the three SAPs that are already in place for Lehi FrontRunner, Ogden Central, and Clearfield FrontRunner.

Discussion ensued. Questions on communicating with cities on SAP roles, municipal SAP participation, exemption qualifications, staff workload, transit-oriented development (TOD) guidelines, and TOD investment strategy (including the required affordable housing component) were posed by the board and answered by staff.

Chair Christensen suggested memorializing UTA’s role in the SAP process with the cities in the agency’s service district. He also requested lease options on UTA-owned land be considered when working on developments at TOD sites.

5. Other Business

- a. Next Meeting: Wednesday, September 28th, 2022 at 9:00 a.m.

6. Adjourn

A motion was made by Trustee Acerson, and seconded by Trustee Holbrook, to adjourn the meeting. The motion carried by a unanimous vote and the meeting adjourned at 2:53 p.m.

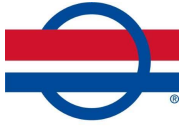
Transcribed by Cathie Griffiths
Executive Assistant to the Board Chair
Utah Transit Authority

This document is not intended to serve as a full transcript as additional discussion may have taken place; please refer to the meeting materials and audio located at <https://www.utah.gov/pmn/sitemap/notice/782819.html> for entire content.

This document along with the digital recording constitute the official minutes of this meeting.

Approved Date:

Carlton J. Christensen
Chair, Board of Trustees



U T A

Utah Transit Authority

669 West 200 South
Salt Lake City, UT 84101

MEETING MEMO

Board of Trustees

Date: 10/12/2022

TO: Board of Trustees
THROUGH: Jana Ostler, Board Manager
FROM: Jana Ostler, Board Manager

TITLE:

Approval of September 28, 2022, Board Meeting Minutes

AGENDA ITEM TYPE:

Minutes

RECOMMENDATION:

Approve the minutes of the September 28, 2022, Board of Trustees meeting

BACKGROUND:

A meeting of the UTA Board of Trustees was held in person at UTA Frontlines Headquarters and broadcast live via the UTA Board Meetings page on Wednesday September 28, 2022 at 9:00 a.m. Minutes from the meeting document the actions of the Board and summarize the discussion that took place in the meeting. A full audio recording of the meeting is available on the [Utah Public Notice Website](https://www.utah.gov/pm/sitemap/notice/780355.html) <<https://www.utah.gov/pm/sitemap/notice/780355.html>> and video feed is available through the [UTA Board Meetings page](https://rideuta.com/Board-of-Trustees/Meetings) <<https://rideuta.com/Board-of-Trustees/Meetings>>.

ATTACHMENTS:

1. 2022-09-28_BOT_Minutes_unapproved



Utah Transit Authority

Board of Trustees

MEETING MINUTES - Draft

669 West 200 South
Salt Lake City, UT 84101

Wednesday, September 28, 2022

9:00 AM

FrontLines Headquarters

Present: Chair Carlton Christensen
Trustee Beth Holbrook
Trustee Jeff Acerson

Also attending were UTA staff and interested community members.

1. Call to Order and Opening Remarks

Chair Carlton Christensen welcomed attendees and called the meeting to order at 9:00 a.m.

2. Pledge of Allegiance

Attendees recited the Pledge of Allegiance.

3. Safety First Minute

Alisha Garrett, UTA Chief Enterprise Strategy Officer, delivered a brief safety message.

5. Consent

a. Approval of September 14, 2022, Board Meeting Minutes

A motion was made by Trustee Holbrook, and seconded by Trustee Acerson, to approve the consent agenda. The motion carried by a unanimous vote.

4. Public Comment

No in-person public comment was given and no online public comment was received for the meeting.

6. Reports

a. Executive Director's Report

- Rail Apprenticeship Program Approved by Department of Labor
- Service Adjustments
- Radio Communications - WiFi
- Executive Director Team Award

Rail Apprenticeship Program Approved by Department of Labor

Jay Fox, UTA Executive Director, was joined by Kim Shanklin, UTA Chief People Officer; Stacey Palacios, UTA Manager - Training & Development; Mitch Holmes, UTA Maintenance Apprenticeship Training Administrator; and Rod Dunn with the

Amalgamated Transit Union (ATU). Mr. Holmes recognized staff who participated in standing up the rail apprenticeship program, which was recently approved by the Department of Labor.

Ms. Palacios spoke about the ATU collaboration with the apprenticeship program. Mr. Dunn expressed the union's support for the program.

Service Adjustments

Mr. Fox was joined by Nichol Bourdeaux, UTA Chief Planning & Engagement Officer, and Cheryl Beveridge, UTA Chief Operating Officer. Mr. Fox spoke about emergency service adjustments scheduled for the December 2022 change day. The adjustments are necessary due to the worker shortage in the current labor market.

Ms. Bourdeaux highlighted the criteria used for analyzing service priorities and reviewed specific changes for December, which include:

- Salt Lake County Ski Service
 - 953: suspended
 - 972: 30-minute service
 - 994: 30-minute service
- Salt Lake County Local Service
 - 39: 30-minute service
 - 201: 60-minute service
 - 218: 60-minute service
 - 240: 30-min service and streamline route
- Summit County Service
 - 901: suspended
 - 902: shorten to 3900 South/Wasatch Boulevard
- Ogden Ski Service
 - 674,675,677: restructure service to run more midday and less peak trips
- Salt Lake City-Ogden Regional Service
 - 455,470, 640: planned missed trips
- Mt. Ogden Local Service
 - 603, 612: planned missed trips
 - 625,645: 60-minute service
 - 650: suspended

Discussion ensued. Questions on public outreach regarding the changes, service prioritization criteria, and regional impacts of operator shortages were posed by the board and answered by staff.

Radio Communications - WiFi

Mr. Fox was joined by Kyle Brimley, UTA IT Director; Jarvie Curtis, UTA IT Manager - Communications & Deployment, and Ms. Garrett. Mr. Brimley congratulated the radio communications team for completing the first phase of a state-of-good repair project designed to improve the Wi-Fi system on FrontRunner. Mr. Curtis described the system, which other transit systems are looking at as a model, and shared the onboard Wi-Fi system is now capable of reaching speeds of up to 95mb with nearly 75,000 connections per month.

Discussion ensued. Questions on the possibility of deploying Wi-Fi on TRAX and Wi-Fi functionality on other transportation modes were posed by the board and answered by staff.

Chair Christensen requested staff look into deploying Wi-Fi on TRAX.

Executive Director Team Award

Mr. Fox was joined by Ms. Garrett. Ms. Garrett recognized the Meadowbrook maintenance team, in cooperation with the Central maintenance team, for its work in cleaning up the UTA "bone yard" - an area where old, out-of-service vehicles were stored to use for parts.

b. Financial Report - July, 2022

Bill Greene, UTA Chief Financial Officer, was joined by Daniel Hofer, UTA Director of Capital Assets & Project Controls, and Ms. Beveridge. Mr. Greene reviewed the financial dashboard, sales tax revenue, sales tax collections by county, passenger revenues, stimulus funding, and operating financial results. Mr. Hofer discussed capital spending (including spending by project type) and provided project highlights on the overhead catenary system (OCS) wire scan that took place in the summer.

Discussion ensued. Questions on sales tax growth, stimulus drawdowns, capital development budget underruns, and weather impacts on the OCS were posed by the board and answered by staff.

7. Contracts, Disbursements and Grants**a. Contract: Offsite Civil Work (Rocky Mountain Power)**

David Osborn, UTA Project Manager III, requested the board approve a contract with Rocky Mountain Power for network capacity upgrades at the Jordan substation. The total contract value is \$211,922.34.

Discussion ensued. A question on the substation location was posed by the board and answered by Mr. Osborn.

A motion was made by Trustee Acerson, and seconded by Trustee Holbrook, that this contract be approved. The motion carried by a unanimous vote.

b. Contract: Primary Server and Data Storage Replacement (Cache Valley Electric)

Mr. Brimley requested the board approve a contract with Cache Valley Electric for a primary server and data storage replacement. The total contract value is \$305,960.92.

Discussion ensued. Questions on the primary server location and potential parts procurement issues were posed by the board and answered by Mr. Brimley.

A motion was made by Trustee Holbrook, and seconded by Trustee Acerson, that this contract be approved. The motion carried by a unanimous vote.

c. Contract: Task Ordering Agreement for TOD Station Area Planning Consultant Pools A, C, D (Design Workshop, Inc.)

Paul Drake, UTA Director of Real Estate and Transit-Oriented Development, was joined by Jordan Swain, Transit-Oriented Development Project Manager. Staff requested the board approve a task ordering contract with Design Workshop, Inc. to assist in station area planning. The contract has a not-to-exceed value of \$600,000.

A motion was made by Trustee Acerson, and seconded by Trustee Holbrook, that this contract be approved. The motion carried by a unanimous vote.

d. Contract: Task Ordering Agreement for TOD Station Area Planning Consultant Pools A, C, F (IBI Group)

Mr. Drake was joined by Mr. Swain. Staff requested the board approve a task ordering contract with IBI Group to assist in station area planning. The contract has a not-to-exceed value of \$600,000. Mr. Swain noted the contract term is different than the term listed in Exhibit A in the meeting packet. The actual term is through November 1, 2027.

Discussion ensued during which Mr. Swain explained “pool F” is for parametrics work.

A motion was made by Trustee Holbrook, and seconded by Trustee Acerson, that this contract be approved as amended to reflect the correct contract term through November 1, 2027. The motion carried by a unanimous vote.

e. Change Order: On-Call Infrastructure Maintenance Contract Task Order #22-72 - 11000 S Grade Crossing Replacement (Stacy and Witbeck, Inc)

Jared Scarbrough, UTA Director of Capital Construction, was joined by Kyle Stockley, UTA Rail Infrastructure Project Manager. Mr. Stockley requested the board approve a \$237,226 change order to the contract with Stacy and Witbeck for the 11000 S grade crossing replacement.

A motion was made by Trustee Acerson, and seconded by Trustee Holbrook, that this change order be approved. The motion carried by a unanimous vote.

f. **Change Order: On-Call Infrastructure Maintenance Contract Task Order #22-73 - 700 East Kimballs Lane Grade Crossing Replacement (Stacy and Witbeck, Inc)**

Mr. Scarbrough was joined by Mr. Stockley. Mr. Stockley requested the board approve a \$284,634 change order to the contract with Stacy and Witbeck for the 700 East Kimballs Lane grade crossing replacement.

Discussion ensued. A question on the location of the crossing was posed by the board and answered by staff.

A motion was made by Trustee Holbrook, and seconded by Trustee Acerson, that this change order be approved. The motion carried by a unanimous vote.

g. **Change Order: On-Call Infrastructure Maintenance Contract Task Order #22-80 - 2022 Phase 2 Grade Crossing Material Procurement (Stacy and Witbeck, Inc)**

Mr. Scarbrough was joined by Mr. Stockley. Mr. Stockley requested the board approve a \$238,146 change order to the contract with Stacy and Witbeck for the 2022 phase 2 grade crossing material procurement.

Discussion ensued. A question on anticipated materials needs was posed by the board and answered by staff.

A motion was made by Trustee Acerson, and seconded by Trustee Holbrook, that this change order be approved. The motion carried by a unanimous vote.

h. **Change Order: TRAX and Commuter Rail Car Cleaning Contract - Last Option Year (Image Property Services)**

Benjamin Adams, UTA Manager of Commuter Rail Vehicle Maintenance, was joined by Marco Gamonal, UTA Manager of Light Rail Vehicle Maintenance. Mr. Adams requested the board approve a \$1,310,802.99 change order for the last option year on the contract with Image Property Services for TRAX and commuter rail car cleaning services, along with an adjustment for inflation. The total contract value, including the change order, is \$5,628,893.71.

Discussion ensued. A question on outsourcing rail cleaning services was posed by the board and answered by staff.

A motion was made by Trustee Holbrook, and seconded by Trustee Acerson, that this change order be approved. The motion carried by a unanimous vote.

i. **Pre-Procurements**

- **Holiday Employee Gift Cards**
- **Bus Stop Sign Poles**
- **South Valley Commuter Rail Environmental Study**

Todd Mills, UTA Director of Supply Chain, indicated the agency intends to procure the goods and services listed on the meeting agenda.

Discussion ensued. Questions on the holiday gift card amount, sole source procurement for the bus stop sign poles, and coordination with the Utah Department of Transportation on the South Valley Commuter Rail Environmental Study were posed by the board and answered by staff.

8. Service and Fare Approvals

a. Fare Agreement: Special Events Pass (The Church of Jesus Christ of Latter-day Saints)

Kensy Kunkel, UTA Manager - Business Development & Sales, requested the board approve a \$38,000 fare agreement with The Church of Jesus Christ of Latter-day Saints for ticket-as-fare passes to the October 2022 General Conference (October 1-2, 2022), Luz de Las Naciones (November 5, 2022), and Christmas concerts (December 13-15, 2022).

Discussion ensued. A question on factoring in decreased ticket availability due to construction near Temple Square was posed by the board and answered by staff.

A motion was made by Trustee Holbrook, and seconded by Trustee Acerson, that this Service or fare agreement be approved. The motion carried by a unanimous vote.

Chair Christensen called for a brief recess at 10:33 a.m.

The meeting reconvened at 10:43 a.m.

9. Budget and Other Approvals

a. TBA2022-09-01 - Technical Budget Adjustment Authorizing the Addition of Two Full Time Employees to Support UTA Grant Management

Mr. Greene described the technical budget adjustment (TBA), which consolidates the agency's grants function under the finance office and adds headcount for a department director and project controls administrator to the grants department.

A motion was made by Trustee Acerson, and seconded by Trustee Holbrook, that this technical budget adjustment be approved. The motion carried by a unanimous vote.

10. Discussion Items

a. UTA Five-Year Service Plan Draft Network

Megan Waters, UTA Community Engagement Director, was joined by Eric Callison, UTA Manager - Service Planning. Mr. Callison outlined the five-year service plan development process and service contained in the current iteration. The five-year service plan is divided into four segments: August 2023, planned but not phased, unconstrained, and vision items. Mr. Callison detailed what is included in the plan for each of these categories. Ms. Waters then reviewed the five-year service plan public engagement process.

Discussion ensued. Questions on anticipated ridership from the Missionary Training Center, potential Salt Lake City-Ogden service adjustments, airport access on the planned 5600 West route, south terminus on the 5600 West route , planned connections to the Grandville Avenue extension in south Salt Lake County, community contact databases, and planned service in northwest Utah County were posed by the board and answered by staff.

Trustee Holbrook suggested utilizing the UTA FrontRunner Wi-Fi network for public outreach. The trustees requested more information on five-year plan costs, both constrained and unconstrained.

b. 2022-2023 UTA Insurance Renewal Discussion

Dave Pitcher, UTA Claims & Insurance Manager, reviewed the UTA Board Policy 2.1 - Risk Management requirements and highlighted the agency's insurance coverage and associated premiums. Overall, there is a 5% increase in insurance premiums in policy year 2022-2023 as compared to policy year 2021-2022.

Discussion ensued. Questions on the implications of sharing rail corridor with Union Pacific Railroad, earthquake coverage, and railroad protective liability coverage were posed by the board and answered by staff.

11. Other Business

- a. Next Meeting: Wednesday, October 12th, 2022 at 9:00 a.m.

12. Adjourn

A motion was made by Trustee Holbrook, and seconded by Trustee Acerson, to adjourn the meeting. The motion carried by a unanimous vote and the meeting adjourned at 11:34 a.m.

Transcribed by Cathie Griffiths
Executive Assistant to the Board Chair
Utah Transit Authority

This document is not intended to serve as a full transcript as additional discussion may have taken place; please refer to the meeting materials, audio, or video located at <https://www.utah.gov/pmn/sitemap/notice/783797.html> for entire content.

This document along with the digital recording constitute the official minutes of this meeting.

Approved Date:

Carlton J. Christensen
Chair, Board of Trustees



Utah Transit Authority

MEETING MEMO

669 West 200 South
Salt Lake City, UT 84101

Board of Trustees

Date: 10/12/2022

TO: Board of Trustees
THROUGH: Jay Fox, Executive Director
FROM: Nichol Bourdeaux, Chief Planning & Engagement Officer
PRESENTER(S): Nichol Bourdeaux, Chief Planning & Engagement Officer

TITLE:

Approval for International Travel to Vancouver, British Columbia, Canada for Planning & Engagement Department Peer Observation

AGENDA ITEM TYPE:

Discussion

RECOMMENDATION:

Approve International Travel for participation in Planning & Engagement Department Peer Observation in Vancouver, British Columbia, Canada. Attendees include Leo Masic, Customer Experience Planner, Megan Waters, Community Engagement Director and G.J. LaBonty, Customer Experience Manager.

BACKGROUND:

The Planning and Engagement Office continually researches best practices from other transit agencies. Doing so informs the department's work in innovating for our riders-including in areas of customer experience, community engagement, service planning and alternative transit modes. Previous peer observation visits conducted by the Planning Department have resulted in concrete changes that have benefitted UTA riders (like improved wayfinding, bus stop signs, service planning practices, and on-board announcements).

DISCUSSION:

This document identifies the components of the proposed agency site visits-including topical areas of discussion as well as anticipated travel expense, accommodations, and meal expenditures.

It is proposed to conduct the peer observation in Vancouver, British Columbia, Canada. TransLink is the public transportation agency that we would visit and review. The observation visit is proposed to take place between fall 2022 and Spring 2023 depending on travel cost feasibility.

Peer observation - itinerary

MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY
Fly to Vancouver (arrive at 9:10 pm)	Morning and afternoon meetings with TransLink Ride system in evening	Morning and afternoon meetings with TransLink Ride system in evening	Ride system	Fly back to Salt Lake (8:00 am)

Proposed UTA staff

- Customer Experience Planner - Leo Masic
- Community Engagement - Megan Waters
- Manager of Customer Experience - G.J. LaBonty

Information sharing

Upon return, UTA staff will develop a presentation and summary report of the peer review for the Planning and Engagement Office, as well as other interested departments at our agency.

International travel

Travel to Canada requires approval from the Board of Trustees. The Planning Department believes a trip to Canada is justified because of:

- **Higher transit usage per capita** compared to the Wasatch Front (population **2.6 million**, pre-covid weekday ridership approximately **156,200**):
- Vancouver (population **2.6 million**, pre-covid weekday ridership **1.4 million**)
- **Similar variety of modes** Vancouver (bus, light rail, BRT, commuter rail)
- Best practices in **wayfinding, next-stop announcements, and other signage**
- **Multilingual information** (due to Canada's official status as a bilingual country)
- **Geographic proximity** (800 miles away)
- Federal/local rules related to **fares**

Topics of discussion

- **TransLink Customer Experience Team**
 - Customer Experience Action Plan
 - *Do you use a consultant to help prepare the document?*
 - *Do you know an approximate cost to produce the document?*
 - *Do you plan to keep releasing updated plans every five years?*
 - *How was the list of 'key projects' developed?*
 - *It looks like many of the key projects span a variety of TransLink's departments (i.e., bus, rail, bicycle, fare payment, information technology). Are the individual*

departments responsible for the implementation of the initiatives, or does the Customer Experience team act as the Project Manager for each project?

- *How were the five priorities for the next five years developed?*

○ **Announcements and on-board signage**

- Do you provide next-stop signage inside your buses? Do you announce every stop? Do you use a pre-recorded voice?
- Did you retrofit old buses with electronic signs?
- Other real time signage and information
- What is your strategy and vision governing decisions regarding customer-facing information?
- How do you accommodate riders who lack access to technology vis-à-vis customer-facing information?
- Decommissioned real time signs (2G issue?)
-

<https://dailyhive.com/vancouver/translink-rapidbus-stops-real-time-digital->

- Sidewalk information totems, including LCD real time information
- Transit app trial for capacity predictions

○ **Customer Outreach/Engagement**

- Transit Ambassador Program
- How do engagement teams interface with the agency's marketing and communications department(s)?
- Art in Transit
- How do you leverage social media to engage with riders and the community as a whole?
- Tap-in-to-Win Customer Contest/Rider recovery from COVID?
- TransLink Store - is it popular? Who manages it?

○ **Service Coordination**

- Two-minute headways in Vancouver-headway management and adherence
- Integration of bus networks with comprehensive rail systems
- How do you bring consistency to the rider experience between modes?
- What kind of service enhancements do you provide for special events? How do you communicate these enhancements to your riders?
- Arterial BRT routes (similar to future UTA core routes)
- What has been your experience with running owl service?
- BRT systems (Rapid) - underlying bus service

○ **Environmental considerations**

- Wind-powered light rail
- Electric bus pilot project

○ **Fare Collection Technology**

- Fare Zones - are they successful?
- Fare media types?
- Hardware/back-office vendors?

- TVM's, card readers, fareboxes manufacturers
 - Mobile ticketing
-

ALTERNATIVES:

Not travel and attempt to learn from our peer agencies through other avenues of communication.

FISCAL IMPACT:

Travel costs fluctuate and will be determined at the time of travel. Only reasonable costs that can be covered under the Planning and Engagement Office approved budget will be incurred for proposed travel.

ATTACHMENTS:

None



U T A

Utah Transit Authority

669 West 200 South
Salt Lake City, UT 84101

MEETING MEMO

Board of Trustees

Date: 10/12/2022

TO: Board of Trustees
FROM: Jay Fox, Executive Director
PRESENTER(S): Jay Fox, Executive Director

TITLE:

Executive Director's Report

- **Bus Rodeo Winners**
- **September 2022 Ridership Update**

AGENDA ITEM TYPE:

Report

RECOMMENDATION:

Informational report for discussion

DISCUSSION:

Jay Fox, Executive Director, will report on recent activities of the agency and other items of interest.

- Bus Rodeo Winners (Cherryl Beveridge)
- September 2022 Ridership Update



Utah Transit Authority

MEETING MEMO

669 West 200 South
Salt Lake City, UT 84101

Board of Trustees

Date: 10/12/2022

TO: Board of Trustees
THROUGH: Jay Fox, Executive Director
FROM: Kim Shanklin, Chief People Officer
PRESENTER(S): Ann Green-Barton, Director of Total Rewards

TITLE:

R2022-10-01 - Approving and Adopting a Revised Investment Policy of the Authority's Employee Retirement Plan

AGENDA ITEM TYPE:
Resolution

RECOMMENDATION:

Adopt resolution R2022-10-01 to approve the revised Retirement Plan Investment Policy and authorize an amendment to the Authority's investment management agreement with Cambridge Associates to incorporate the new Investment Policy.

BACKGROUND:

The Pension Committee has been designated the administrator of UTA's Retirement Plan and Trust Agreement. Cambridge Associates presented at the June 2, 2022 Pension Committee meeting on the current investment policy statement and target asset allocations. Cambridge recommended the Pension Committee consider a change to the strategic asset allocation to better position the portfolio for today's market conditions and provide portfolio managers greater investment opportunities.

The Pension Committee is required by Board Policy 2.1 Financial Management and Resolution R2019-08-01 to present any proposed changes in funding assumptions and contribution rates, selection of investment management services, or proposed policies and procedures to the Board of Trustees for consideration and approval.

DISCUSSION:

As part of the investment discussions, Cambridge recommended changing the asset allocation of the portfolio to eliminate one asset class and introduce a new asset class that would permit investment in private equity opportunities. The purpose of this change is to add return potential and lower portfolio volatility through

more diversification. This revision to the target asset allocations eliminates Liquid Diversifiers and allows for up to 10% investment in Private Equity. On June 2, 2022, the Pension Committee unanimously approved a motion to recommend the Board of Trustees adopt the revised Retirement Plan Investment Policy.

ALTERNATIVES:

If the revised Retirement Plan Investment Policy is not adopted, the current version of the Investment Policy will remain in effect.

FISCAL IMPACT:

There is no fiscal impact to the current budget.

ATTACHMENTS:

R2022-10-01 Approving and Adopting a Revised Investment Policy of the Authority's Employee Retirement Plan, including:

- Exhibit A - UTA Investment Policy Statement October 2022 REDLINE
- Exhibit B - Amendment #1 to the Investment Management Agreement (Cambridge Associates)

**RESOLUTION OF THE BOARD OF TRUSTEES OF THE UTAH TRANSIT
AUTHORITY APPROVING AND ADOPTING A REVISED INVESTMENT POLICY
OF THE AUTHORITY'S EMPLOYEE RETIREMENT PLAN**

R2022-10-01

October 12, 2022

WHEREAS, the Utah Transit Authority (the "Authority") is a large public transit district organized under the laws of the State of Utah and was created to transact and exercise all of the powers provided for in the Utah Public Transit District Act; and

WHEREAS, the Board of Trustees ("Board") established the Utah Transit Authority Employee Retirement Plan (the "Retirement Plan") to provide a retirement system for its employees; and

WHEREAS, the Board established a committee (the "Pension Committee") to help oversee the administration of the Retirement Plan; and

WHEREAS, the Pension Committee has created a policy document revising the funding and investment policies for the Retirement Plan that were previously adopted in 2016 (the "Investment Policy"); and

WHEREAS, Board Policy 2.1 – Financial Management requires the Board of Trustees to review and approve the Pension Committee's Investment Policy prior to adoption; and

WHEREAS, it is the recommendation of the Pension Committee that the Board of the Authority approve and adopt the Investment Policy; and

WHEREAS, the Board of the Authority wishes to adopt the Investment Policy for the Retirement Plan and authorize the Pension Committee to execute it.

NOW, THEREFORE, BE IT RESOLVED by the Board of Trustees of the Utah Transit Authority:

1. That the Board hereby confirms the recommendation of the Pension Committee that the Investment Policy be adopted.
2. That the Board hereby approves and adopts the Investment Policy in substantially the same form as the document attached as "Exhibit A" to this resolution and authorizes the Pension Committee to execute it.
3. That the Board hereby approves amending the Authority's investment management agreement to incorporate the new Investment Policy in substantially the same form as the document attached as "Exhibit B" to this resolution and authorizes the Pension Committee to execute it.

4. That the Board formally ratifies prior actions taken by the Authority, including those taken by the Pension Committee, Executive Director, the Chief Financial Officer, staff, and counsel that were necessary or appropriate to give effect to this Resolution.

5. That the corporate seal be attached hereto.

Approved and adopted this 12th day of October 2022.

Carlton Christensen, Chair
Board of Trustees

ATTEST:

Secretary of the Authority

(Corporate Seal)

Approved As To Form:

DocuSigned by:

David Wilkins

5E3257B1CF024B9...

Legal Counsel

Exhibit A
(Investment Policy)

Utah Transit Authority Employee Retirement Plan

INVESTMENT POLICY

2022 February 2016

Approved

October

INVESTMENT POLICY CONTENTS

	<u>Page</u>
I. PURPOSE	3
II. ROLES AND RESPONSIBILTIES	3
III. LONG TERM ASSET ALLOCATION POLICY	6
IV. IMPLEMENTATION ISSUES	8
V. CONTROL AND EVALUATION	9

The following is the Pension Committee’s statement of (i) funding policy and (ii) investment policy, objectives, and guidelines for the Utah Transit Authority Employee Retirement Plan (the “Plan”). It is prepared by the Committee as direction to the Fund Custodian, Investment Advisor and Investment Managers and is subordinate to the plan document provided it is not inconsistent with the plan document.

I. PURPOSE

The Plan is a defined benefit pension plan qualified under the Internal Revenue Code that covers both administrative employees and those employees covered by a collective bargaining agreement. The Plan intends to provide a vested pension whose amount depends on length-of-service and other parameters described in the Plan. The Authority intends to build and maintain the Fund, by means of contributions that satisfy legal requirements and by means of investment return.

Because of the long-term nature of the Plan's obligations and funding policy, and the expected cash flow needs to pay benefits, the Plan's investment policy is to manage the Fund:

- i. With long-term (five years and more) objectives
- ii. With an emphasis on total return more than on high current income or the need to maintain ready-cash reserves
- iii. With the intent to achieve the highest possible long-term rate of return without taking excessive risk that could jeopardize the Plan’s funding policy or subject the Plan to undue funding volatility

In providing the framework for the management of the Plan assets, the policies contained in this document are designed to meet the following objectives:

- i. Provide for the availability of funds for benefits as they become due
- ii. Maintain the Trust’s purchasing power
- iii. Maximize total return subject to prudent risk-taking and expense management
- iv. Diversify assets across and within capital markets
- v. Maximize the Plans’ ABO funded levels

Secondary to these primary objectives, specific objectives for the Plan include achieving a rate of investment return (net of asset management expenses) over a full market cycle (generally considered 3-5 years) that:

- i. Exceeds the Plan’s actuarial investment rate assumption (currently 6.757.25% per annum)
- ii. Exceeds by 3.5% per annum the rate of inflation (as measured by the Consumer Price Index for all Urban Consumers)

II. ROLES AND RESPONSIBILITIES

Definitions

“ABO” means accrued benefit obligation. At a given time, the Plan’s accrued benefit obligation is the sum of the present value of (i) the pensions earned by active and terminated vested participants, and (ii) the pensions remaining to be paid to retirees.

"Authority" means Utah Transit Authority.

"Board" means the Board of Trustees of the Authority.

"Committee" means the Pension Committee as established by the Utah Transit Authority Employee Retirement Plan.

"Fund" means the assets held in the Trust Fund created by the Plan.

"Fund Custodian" means the holding company appointed by the Committee to provide institutional investment and brokerage services.

"Investment Advisor" means the current Registered Investment Advisor employed to manage the assets of the Plan on a discretionary basis.

"Investment Manager" means the asset manager or managers who have a responsibility to manage portions of the assets of the Plan as directed by the Investment Advisor or the Committee.

"Participant" means an Authority employee who is eligible to be a participant under the Plan.

"Plan" means the Utah Transit Authority Employee Retirement Plan.

"Staff" means individuals from the Authority assigned responsibility for assisting the Committee in the operational aspects of the Plan.

"Statement" means this investment policy statement as adopted by the Pension Committee.

Roles and Responsibilities

Committee

The Committee has been delegated plan management authority and responsibility by the Plan to implement and maintain the provisions of this Statement and to take any corrective actions as needed. In this capacity, the Committee has the authority to employ persons to render advice with respect to its responsibilities under the Plans. The Committee has the responsibility to periodically review all pertinent participant information and Plan data in order to establish the funding policy of the Plan. The Committee and its members are considered fiduciaries and are held to a standard of care that anticipates plan assets being managed solely in the best interests of the plan participants and beneficiaries. This will be achieved by:

- i. Performing all fiduciary duties solely in the interest of plan participants and their beneficiaries
- ii. Discharging all responsibilities with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character with like aims

The Committee's other responsibilities include:

- i. Establishing and periodically reviewing the appropriateness of the Plan's asset allocation policy (which may be expressed as a range)
- ii. Making revisions to this Statement to reflect changing conditions within the Plan

- iii. Monitoring compliance with this Statement
- iv. Appointing agents and advisors such as the Plans' actuary and accountant, and fiduciaries such as the Fund Custodian, Investment Advisor, and Investment Managers
- v. To the extent that the Committee elects to do so, employing one or more Investment Managers to direct all or a portion of the Fund's investments provided that, to the extent the Investment Manager is being appointed as an "investment manager" under ERISA, the Investment Manager meets the following requirements:
 - a. Qualifies as an investment manager under the Employee Retirement Income Security Act of 1974 ("ERISA")
 - b. Acknowledges that it is an ERISA 3(38) fiduciary with respect to the Plan
- vi. Removing Investment Advisors or Investment Managers

Investment Advisor

An Investment Advisor may be assigned by the Committee to manage the Fund in a manner consistent with this Statement and in accordance with State and Federal law and the Uniform Prudent Investor Act. The Investment Advisor must be a registered investment advisor and shall acknowledge that it is a fiduciary with respect to the Plan. The Investment Advisor will not take title to any assets nor act as a custodian of the assets.

As of February 1, 2016, the Pension Committee appointed Cambridge Associates, LLC ("CA") as Investment Advisor pursuant to an Investment Management Agreement (the "IMA"). The IMA provides CA with discretion to manage the Plan in accordance with the investment guidelines and restrictions contained in this Statement. Under the IMA, CA's duties include, but are not limited to, the following:

- i. Advising the Plan surrounding the selection of and the allocation to the different asset categories within the allowable ranges set forth in the Long Term Asset Allocation Policy section of this Statement
- ii. Periodically, but no less than annually, reviewing the suitability of the asset mix and Investment Managers and meeting with the Committee to present results
 - a. This presentation should include economic and capital market research which supports the asset allocation relative to the allowable ranges set forth in the Long Term Asset Allocation Policy section of this Statement
- iii. Identifying specific assets and Investment Managers within each asset category
- iv. Implementing investment decisions on behalf of the Plan, including (a) making investments in investment funds and (b) appointing Investment Managers to direct all or a portion of the Fund's investments provided that, to the extent the Investment Manager is being appointed as an "investment manager" under ERISA, the Investment Manager meets the following requirements:
 - a. Qualifies as an investment manager under the Employee Retirement Income Security Act of 1974 ("ERISA")
 - b. Acknowledges that it is an ERISA 3(38) fiduciary with respect to the Plan
- v. Monitoring and reporting to the Committee on the performance of Investment Managers and any direct investments in investment funds
- vi. Recommending changes to any of the above

- vii. Periodically, but no less than quarterly, providing the Committee with statements detailing Plan investments, asset allocation, performance, and all fees being paid
- viii. Complying with the provisions of this Statement
 - ix. Hiring and removing Investment Managers and investing in and redeeming from investment funds

Investment Managers

Investment Managers, to the extent that they are appointed, will construct and manage investment portfolios consistent with the investment philosophy and disciplines they were hired to implement. Under the discretionary agreement with CA, Investment Managers are expected to adhere to the directions from the Investment Advisor.

Relations with Advisors and Consultants

The Committee will designate individuals to act as contacts who are responsible for providing direction to and interacting with the assigned advisors and consultants in implementing the policies and directives of the Committee. All meetings and presentations involving the Committee will be coordinated and scheduled by the staff. Consultants and advisors, hired to provide specific expertise, will function as an extension of the staff.

Review and Amendment of this Policy Statement

The policies and responsibilities set forth in this document are intended to provide long-term stability and structure to the investment of Plan assets and are therefore not subject to frequent change. The policies stated here, however, must be reflective of the collective common will and wisdom of the Committee. Therefore, to insure the policy is maintained in a current status, these stated policies of the Committee will be reviewed from time to time by the staff and the Committee and amended as deemed appropriate by the Committee.

III. LONG TERM ASSET ALLOCATION POLICY

In setting the long term asset allocation policy for the Plan, the Committee has opted to provide a minimum and maximum allowable allocation to the major asset classes. The Investment Advisor will seek to diversify the Plan by asset class (e.g., equities, fixed income, and real assets) and within each asset class (e.g., by economic sector, industry, quality, style, size, etc.). The purpose of diversification is to provide reasonable assurance that no single security or class of securities will have a disproportionate impact on the total Plan.

The target allocations and aggregate exposure to each of the asset classes is to remain within the following ranges:

	Policy Allocation	
	Target Allocation	Range
Global Equity	56 63%	36 51% – 76 75%
Private Equity	10%	0%-20%
Liquid Diversifiers	-10%	-0% – 15%
Real Assets	74%	30% – 118%
Fixed Income	25 22%	15 12% – 35 32%
Cash	2 1%	0% – 5%

Asset Classes are defined as follows:

- i. Global Equity – intended to provide capital appreciation, current income, and growth of income mostly through the ownership of public equities representing an ownership interest in a company. The objective for investment managers in this category is to exceed the results represented by the annualized return of the MSCI All Country World Index, net over annualized rolling three to five-year time periods.
- ii. Private Equity – the objective of private equity investments, including buyouts, venture capital, secondaries, private credit, and distressed assets, is to provide the Plan with a return in excess of public markets over longer periods of time. These investments are illiquid and require capital to be locked up for 7-12 years on average. Due to the higher-risk nature of these strategies, a program of private equity investments should be diversified by vintage year, strategy, geography, and manager. A private equity program requires multi-year commitments and is built over several years. The Investment Advisor will work to monitor the funded and unfunded commitment levels relative to asset allocation and Fund cash levels to ensure adequate liquidity to meet capital calls as well as spending needs.
- ~~i.~~ ~~Liquid Diversifiers—intended to provide the Fund with less directional equity exposure and less correlated returns to traditional asset class (i.e. equities and fixed income). These strategies may utilize multiple asset classes spanning across the capital structure of equity and debt securities and they may also employ leverage, commodities, and derivatives. These investments will be made in managers with more liquid investment profiles through mutual funds or commingled vehicles.~~
- ~~ii.~~ iii. Real Assets – intended to provide real return through investments which has inflation sensitive characteristics. Investments could include REITs, natural resource equities, MLPs, inflation-linked bonds and commodities.
- ~~iii.~~ iv. Fixed Income – intended to provide diversification and protection against downward moves in the equity market and serves as a deflation hedge and a predictable source of income. Weighted average duration of the allocation will be within 1 year of the Barclays Capital Aggregate Bond Index, as measured on a quarterly basis.
- ~~iv.~~ v. Cash – the primary purpose of cash and cash equivalents with maturities of less than 1 year is to provide a liquid source of funds for portfolio rebalancing.

Prohibited Investments:

~~While some investment funds and Investment Managers might invest in the following types of investment strategies, the Plan shall not invest directly in the following investments or strategies~~

- ~~Options or futures contracts~~
- ~~Non-marketable and/or non-registered single name securities~~
- ~~Derivatives~~
- ~~Private placements in single name securities~~
- ~~Private Real estate~~
- ~~Short selling or purchasing on margin~~
- ~~Single commodity futures~~

~~Warrants~~
~~Venture capital & Private Equity~~
~~Securities lending~~
~~Traditional hedge funds~~
~~Employ leverage at aggregate Plan level~~

- ◇ The Investment Advisor is prohibited from employing leverage, directly implementing derivatives, or securities lending at the aggregate Plan level. It was acknowledged that some investment managers in the Plan may utilize derivatives, such as options and futures contracts, as part of their investment strategy. Some managers may also participate in securities lending as part of their strategy. The current investment policy does not allow for the Plan to invest in private placements in single-name securities.

The Committee recognizes that maintaining a rigid allocation at all times would be undesirable under various potential market conditions. Therefore, the allocation of assets may vary from time to time within and in some extreme market conditions outside the ranges provided above without being considered an exception to this Investment Policy. The only instance where the allocation would be permitted to be outside the range is if the purchases were made within the allocation range but through unrealized market gains or losses the value of the assets falls outside the range.

The Investment Advisor, CA, will monitor the actual asset allocation relative to the above targets and ranges and rebalance the Plan as appropriate. Rebalancing the Plan to approved levels helps maintain the risk profile adopted by the Committee. In the event that the actual allocation moves outside the above ranges, CA will inform the Authority and immediately bring the allocation within the above allowable ranges.

IV. IMPLEMENTATION ISSUES

Investment Manager Selection

The Committee has appointed the Investment Advisor to, to the extent it determines to do so, hire competent registered professional Investment Managers to manage portions of the assets of the Plan. No Investment Manager shall be hired who has not, by their record and experience, demonstrated their fiduciary responsibility, their investment expertise, and their capacity to undertake the mandate for which they are being considered. The Committee has also asked the Investment Advisor to make best efforts to review and consider managers with local presence in the state of Utah.

The selection of investments in underlying funds and with Investment Managers will be accomplished through a due-diligence process that includes both a Qualitative and Quantitative Evaluation. Factors to be considered in the due-diligence process are as follows:

- i. Quantitative Performance Evaluation – Investment Managers will be selected based on quantitative factors relative to their respective asset class. Quantitative factors to be considered may include, but are not limited to, the following:
 - a. A record of performing near or above the relevant market index
 - b. A record of performing near or above the median manager in a relevant peer group
 - c. An analysis of risk and risk-adjusted performance

- ii. Qualitative Evaluation – the qualitative factors considered in the selection of Investment Managers may include, but are not limited to, the following:
 - a. A history that demonstrates an ability to prudently manage diversified portfolios
 - b. A fee structure that is competitive versus a relative peer group
 - c. Adherence to a stated investment style and philosophy
 - d. Sound communication and reporting procedures
 - e. Corporate stability
 - f. Stability and quality of investment management personnel
 - g. For Investment Managers that have been appointed as 3(38) investment managers under ERISA, compliance with ERISA

Proxy Voting

Investment Managers, the Investment Advisor, and the managers of investment funds have been given the responsibility for voting proxy issues on securities held in their respective portfolios. In accordance with the provisions of ERISA, all proxies voted by Investment Managers and the Investment Advisor will be voted exclusively for the best interests of the Plans and their participants. Investment Managers will maintain written policies for proxy voting and keep a proper record of all proxies to which the Plans are entitled.

Portfolio Transitions

Due to the nature of the vehicles in which CA invests the portfolio, from time to time, it may be necessary for the portfolio to temporarily exceed or fall below the allowable ranges to facilitate efficient movement between paired transactions. Such temporary deviations shall not constitute a breach of the Policy Ranges/Investment Guidelines provided that the exposure deviations are rectified within five business days.

There will be an implementation window to allow for the transition of assets to the Investment Advisor's desired positioning. The effective date of the Investment Policy Statement will be October 31, 2022, and the implementation window will cease on December 1, 2022. During the transition period, the Investment Advisor will manage the portfolio prudently and in the spirit of the Investment Policy Statement while it shifts the portfolio assets toward their policy guidelines. Notwithstanding, the Committee agrees to waive the guidelines and investment restrictions enumerated in this Statement until the implementation window is complete. For purposes of assessing the Investment Advisor's performance, the Committee agrees that the Investment Advisor's official track record will begin on December 1, 2022. After this time, the Investment Advisor will be responsible for the portfolio's performance relative to the guidelines enumerated in this Investment Policy Statement.

V. CONTROL AND EVALUATION

Performance Monitoring

Time-weighted rates of return (and sometimes dollar-weighted rates of return) will be calculated by the Investment Advisor at monthly and quarterly intervals, for the Plan as a whole and for each separately managed sub-component. Measurements shall be reported at a minimum for the most recent quarter, year, three-year and five-year periods, and ten-year periods, if available.

The performance of the Fund will be evaluated against a custom Policy Benchmark which aligns with Target Asset Allocation. Each asset class and custom portfolio benchmark will be as follows:

<u>Portfolio Role</u>	<u>Target Allocation</u>	<u>Allowable Range</u>	<u>Benchmark</u>	<u>Benchmark Weight</u>
Global Equity	63%	51 - 75%	MSCI All Country World Index, net	63%
Liquid Diversifiers	10%	0 - 15%	35% of MSCI All Country World Index, net <u>65% of 91-day Treasury Bill Index</u>	10%
Real Assets	4%	0 - 8%	Dynamic Blend of Manager Benchmarks based on Manager Weight in Allocation	4%
Fixed Income	22%	12 - 32%	Barclays Aggregate Bond Index	22%
Cash & Cash Equivalents	1%	0 - 5%	91-day Treasury Bill Index	1%
Total	100%			

<u>Portfolio Role</u>	<u>Target Allocation</u>	<u>Allowable Range</u>	<u>Benchmark</u>	<u>Benchmark Weight</u>
Global Equity	67%	55 - 79%	MSCI All Country World Index, net	67%
Real Assets	7%	3 - 11%	Dynamic Blend of Manager Benchmarks based on Manager Weight in Allocation	7%
Fixed Income	25%	15 - 35%	Barclays Aggregate Bond Index	25%
Cash & Cash Equivalents	1%	0 - 5%	91-day Treasury Bill Index	1%
Total	100%			

<u>Portfolio Role</u>	<u>Target Allocation</u>	<u>Allowable Range</u>	<u>Benchmark</u>	<u>Benchmark Weight</u>
Global Equity	56%	36 - 76%	MSCI All Country World Index, net	56%
Private Equity	10%*	0 - 20%	MSCI All Country World Index, net (lagged)	10%*
Real Assets	7%	3 - 11%	Dynamic Blend of Manager Benchmarks based on Manager Weight in Allocation	7%
Fixed Income	25%	15 - 35%	Barclays Aggregate Bond Index	25%
Cash & Cash Equivalents	2%	0 - 5%	91-day Treasury Bill Index	2%
Total	90%			H

*Private Equity weight will dynamically shift with Global Equity weight until long-term target allocation is achieved.

<u>Portfolio Benchmarks</u>	<u>Benchmark Purpose</u>	<u>Composition</u>
Policy Benchmark	To show overall value-add from asset allocation, manager structure and manager selection decisions	Asset Class Composite Benchmarks (above) weighted by their Target Allocation
Dynamic Benchmark	To show manager selection value-add	Individual manager benchmarks weighted by their actual allocation

The performance track record of the Plan for purposes of the Investment Advisor’s performance track record statistics shall begin on May 1, 2016. For the avoidance of doubt, the Investment Advisor shall be responsible for the management of the Plan assets, and the reports provided to the Plan shall show the Plan’s performance, beginning on the date provided in the IMA.

Investment Manager Review

Solely for the purposes of this section and the next, unless otherwise stated, “Investment Managers” shall refer to both investment managers appointed by the Investment Advisor to manage a portion of the assets of the Plan, as well as the managers of commingled investment funds in which the Plan invests.

Investment Managers are selected and assigned to meet specific needs of the Plan. To insure that these needs are met on a continuing basis, all assigned Investment Managers will be monitored by the Investment Advisor, which will provide reporting to the Committee. Generally, Investment Managers will be evaluated over a full market cycle, defined as three to five years. This allows for the investment process and style of a particular fund to fully manifest itself in terms of risk, return, style, and overall characteristics. At its discretion, the Investment Advisor and/or Committee may choose to evaluate an Investment Manager over a shorter period. During the regular review, the Investment Advisor will review Investment Managers with Committee which could include the following with respect to each Investment Manager:

- i. Management/Expenses/Discipline
 - a. Demonstration of prudently managing diversified portfolios that offer reasonable opportunities for appreciation in value or earnings

- b. Fees that are near or below median in a comparable universe
 - c. Adherence to the style and philosophy presented by the investment manager
- ii. Performance
 - a. Record of performing near or above the relevant published market index (Standard & Poor's 500 Index, Lehman Brothers Aggregate Bond Index, etc.)
 - b. Record of performing above the median manager in their peer group
- iii. Communication/Reporting
 - a. Commitment to providing frequent communication regarding investment characteristics, perceived investment outlook, and performance, as well as a clear definition of investment philosophy and strategy
- iv. Corporate Stability/Personnel/Other
 - a. Financial stability of the company
 - b. The turnover and stability of investment management personnel, capabilities and compensation structure
 - c. Adherence to the terms of this Statement
 - d. For Investment Managers that have been appointed as 3(38) "investment managers" under ERISA, compliance with ERISA

Other criteria may be identified as well.

Investment Manager Termination

The Investment Advisor will have discretion to terminate Investment Managers. A termination may come from a failure to adhere to the general guidelines within the following categories of the review process:

- i. Management/Expenses/Discipline
- ii. Performance
- iii. Communication/Reporting
- iv. Corporate Stability/Personnel/Other

Instances of non-compliance, and/or non-adherence to the aforementioned standards as a whole will prompt a review by the Investment Advisor.

Other grounds may be identified on a case by case basis and considered within the termination and replacement decision making process managed by the Investment Advisor.

Exhibit B
(Amendment to Investment Management Agreement)

**AMENDMENT #1
TO THE INVESTMENT MANAGEMENT AGREEMENT**

This Amendment #1 (this “**Amendment**”) to the Investment Management Agreement (the “**Agreement**”) by and between The Utah Transit Authority Pension Committee (“**Trustee**”) as trustee and plan administrator of the Utah Transit Authority Employee Retirement Plan and Trust (the “**Client**”) and Cambridge Associates, LLC, a Massachusetts limited liability company (“**CA**” or the “**Manager**”) is made effective as of _____ (the “**Amendment Effective Date**”). Capitalized terms used herein and not otherwise defined are used as defined in the Agreement.

WHEREAS, the Client and CA entered into the Agreement effective as of February 1, 2016; and

WHEREAS, the parties desire to amend the Agreement as set forth herein;

NOW, THEREFORE, the Agreement is hereby amended as follows:

1. Exhibit B to the Agreement is hereby deleted in its entirety and replaced with the Exhibit B attached hereto.
2. Except as amended hereby, all other terms and conditions of the Agreement shall remain in full force and effect.

[Signature page follows.]

IN WITNESS WHEREOF, the parties hereto have executed this Amendment #1 to the Investment Management Agreement, effective as of the Amendment Effective Date.

CAMBRIDGE ASSOCIATES, LLC

**UTAH TRANSIT AUTHORITY
EMPLOYEE RETIREMENT PLAN
AND TRUST**

**By: The Utah Transit Authority Pension
Committee, as trustee and plan
administrator**

By: _____
Name:
Title:

By: _____
Name:
Title:

Date: _____

Date: _____

By: _____
Name:
Title:

Date: _____

Legal Approved to Form:

DocuSigned by:

Mike Bell

By: _____
70E33A415BA44F6...

Name: Michael L. Bell
Title: Assistant Attorney General

Date: 9-27-22

Utah Transit Authority Employee Retirement Plan

INVESTMENT POLICY

Approved October 2022

INVESTMENT POLICY CONTENTS

	<u>Page</u>
I. PURPOSE	3
II. ROLES AND RESPONSIBILTIES	3
III. LONG TERM ASSET ALLOCATION POLICY	6
IV. IMPLEMENTATION ISSUES	8
V. CONTROL AND EVALUATION	9

The following is the Pension Committee’s statement of (i) funding policy and (ii) investment policy, objectives, and guidelines for the Utah Transit Authority Employee Retirement Plan (the “Plan”). It is prepared by the Committee as direction to the Fund Custodian, Investment Advisor and Investment Managers and is subordinate to the plan document provided it is not inconsistent with the plan document.

I. PURPOSE

The Plan is a defined benefit pension plan qualified under the Internal Revenue Code that covers both administrative employees and those employees covered by a collective bargaining agreement. The Plan intends to provide a vested pension whose amount depends on length-of-service and other parameters described in the Plan. The Authority intends to build and maintain the Fund, by means of contributions that satisfy legal requirements and by means of investment return.

Because of the long-term nature of the Plan's obligations and funding policy, and the expected cash flow needs to pay benefits, the Plan's investment policy is to manage the Fund:

- i. With long-term (five years and more) objectives
- ii. With an emphasis on total return more than on high current income or the need to maintain ready-cash reserves
- iii. With the intent to achieve the highest possible long-term rate of return without taking excessive risk that could jeopardize the Plan’s funding policy or subject the Plan to undue funding volatility

In providing the framework for the management of the Plan assets, the policies contained in this document are designed to meet the following objectives:

- i. Provide for the availability of funds for benefits as they become due
- ii. Maintain the Trust’s purchasing power
- iii. Maximize total return subject to prudent risk-taking and expense management
- iv. Diversify assets across and within capital markets
- v. Maximize the Plans’ ABO funded levels

Secondary to these primary objectives, specific objectives for the Plan include achieving a rate of investment return (net of asset management expenses) over a full market cycle (generally considered 3-5 years) that:

- i. Exceeds the Plan’s actuarial investment rate assumption (currently 6.75% per annum)
- ii. Exceeds by 3.5% per annum the rate of inflation (as measured by the Consumer Price Index for all Urban Consumers)

II. ROLES AND RESPONSIBILITIES

Definitions

“ABO” means accrued benefit obligation. At a given time, the Plan’s accrued benefit obligation is the sum of the present value of (i) the pensions earned by active and terminated vested participants, and (ii) the pensions remaining to be paid to retirees.

"Authority" means Utah Transit Authority.

“Board” means the Board of Trustees of the Authority.

"Committee" means the Pension Committee as established by the Utah Transit Authority Employee Retirement Plan.

"Fund" means the assets held in the Trust Fund created by the Plan.

“Fund Custodian” means the holding company appointed by the Committee to provide institutional investment and brokerage services.

“Investment Advisor” means the current Registered Investment Advisor employed to manage the assets of the Plan on a discretionary basis.

“Investment Manager” means the asset manager or managers who have a responsibility to manage portions of the assets of the Plan as directed by the Investment Advisor or the Committee.

“Participant” means an Authority employee who is eligible to be a participant under the Plan.

"Plan" means the Utah Transit Authority Employee Retirement Plan.

“Staff” means individuals from the Authority assigned responsibility for assisting the Committee in the operational aspects of the Plan.

"Statement" means this investment policy statement as adopted by the Pension Committee.

Roles and Responsibilities

Committee

The Committee has been delegated plan management authority and responsibility by the Plan to implement and maintain the provisions of this Statement and to take any corrective actions as needed. In this capacity, the Committee has the authority to employ persons to render advice with respect to its responsibilities under the Plans. The Committee has the responsibility to periodically review all pertinent participant information and Plan data in order to establish the funding policy of the Plan. The Committee and its members are considered fiduciaries and are held to a standard of care that anticipates plan assets being managed solely in the best interests of the plan participants and beneficiaries. This will be achieved by:

- i. Performing all fiduciary duties solely in the interest of plan participants and their beneficiaries
- ii. Discharging all responsibilities with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character with like aims

The Committee’s other responsibilities include:

- i. Establishing and periodically reviewing the appropriateness of the Plan’s asset allocation policy (which may be expressed as a range).
- ii. Making revisions to this Statement to reflect changing conditions within the Plan

- iii. Monitoring compliance with this Statement
- iv. Appointing agents and advisors such as the Plans' actuary and accountant, and fiduciaries such as the Fund Custodian, Investment Advisor, and Investment Managers
- v. To the extent that the Committee elects to do so, employing one or more Investment Managers to direct all or a portion of the Fund's investments provided that, to the extent the Investment Manager is being appointed as an "investment manager" under ERISA, the Investment Manager meets the following requirements:
 - a. Qualifies as an investment manager under the Employee Retirement Income Security Act of 1974 ("ERISA")
 - b. Acknowledges that it is an ERISA 3(38) fiduciary with respect to the Plan
- vi. Removing Investment Advisors or Investment Managers

Investment Advisor

An Investment Advisor may be assigned by the Committee to manage the Fund in a manner consistent with this Statement and in accordance with State and Federal law and the Uniform Prudent Investor Act. The Investment Advisor must be a registered investment advisor and shall acknowledge that it is a fiduciary with respect to the Plan. The Investment Advisor will not take title to any assets nor act as a custodian of the assets.

As of February 1, 2016, the Pension Committee appointed Cambridge Associates, LLC ("CA") as Investment Advisor pursuant to an Investment Management Agreement (the "IMA"). The IMA provides CA with discretion to manage the Plan in accordance with the investment guidelines and restrictions contained in this Statement. Under the IMA, CA's duties include, but are not limited to, the following:

- i. Advising the Plan surrounding the selection of and the allocation to the different asset categories within the allowable ranges set forth in the Long Term Asset Allocation Policy section of this Statement
- ii. Periodically, but no less than annually, reviewing the suitability of the asset mix and Investment Managers and meeting with the Committee to present results
 - a. This presentation should include economic and capital market research which supports the asset allocation relative to the allowable ranges set forth in the Long Term Asset Allocation Policy section of this Statement
- iii. Identifying specific assets and Investment Managers within each asset category
- iv. Implementing investment decisions on behalf of the Plan, including (a) making investments in investment funds and (b) appointing Investment Managers to direct all or a portion of the Fund's investments provided that, to the extent the Investment Manager is being appointed as an "investment manager" under ERISA, the Investment Manager meets the following requirements:
 - a. Qualifies as an investment manager under the Employee Retirement Income Security Act of 1974 ("ERISA")
 - b. Acknowledges that it is an ERISA 3(38) fiduciary with respect to the Plan
- v. Monitoring and reporting to the Committee on the performance of Investment Managers and any direct investments in investment funds
- vi. Recommending changes to any of the above

- vii. Periodically, but no less than quarterly, providing the Committee with statements detailing Plan investments, asset allocation, performance, and all fees being paid
- viii. Complying with the provisions of this Statement
 - ix. Hiring and removing Investment Managers and investing in and redeeming from investment funds

Investment Managers

Investment Managers, to the extent that they are appointed, will construct and manage investment portfolios consistent with the investment philosophy and disciplines they were hired to implement. Under the discretionary agreement with CA, Investment Managers are expected to adhere to the directions from the Investment Advisor.

Relations with Advisors and Consultants

The Committee will designate individuals to act as contacts who are responsible for providing direction to and interacting with the assigned advisors and consultants in implementing the policies and directives of the Committee. All meetings and presentations involving the Committee will be coordinated and scheduled by the staff. Consultants and advisors, hired to provide specific expertise, will function as an extension of the staff.

Review and Amendment of this Policy Statement

The policies and responsibilities set forth in this document are intended to provide long-term stability and structure to the investment of Plan assets and are therefore not subject to frequent change. The policies stated here, however, must be reflective of the collective common will and wisdom of the Committee. Therefore, to insure the policy is maintained in a current status, these stated policies of the Committee will be reviewed from time to time by the staff and the Committee and amended as deemed appropriate by the Committee.

III. LONG TERM ASSET ALLOCATION POLICY

In setting the long term asset allocation policy for the Plan, the Committee has opted to provide a minimum and maximum allowable allocation to the major asset classes. The Investment Advisor will seek to diversify the Plan by asset class (e.g., equities, private equity, fixed income, and real assets) and within each asset class (e.g., by economic sector, industry, quality, style, size, etc.). The purpose of diversification is to provide reasonable assurance that no single security or class of securities will have a disproportionate impact on the total Plan.

The target allocations and aggregate exposure to each of the asset classes is to remain within the following ranges:

	Policy Allocation	
	Target Allocation	Range
Global Equity	56%	36% – 76%
Private Equity	10%	0%-20%
Real Assets	7%	3% – 11%
Fixed Income	25%	15% – 35%
Cash	2%	0% – 5%

Asset Classes are defined as follows:

- i. Global Equity – intended to provide capital appreciation, current income, and growth of income mostly through the ownership of public equities representing an ownership interest in a company. The objective for investment managers in this category is to exceed the results represented by the annualized return of the MSCI All Country World Index, net over annualized rolling three to five-year time periods.
- ii. Private Equity: the objective of private equity investments, including buyouts, venture capital, secondaries, private credit, and distressed assets, is to provide the Plan with a return in excess of public markets over longer periods of time. These investments are illiquid and require capital to be locked up for 7-12 years on average. Due to the higher-risk nature of these strategies, a program of private equity investments will be diversified by vintage year, strategy, geography, and manager. A private equity program requires multi-year commitments and is built over several years. The Investment Advisor will monitor the funded and unfunded commitment levels relative to asset allocation and Fund cash levels to ensure adequate liquidity to meet capital calls as well as spending needs.
- iii. Real Assets – intended to provide real return through investments which has inflation sensitive characteristics. Investments could include REITs, natural resource equities, MLPs, inflation-linked bonds and commodities.
- iv. Fixed Income – intended to provide diversification and protection against downward moves in the equity market and serves as a deflation hedge and a predictable source of income.
- v. Cash – the primary purpose of cash and cash equivalents with maturities of less than 1 year is to provide a liquid source of funds for portfolio rebalancing.

Prohibited Investments:

The Investment Advisor is prohibited from employing leverage, directly implementing derivatives, or securities lending at the aggregate Plan level. It was acknowledged that some investment managers in the Plan may utilize derivatives, such as options and futures contracts, as part of their investment strategy. Some managers may also participate in securities lending as part of their strategy. The current investment policy does not allow for the Plan to invest in private placements in single-name securities.

The Committee recognizes that maintaining a rigid allocation at all times would be undesirable under various potential market conditions. Therefore, the allocation of assets may vary from time to time within and in some extreme market conditions outside the ranges provided above without being considered an exception to this Investment Policy. The only instance where the allocation would be permitted to be outside the range is if the purchases were made within the allocation range but through unrealized market gains or losses the value of the assets falls outside the range.

The Investment Advisor, CA, will monitor the actual asset allocation relative to the above targets and ranges and rebalance the Plan as appropriate. Rebalancing the Plan to approved levels helps maintain the risk profile adopted by the Committee. In the event that the actual allocation moves outside the above ranges, CA will inform the Authority and immediately bring the allocation within the above allowable ranges.

IV. IMPLEMENTATION ISSUES

Investment Manager Selection

The Committee has appointed the Investment Advisor to, to the extent it determines to do so, hire competent registered professional Investment Managers to manage portions of the assets of the Plan. No Investment Manager shall be hired who has not, by their record and experience, demonstrated their fiduciary responsibility, their investment expertise, and their capacity to undertake the mandate for which they are being considered. The Committee has also asked the Investment Advisor to make best efforts to review and consider managers with local presence in the state of Utah.

The selection of investments in underlying funds and with Investment Managers will be accomplished through a due-diligence process that includes both a Qualitative and Quantitative Evaluation. Factors to be considered in the due-diligence process are as follows:

- i. Quantitative Performance Evaluation – Investment Managers will be selected based on quantitative factors relative to their respective asset class. Quantitative factors to be considered may include, but are not limited to, the following:
 - a. A record of performing near or above the relevant market index
 - b. A record of performing near or above the median manager in a relevant peer group
 - c. An analysis of risk and risk-adjusted performance
- ii. Qualitative Evaluation – the qualitative factors considered in the selection of Investment Managers may include, but are not limited to, the following:
 - a. A history that demonstrates an ability to prudently manage diversified portfolios
 - b. A fee structure that is competitive versus a relative peer group
 - c. Adherence to a stated investment style and philosophy
 - d. Sound communication and reporting procedures
 - e. Corporate stability
 - f. Stability and quality of investment management personnel
 - g. For Investment Managers that have been appointed as 3(38) investment managers under ERISA, compliance with ERISA

Proxy Voting

Investment Managers, the Investment Advisor, and the managers of investment funds have been given the responsibility for voting proxy issues on securities held in their respective portfolios. In accordance with the provisions of ERISA, all proxies voted by Investment Managers and the Investment Advisor will be voted exclusively for the best interests of the Plans and their participants. Investment Managers will maintain written policies for proxy voting and keep a proper record of all proxies to which the Plans are entitled.

Portfolio Transitions

Due to the nature of the vehicles in which CA invests the portfolio, from time to time, it may be necessary for the portfolio to temporarily exceed or fall below the allowable ranges to facilitate efficient movement between paired transactions. Such temporary deviations shall not

constitute a breach of the Policy Ranges/Investment Guidelines provided that the exposure deviations are rectified within five business days.

There will be an implementation window to allow for the transition of assets to the Investment Advisor's desired positioning. The effective date of the Investment Policy Statement will be October 31, 2022, and the implementation window will cease on December 1, 2022. During the transition period, the Investment Advisor will manage the portfolio prudently and in the spirit of the Investment Policy Statement while it shifts the portfolio assets toward their policy guidelines. Notwithstanding, the Committee agrees to waive the guidelines and investment restrictions enumerated in this Statement until the implementation window is complete. For purposes of assessing the Investment Advisor's performance, the Committee agrees that the Investment Advisor's official track record will begin on December 1, 2022. After this time, the Investment Advisor will be responsible for the portfolio's performance relative to the guidelines enumerated in this Investment Policy Statement.

V. CONTROL AND EVALUATION

Performance Monitoring

Time-weighted rates of return (and sometimes dollar-weighted rates of return) will be calculated by the Investment Advisor at monthly and quarterly intervals, for the Plan as a whole and for each separately managed sub-component. Measurements shall be reported at a minimum for the most recent quarter, year, three-year and five-year periods, and ten-year periods, if available.

The performance of the Fund will be evaluated against a custom Policy Benchmark which aligns with Target Asset Allocation. Each asset class and custom portfolio benchmark will be as follows:

<u>Portfolio Role</u>	<u>Target Allocation</u>	<u>Allowable Range</u>	<u>Benchmark</u>	<u>Benchmark Weight</u>
Global Equity	56%*	36 - 76%	MSCI All Country World Index, net	56%
Private Equity	10%*	0 - 20%	MSCI All Country World Index, net (lagged)	10%*
Real Assets	7%	3 - 11%	Dynamic Blend of Manager Benchmarks based on Manager Weight in Allocation	7%
Fixed Income	25%	15 - 35%	Barclays Aggregate Bond Index	25%
Cash & Cash Equivalents	2%	0 - 5%	91-day Treasury Bill Index	2%
Total	100%			

*Private Equity weight will dynamically shift with Global Equity weight until long-term target allocation is achieved.

- a. Financial stability of the company
- b. The turnover and stability of investment management personnel, capabilities and compensation structure
- c. Adherence to the terms of this Statement
- d. For Investment Managers that have been appointed as 3(38) “investment managers” under ERISA, compliance with ERISA

Other criteria may be identified as well.

Investment Manager Termination

The Investment Advisor will have discretion to terminate Investment Managers. A termination may come from a failure to adhere to the general guidelines within the following categories of the review process:

- i. Management/Expenses/Discipline
- ii. Performance
- iii. Communication/Reporting
- iv. Corporate Stability/Personnel/Other

Instances of non-compliance, and/or non-adherence to the aforementioned standards as a whole will prompt a review by the Investment Advisor.

Other grounds may be identified on a case by case basis and considered within the termination and replacement decision making process managed by the Investment Advisor.

<u>Portfolio Benchmarks</u>	<u>Benchmark Purpose</u>	<u>Composition</u>
Policy Benchmark	To show overall value-add from asset allocation, manager structure and manager selection decisions	Asset Class Composite Benchmarks (above) weighted by their Target Allocation
Dynamic Benchmark	To show manager selection value-add	Individual manager benchmarks weighted by their actual allocation

The performance track record of the Plan for purposes of the Investment Advisor's performance track record statistics shall begin on May 1, 2016. For the avoidance of doubt, the Investment Advisor shall be responsible for the management of the Plan assets, and the reports provided to the Plan shall show the Plan's performance, beginning on the date provided in the IMA.

Investment Manager Review

Solely for the purposes of this section and the next, unless otherwise stated, "Investment Managers" shall refer to both investment managers appointed by the Investment Advisor to manage a portion of the assets of the Plan, as well as the managers of commingled investment funds in which the Plan invests.

Investment Managers are selected and assigned to meet specific needs of the Plan. To insure that these needs are met on a continuing basis, all assigned Investment Managers will be monitored by the Investment Advisor, which will provide reporting to the Committee. Generally, Investment Managers will be evaluated over a full market cycle, defined as three to five years. This allows for the investment process and style of a particular fund to fully manifest itself in terms of risk, return, style, and overall characteristics. At its discretion, the Investment Advisor and/or Committee may choose to evaluate an Investment Manager over a shorter period. During the regular review, the Investment Advisor will review Investment Managers with Committee which could include the following with respect to each Investment Manager:

- i. Management/Expenses/Discipline
 - a. Demonstration of prudently managing diversified portfolios that offer reasonable opportunities for appreciation in value or earnings
 - b. Fees that are near or below median in a comparable universe
 - c. Adherence to the style and philosophy presented by the investment manager
- ii. Performance
 - a. Record of performing near or above the relevant published market index (Standard & Poor's 500 Index, Lehman Brothers Aggregate Bond Index, etc.)
 - b. Record of performing above the median manager in their peer group
- iii. Communication/Reporting
 - a. Commitment to providing frequent communication regarding investment characteristics, perceived investment outlook, and performance, as well as a clear definition of investment philosophy and strategy
- iv. Corporate Stability/Personnel/Other



Utah Transit Authority

MEETING MEMO

669 West 200 South
Salt Lake City, UT 84101

Board of Trustees

Date: 10/12/2022

TO: Board of Trustees
THROUGH: Jay Fox, Executive Director
FROM: Paul Drake, Director of Real Estate & TOD
PRESENTER(S): Jordan Swain, TOC Project Manager

TITLE:

Contract: Task Ordering Agreement for TOD Station Area Planning Consultant Pool G (Economic & Planning Systems, Inc.)

AGENDA ITEM TYPE:

Procurement Contract/Change Order

RECOMMENDATION:

Authorize the Executive Director to execute the task ordering agreement and associated disbursements with Economic & Planning Systems (EPS) to add them to the Station Area Planning Pool of Consultants.

BACKGROUND:

UTA is providing technical assistance to cities that are completing station area planning work in response HB462 requirements.

DISCUSSION:

In response to HB462, the TOC Department is setting up and maintaining a pool of pre-qualified consultants that may be solicited to complete particular tasks via task order. Said pool will increase UTA's efficiency and ability to respond to the needs of our partner cities. Economic & Planning Systems has been chosen to be part of Pool G to perform work in Market Analysis. No work is authorized, nor funds obligated until a task order is issued under this contract. If the total cost of task orders issued under this agreement exceeds \$200,000, additional Board approval will be required.

CONTRACT SUMMARY:

Contractor Name:	Economic & Planning Systems, Inc. (EPS)
Contract Number:	22-035674
Base Contract Effective Dates:	11/01/2022 to 11/01/2027
Extended Contract Dates:	N/A
Existing Contract Value:	N/A
Amendment Amount:	N/A
New/Total Contract Value:	\$200,000 is the estimated cumulative cost.
Procurement Method:	RFQU (Qualification)
Budget Authority:	This project is included in the 2022 Capital Budget

ALTERNATIVES:

N/A

FISCAL IMPACT:

Station area plans will be funded through a combination of FTA grants, partner funds, and UTA capital funds.

ATTACHMENTS:

1. Task Ordering Agreement

TASK ORDERING AGREEMENT FOR PROFESSIONAL SERVICES
UTA CONTRACT #22-035674
TOD Station Area Planning Consultant Pool G

This Task Ordering Agreement (TOA) is entered into and made effective as of the date of last signature below (the “Effective Date”) by and between UTAH TRANSIT AUTHORITY, a public transit district organized under the laws of the State of Utah (“UTA”), and Economic & Planning Systems, Inc. (“Consultant”).

RECITALS

WHEREAS, UTA desires to award a task ordering contract for professional consulting services per the Statement of Services contained at Exhibit A.

WHEREAS, On March 17, 2022, UTA issued Request for Qualifications Package Number 22-03567 (“RFQu”) encouraging interested parties to submit Statement of Qualifications (SOQ) to perform the services described in the RFQu.

WHEREAS, Upon evaluation of the SOQs submitted in response to the RFQu, UTA selected Consultant as the preferred entity with whom to negotiate a contract to perform the Work.

WHEREAS, Consultant is qualified and willing to perform the Work as set forth in the Scope of Services.

AGREEMENT

NOW, THEREFORE, in accordance with the foregoing Recitals, which are incorporated herein by reference, and for and in consideration of the mutual covenants and agreements hereafter set forth, the mutual benefits to the parties to be derived here from, and for other valuable consideration, the receipt and sufficiency of which the parties acknowledge, it is hereby agreed as follows:

1. SERVICES TO BE PROVIDED

- a. Consultant shall perform all Tasks issued under this TOA as set forth in the Scope of Services (Exhibit A). Except for items (if any) which this Contract specifically states will be UTA-provided, Consultant shall furnish all the labor, material and incidentals necessary for the Work.
- b. Consultant shall perform all Work under this TOA in a professional manner, using at least that standard of care, skill and judgment which can reasonably be expected from similarly situated professionals.
- c. All Work shall conform to generally accepted standards in the transit industry. Consultant shall perform all Work in compliance with applicable laws, regulations, rules, ordinances, permit constraints and other legal requirements including, without limitation, those related

to safety and environmental protection.

- d. Consultant shall furnish only qualified personnel and materials necessary for the performance of the Work.
- e. When performing Work on UTA property, Consultant shall comply with all UTA work site rules including, without limitation, those related to safety and environmental protection.
- f. Consultant is not guaranteed to receive any minimum number of task orders under this Agreement.

2. TASK ORDER ISSUANCE

- a. The Consultant's shall perform services with respect to a wide variety of tasks, as described in Exhibit A at the request of UTA.
- b. Each discrete item is referred to as a "Task." UTA and the Consultant will negotiate scope, schedule, and lump sum or not-to-exceed price for each Task, and document those and other terms, as necessary, in a written "Task Order" in substantively the same format as that attached as Exhibit A. The lump sum or not-to-exceed price for each Task shall be developed in accordance with Section 5 of this Contract and Exhibit C. Upon the execution of a Task Order, the Consultant shall perform services for that Task, including furnishing all the materials, appliances, tools, and labor of every kind required, and constructing and completing in the most substantial and skillful manner, the work identified in the scope of work attached as an Exhibit to that Task Order.
- c. If UTA and the Consultant are unable to agree on the price, scope, or other terms of a Task Order, UTA shall retain the right to remove the Task from the scope of the on-call Consultant and procure the item outside this Contract.

3. PROGRESS OF WORK

- a. Consultant shall prosecute the Work in a diligent and continuous manner and in accordance with all applicable notice to proceed, critical path schedule and guaranteed completion date requirements set forth in (or developed and agreed by the parties in accordance with) the Scope of Services.
- b. Consultant shall conduct regular meetings to update UTA's Project Manager regarding the progress of the Work including, but not limited to, any unusual conditions or critical path schedule items that could affect or delay the Work. Such meetings shall be held at intervals mutually agreed to between the parties.
- c. Consultant shall deliver monthly progress reports and provide all Contract submittals and other deliverables as specified in the Scope of Services.
- d. Any drawing or other submittal reviews to be performed by UTA in accordance with the Scope of Services are for the sole benefit of UTA, and shall not relieve Consultant of its responsibility to comply with the Contract requirements.

- e. UTA will have the right to inspect, monitor and review any Work performed by Consultant hereunder as deemed necessary by UTA to verify that such Work conforms to the Contract requirements. Any such inspection, monitoring and review performed by UTA is for the sole benefit of UTA, and shall not relieve Consultant of its responsibility to comply with the Contract requirements.
- f. UTA shall have the right to reject Work which fails to conform to the requirements of this Contract. Upon receipt of notice of rejection from UTA, Consultant shall (at its sole expense and without entitlement to equitable schedule relief) promptly re-perform, replace or re-execute the Work so as to conform to the Contract requirements.
- g. If Consultant fails to promptly remedy rejected Work as provided in Section 3 (f) UTA may (without limiting or waiving any rights or remedies it may have) perform necessary corrective action using other Consultants or UTA's own forces. Any costs reasonably incurred by UTA in such corrective action shall be chargeable to Consultant.

4. FINAL ACCEPTANCE OF TASKS

Each Task shall be entirely completed – including all punch list items, final cleanup, etc. – by the final acceptance date specified in the applicable Task Order. When, in the opinion of UTA's PM, the Consultant has fully performed the work under a Task Order, UTA's PM will notify the Consultant of final acceptance.

Final acceptance will be final and conclusive except for defects not readily ascertainable by UTA, actual or constructive fraud, gross mistakes amounting to fraud, or other errors which the Consultant knew or should have known about, as well as UTA's rights under any warranty or guarantee. Final acceptance may be revoked by UTA at any time prior to the issuance of the final payment by UTA or upon UTA's discovery of such defects, mistakes, fraud, or errors in the work even after final payment is issued.

5. PERIOD OF PERFORMANCE

This Contract shall commence as of the Effective Date. This Contract shall remain in full force and effect until all Work is completed in accordance with this Contract, as reasonably determined by UTA. Consultant shall complete all Work no later than November 1, 2027. This guaranteed completion date may be extended if Consultant and UTA mutually agree to an extension evidenced by a written Change Order. The rights and obligations of UTA and Consultant under this Contract shall at all times be subject to and conditioned upon the provisions of this Contract.)

6. COMPENSATION

Unless otherwise agreed in a Task Order, payment for the completion of Tasks will be in the form of a lump sum or not-to-exceed price negotiated between UTA and the Consultant and set forth in an executed Task Order. The lump sum or not-to-exceed price will be negotiated through an open-book cost estimating process based on the pricing elements set forth in Exhibit C. The lump sum or not-to-exceed price will be paid to the Consultant for satisfactory completion of all work identified in the applicable Task Order. Except as amended by UTA-issued change orders, the amount to be paid to the Consultant for all

costs necessary to complete the work, whether stated or reasonably implied in the Task Order or other contract documents, will not exceed the lump sum or not-to-exceed price, including all labor, materials, equipment, supplies, small tools, incidental expenses, and any other direct or indirect associated costs’.

7. INCORPORATED DOCUMENTS

- a. The following documents hereinafter listed in chronological order, are hereby incorporated into the Contract by reference and made a part hereof:
 - 1. The terms and conditions of this Task Ordering Agreement (including any exhibits and attachments hereto).
 - 2. UTA's RFQu including, without limitation, all attached or incorporated terms, conditions, federal clauses (as applicable), drawings, plans, specifications and standards and other descriptions of the Goods and Services;
 - 3. Consultant's Proposal including, without limitation, all federal certifications (as applicable);
- b. The above-referenced documents are made as fully a part of the Contract as if hereto

8. ORDER OF PRECEDENCE

The Order of Precedence for this contract is as follows:

- 1. UTA Contract including all attachments
- 2. UTA Terms and Conditions
- 3. UTA Solicitation Terms
- 4. Contractor’s Bid or Proposal including proposed terms or conditions

Any Consultant proposed term or condition which is in conflict with a UTA contract or solicitation term or condition will be deemed null and void.

9. CHANGES

- a. UTA’s Project Manager or designee may, at any time, by written order designated or indicated to be a Change Order, direct changes in the Work including, but not limited to, changes:
 - 1. In the Scope of Services;
 - 2. In the method or manner of performance of the Work; or
 - 3. In the schedule or completion dates applicable to the Work.

To the extent that any change in Work directed by UTA causes an actual and demonstrable impact to: (i) Consultant’s cost of performing the work; or (ii) the time required for the Work, then (in either case) the Change Order shall include an equitable adjustment to this Contract to make Consultant whole with respect to the impacts of such change.

- b. A change in the Work may only be directed by UTA through a written Change Order or (alternatively) UTA’s expressed, written authorization directing Consultant to proceed

pending negotiation of a Change Order. Any changes to this Contract undertaken by Consultant without such written authority shall be at Consultant's sole risk. Consultant shall not be entitled to rely on any other manner or method of direction.

- c. Consultant shall also be entitled to an equitable adjustment to address the actual and demonstrable impacts of "constructive" changes in the Work if: (i) subsequent to the Effective Date of this Contract, there is a material change with respect to any requirement set forth in this Contract; or (ii) other conditions exist or actions are taken by UTA which materially modify the magnitude, character or complexity of the Work from what should have been reasonably assumed by Consultant based on the information included in (or referenced by) this Contract. In order to be eligible for equitable relief for "constructive" changes in Work, Consultant must give UTA's Project Manager or designee written notice stating:
- A. The date, circumstances, and source of the change; and
 - B. That Consultant regards the identified item as a change in Work giving rise to an adjustment in this Contract.

Consultant must provide notice of a "constructive" change and assert its right to an equitable adjustment under this Section within ten (10) days after Consultant becomes aware (or reasonably should have become aware) of the facts and circumstances giving rise to the "constructive" change. Consultant's failure to provide timely written notice as provided above shall constitute a waiver of Consultant's rights with respect to such claim.

- d. As soon as practicable, but in no event longer than 30 days after providing notice, Consultant must provide UTA with information and documentation reasonably demonstrating the actual cost and schedule impacts associated with any change in Work. Equitable adjustments will be made via Change Order. Any dispute regarding the Consultant's entitlement to an equitable adjustment (or the extent of any such equitable adjustment) shall be resolved in accordance with Article 21 of this Contract.

10. INVOICING PROCEDURES

- a. Contractor shall invoice UTA after achievement of contractual milestones or delivery of all Goods and satisfactory performance of all Services. Contractor shall submit invoices to ap@rideuta.com for processing and payment. In order to timely process invoices, Contractor shall include the following information on each invoice:
- i. Contractor Name
 - ii. Unique Invoice Number
 - iii. PO Number
 - iv. Invoice Date
 - v. Detailed Description of Charges
 - vi. Total Dollar Amount Due
- b. UTA shall have the right to disapprove (and withhold from payment) specific line items of each invoice to address non-conforming Goods or Services. Approval by UTA shall not be unreasonably withheld. UTA shall also have the right to offset

(against payments) amounts reasonably reflecting the value of any claim which UTA has against Contractor under the Contract. Payment for all invoice amounts not specifically disapproved or offset by UTA shall be provided to Contractor within thirty (30) calendar days of invoice submittal.

11. OWNERSHIP OF DESIGNS, DRAWINGS, AND WORK PRODUCT

Any deliverables prepared or developed pursuant to the Contract including without limitation drawings, specifications, manuals, calculations, maps, sketches, designs, tracings, notes, reports, data, computer programs, models and samples, shall become the property of UTA when prepared, and, together with any documents or information furnished to Consultant and its employees or agents by UTA hereunder, shall be delivered to UTA upon request, and, in any event, upon termination or final acceptance of the Goods and Services. UTA shall have full rights and privileges to use and reproduce said items. To the extent that any deliverables include or incorporate preexisting intellectual property of Consultant, Consultant hereby grants UTA a fully paid, perpetual license to use such intellectual property for UTA's operation, maintenance, modification, improvement and replacement of UTA's assets. The scope of the license shall be to the fullest extent necessary to accomplish those purposes, including the right to share same with UTA's Consultants, agent, officers, directors, employees, joint owners, affiliates and consultants.

12. USE OF SUBCONSULTANTS

- a. Consultant shall give advance written notification to UTA of any proposed subcontract (not indicated in Consultant's Proposal) negotiated with respect to the Work. UTA shall have the right to approve all subconsultants, such approval not to be withheld unreasonably.
- b. No subsequent change, removal or substitution shall be made with respect to any such subconsultant without the prior written approval of UTA.
- c. Consultant shall be solely responsible for making payments to subconsultants, and such payments shall be made within thirty (30) days after Consultant receives corresponding payments from UTA.
- d. Consultant shall be responsible for and direct all Work performed by subconsultants.
- e. Consultant agrees that no subcontracts shall provide for payment on a cost-plus-percentage-of-cost basis. Consultant further agrees that all subcontracts shall comply with all applicable laws.

12. KEY PERSONNEL

Consultant shall provide the key personnel as indicated in Consultant's Proposal (or other applicable provisions of this Contract), and shall not change any of said key personnel without the express written consent of UTA. The following personnel are considered to be "key" under this clause:

Andrew Knudtsen, CCIM Principal in Charge and Project Manager

Daniel Guimond, Project Advisor

Darin Smith, Project Advisor

If the key personnel listed above are changed without UTA's permission, the Consultant is in default of the contract and liable for default damages.

13. SUSPENSION OF WORK

- a. UTA may, at any time, by written order to Consultant, require Consultant to suspend, delay, or interrupt all or any part of the Work called for by this Contract. Any such order shall be specifically identified as a "Suspension of Work Order" issued pursuant to this Article. Upon receipt of such an order, Consultant shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of further costs allocable to the Work covered by the order during the period of Work stoppage.
- b. If a Suspension of Work Order issued under this Article is canceled, Consultant shall resume Work as mutually agreed to in writing by the parties hereto.
- c. If a Suspension of Work Order is not canceled and the Work covered by such order is terminated for the convenience of UTA, reasonable costs incurred as a result of the Suspension of Work Order shall be considered in negotiating the termination settlement.
- d. If the Suspension of Work causes an increase in Consultant's cost or time to perform the Work, UTA's Project Manager or designee shall make an equitable adjustment to compensate Consultant for the additional costs or time, and modify this Contract by Change Order.

14. TERMINATION

- a. **FOR CONVENIENCE**: UTA shall have the right to terminate the Contract at any time by providing written notice to Consultant. If the Contract is terminated for convenience, UTA shall pay Consultant: (i) in full for Goods delivered and Services fully performed prior to the effective date of termination; and (ii) an equitable amount to reflect costs incurred (including Contract close-out and subconsultant termination costs that cannot be reasonably mitigated) and profit on work-in-progress as of to the effective date of the termination notice. UTA shall not be responsible for anticipated profits based on the terminated portion of the Contract. Consultant shall promptly submit a termination claim to UTA. If Consultant has any property in its possession belonging to UTA, Consultant will account for the same, and dispose of it in the manner UTA directs.
- b. **FOR DEFAULT**: If Consultant (a) becomes insolvent; (b) files a petition under any chapter of the bankruptcy laws or is the subject of an involuntary petition; (c) makes a general assignment for the benefit of its creditors; (d) has a receiver appointed; (e) should fail to make prompt payment to any subconsultants or suppliers; or (f) fails to comply with any of its material obligations under the Contract, UTA may, in its discretion, after first giving Consultant seven (7) days written notice to cure such default:
 1. Terminate the Contract (in whole or in part) for default and obtain the Goods

and Services using other Consultants or UTA's own forces, in which event Consultant shall be liable for all incremental costs so incurred by UTA;

2. Pursue other remedies available under the Contract (regardless of whether the termination remedy is invoked); and/or
 3. Except to the extent limited by the Contract, pursue other remedies available at law.
- c. **CONSULTANT'S POST TERMINATION OBLIGATIONS:** Upon receipt of a termination notice as provided above, Consultant shall (i) immediately discontinue all work affected (unless the notice directs otherwise); and (ii) deliver to UTA all data, drawings and other deliverables, whether completed or in process. Consultant shall also remit a final invoice for all services performed and expenses incurred in full accordance with the terms and conditions of the Contract up to the effective date of termination. UTA shall calculate termination damages payable under the Contract, shall offset such damages against Consultant's final invoice, and shall invoice Consultant for any additional amounts payable by Consultant (to the extent termination damages exceed the invoice). All rights and remedies provided in this Article are cumulative and not exclusive. If UTA terminates the Contract for any reason, Consultant shall remain available, for a period not exceeding 90 days, to UTA to respond to any questions or concerns that UTA may have regarding the Goods and Services furnished by Consultant prior to termination.

d. **TERMINATION OF TASKS OR TOA**

UTA's termination rights under this Article shall apply, in UTA's discretion, to either an individual task order or the entire TOA. Where the TOA is terminated for convenience, the Consultant shall be entitled to payment in full for all tasks satisfactorily completed prior to the termination date. Where a task is terminated prior to acceptance by UTA, Consultant shall be entitled to its actual allowable and allocable costs expended to the date of termination for the terminated task.

15. **INFORMATION, RECORDS and REPORTS; AUDIT RIGHTS**

Consultant shall retain all books, papers, documents, accounting records and other evidence to support any cost-based billings allowable under Exhibit B (or any other provision of this Contract). Such records shall include, without limitation, time sheets and other cost documentation related to the performance of labor services, as well as subcontracts, purchase orders, other contract documents, invoices, receipts or other documentation supporting non-labor costs. Consultant shall also retain other books and records related to the performance, quality or management of this Contract and/or Consultant's compliance with this Contract. Records shall be retained by Consultant for a period of at least six (6) years after completion of the Work, or until any audit initiated within that six-year period has been completed (whichever is later). During this six-year period, such records shall be made available at all reasonable times for audit and inspection by UTA and other authorized auditing parties including, but not limited to, the Federal Transit Administration. Copies of requested records shall be furnished to UTA or designated audit parties upon request. Consultant agrees that it

shall flow-down (as a matter of written contract) these records requirements to all subconsultants utilized in the performance of the Work at any tier.

16. FINDINGS CONFIDENTIAL

Any documents, reports, information, or other data and materials delivered or made available to or prepared or assembled by Contractor or subcontractor under this Contract are considered confidential and shall not be made available to any person, organization, or entity by Contractor without consent in writing from UTA. If confidential information is released to any third party without UTA’s written consent as described above, contractor shall notify UTA of the data breach within 10 days and provide its plan for immediate mitigation of the breach for review and approval by UTA.

- a. It is hereby agreed that the following information is not considered to be confidential:
 - A. Information already in the public domain.
 - B. Information disclosed to Contractor by a third party who is not under a confidentiality obligation.
 - C. Information developed by or in the custody of Contractor before entering into this Contract.
 - D. Information developed by Contractor through its work with other clients; and
 - E. Information required to be disclosed by law or regulation including, but not limited to, subpoena, court order or administrative order.

17. PUBLIC INFORMATION.

Consultant acknowledges that the Contract and related materials (invoices, orders, etc.) will be public documents under the Utah Government Records Access and Management Act (GRAMA). Consultant’s response to the solicitation for the Contract will also be a public document subject to GRAMA, except for legitimate trade secrets, so long as such trade secrets were properly designated in accordance with terms of the solicitation.

18. GENERAL INDEMNIFICATION

Consultant shall indemnify, hold harmless and defend UTA, its officers, trustees, agents, and employees (hereinafter collectively referred to as “Indemnitees”) from and against all liabilities, claims, actions, damages, losses, and expenses including without limitation reasonable attorneys’ fees and costs (hereinafter referred to collectively as “claims”) related to bodily injury, including death, or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent acts or willful omissions of Consultant or any of its owners, officers, directors, agents, employees or subconsultants. This indemnity includes any claim or amount arising out of the failure of such Consultant to conform to federal, state, and local laws and regulations. The indemnity obligations of Consultant shall not apply to the extent that claims arise out of the sole negligence of UTA or the Indemnitees.

19. INSURANCE REQUIREMENTS

Standard Insurance Requirements

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The Utah Transit Authority in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this contract by the Contractor, his agents, representatives, employees or subcontractors and Contractor is free to purchase additional insurance as may be determined necessary.

A. MINIMUM SCOPE AND LIMITS OF INSURANCE: Contractor shall provide coverage with limits of liability not less than those Stated below. An excess liability policy or umbrella liability policy may be used to meet the minimum liability requirements provided that the coverage is written on a “following form” basis.

1. Commercial General Liability – Occurrence Form

Policy shall include bodily injury, property damage and broad form contractual liability coverage.

- General Aggregate \$4,000,000
- Products – Completed Operations Aggregate \$1,000,000
- Personal and Advertising Injury \$1,000,000
- Each Occurrence \$2,000,000
- a. The policy shall be endorsed to include the following additional insured language: "The Utah Transit Authority shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor".

2. Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL) \$2,000,000

- a. The policy shall be endorsed to include the following additional insured language: "The Utah Transit Authority shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor, including automobiles owned, leased, hired or borrowed by the Contractor".

3. Worker's Compensation and Employers' Liability

Workers' Compensation Statutory

Employers' Liability

Each Accident	\$100,000
Disease – Each Employee	\$100,000
Disease – Policy Limit	\$500,000

- a. Policy shall contain a waiver of subrogation against the Utah Transit Authority.
- b. This requirement shall not apply when a contractor or subcontractor is exempt under UCA 34A-2-103, AND when such contractor or subcontractor executes the appropriate waiver form.

4. Professional Liability (Errors and Omissions Liability)

The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Services of this contract.

Each Claim	\$1,000,000
Annual Aggregate	\$2,000,000

- a. In the event that the professional liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of three (3) years beginning at the time work under this Contract is completed.

B. ADDITIONAL INSURANCE REQUIREMENTS: The policies shall include, or be endorsed to include, the following provisions:

- 1. On insurance policies where the Utah Transit Authority is named as an additional insured, the Utah Transit Authority shall be an additional insured to the full limits of liability purchased by the Consultant. Insurance limits indicated in this agreement are minimum limits. Larger limits may be indicated after the consultant’s assessment of the exposure for this contract; for their own protection and the protection of UTA.
- 2. The Contractor's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.

C. NOTICE OF CANCELLATION: Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided or canceled except after thirty (30) days prior written notice has been

given to the Utah Transit Authority, except when cancellation is for non-payment of premium, then ten (10) days prior notice may be given. Such notice shall be sent directly to (Utah Transit Authority agency Representative's Name & Address).

- D. ACCEPTABILITY OF INSURERS: Insurance is to be placed with insurers duly licensed or authorized to do business in the State and with an "A.M. Best" rating of not less than A-VII. The Utah Transit Authority in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.
- E. VERIFICATION OF COVERAGE: Contractor shall furnish the Utah Transit Authority with certificates of insurance (on standard ACORD form) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and any required endorsements are to be sent to insurancecerts@rideuta.com and received and approved by the Utah Transit Authority before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.

All certificates required by this Contract shall be emailed directly to Utah Transit Authority's insurance email address at insurancecerts@rideuta.com. The Utah Transit Authority project/contract number and project description shall be noted on the certificate of insurance. The Utah Transit Authority reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time. DO NOT SEND CERTIFICATES OF INSURANCE TO THE UTAH TRANSIT AUTHORITY'S CLAIMS AND INSURANCE DEPARTMENT.

- F. SUBCONTRACTORS: Contractors' certificate(s) shall include all subcontractors as additional insureds under its policies or subcontractors shall maintain separate insurance as determined by the Contractor, however, subcontractor's limits of liability shall not be less than \$1,000,000 per occurrence / \$2,000,000 aggregate. Subcontractors maintaining separate insurance shall name Utah Transit Authority as an additional insured on their policy. Blanket additional insured endorsements are not acceptable from sub-contractors. Utah Transit Authority must be scheduled as an additional insured on any sub-contractor policies.
- G. APPROVAL: Any modification or variation from the insurance requirements in this Contract shall be made by Claims and Insurance Department or the UTA Legal Services, whose decision shall be final. Such action will not require a formal Contract amendment, but may be made by administrative action.

20. **INTELLECTUAL PROPERTY INDEMNIFICATION**

- a. Consultant shall protect, release, defend, indemnify and hold harmless UTA and the other Indemnitees against and from any and all Claims of any kind or nature whatsoever on account of infringement relating to Consultant's performance under this Contract. If notified promptly in writing and given authority, information and assistance, Consultant shall defend, or may settle at its expense, any suit or proceeding against UTA so far as based on a claimed infringement and Consultant shall pay all damages and costs awarded therein against UTA due to such breach. In case any portion of the Work is in such suit held to constitute such an infringement or an injunction is filed that interferes with UTA's rights under this Contract, Consultant shall, at its expense and through mutual agreement between the UTA and Consultant, either procure for UTA any necessary intellectual property rights, or modify Consultant's services or deliverables such that the claimed infringement is eliminated.

- b. Consultant shall: (i) protect, release, defend, indemnify and hold harmless UTA and the other Indemnitees against and from any and all liens or Claims made or filed against UTA or upon the Work or the property on which the Work is located on account of any labor performed or labor, services, and equipment furnished by subconsultants of any tier; and (ii) keep the Work and said property free and clear of all liens or claims arising from the performance of any Work covered by this Contract by Consultant or its subconsultants of any tier. If any lien arising out of this Contract is filed, before or after Work is completed, Consultant, within ten (10) calendar days after receiving from UTA written notice of such lien, shall obtain a release of or otherwise satisfy such lien. If Consultant fails to do so, UTA may take such steps and make such expenditures as in its discretion it deems advisable to obtain a release of or otherwise satisfy any such lien or liens, and Consultant shall upon demand reimburse UTA for all costs incurred and expenditures made by UTA in obtaining such release or satisfaction. If any non-payment claim is made directly against UTA arising out of non-payment to any subconsultant, Consultant shall assume the defense of such claim within ten (10) calendar days after receiving from UTA written notice of such claim. If Consultant fails to do so, Consultant shall upon demand reimburse UTA for all costs incurred and expenditures made by UTA to satisfy such claim.

21. **INDEPENDENT CONTRACTOR**

Consultant is an independent Consultant and agrees that its personnel will not represent themselves as, nor claim to be, an officer or employee of UTA by reason of this Contract. Consultant is responsible to provide and pay the cost of all its employees' benefits.

22. **PROHIBITED INTEREST**

No member, officer, agent, or employee of UTA during his or her tenure or for one year thereafter shall have any interest, direct or indirect, including prospective employment by Consultant in this Contract or the proceeds thereof without specific written authorization by UTA.

23. **CLAIMS/DISPUTE RESOLUTION**

- a. "Claim" means any disputes between UTA and the Consultant arising out of or relating to the Contract Documents including any disputed claims for Contract adjustments that cannot be resolved in accordance with the Change Order negotiation process set forth in Article 6. Claims must be made by written notice. The responsibility to substantiate claims rests with the party making the claim.
- b. Unless otherwise directed by UTA in writing, Consultant shall proceed diligently with performance of the Work pending final resolution of a Claim, including litigation. UTA shall continue to pay any undisputed payments related to such Claim.
- c. The parties shall attempt to informally resolve all claims, counterclaims and other disputes through the escalation process described below. No party may bring a legal action to enforce any term of this Contract without first having exhausted such process.
- d. The time schedule for escalation of disputes, including disputed requests for change order, shall be as follows:

Level of Authority	Time Limit
UTA's Project Manager/Consultant's Project Manager	Five calendar days
UTA's Director of Real Estate & TOD / Consultant's [SECOND LEVEL]	Five calendar days
UTA's Chief Service Development Officer/Consultant's [THIRD LEVEL]	Five calendar days

Unless otherwise directed by UTA's Project Manager, Consultant shall diligently continue performance under this Contract while matters in dispute are being resolved.

If the dispute cannot be resolved informally in accordance with the escalation procedures set forth above, than either party may commence formal mediation under the Juris Arbitration and Mediation (JAMS) process using a mutually agreed upon JAMS mediator. If resolution does not occur through Mediation, then legal action may be commenced in accordance the venue and governing law provisions of this contract.

24. **GOVERNING LAW**

This Contract shall be interpreted in accordance with the substantive and procedural laws of the State of Utah. Any litigation between the parties arising out of or relating to this Contract will be conducted exclusively in federal or state courts in the State of Utah and Consultant consents to the jurisdiction of such courts.

25. **ASSIGNMENT OF CONTRACT**

Consultant shall not assign, sublet, sell, transfer, or otherwise dispose of any interest in this Contract without prior written approval of UTA, and any attempted transfer in violation of this restriction shall be void.

26. **NONWAIVER**

No failure or waiver or successive failures or waivers on the part of either party in the enforcement of any condition, covenant, or article of this Contract shall operate as a discharge of any such condition, covenant, or article nor render the same invalid, nor impair the right of either party to enforce the same in the event of any subsequent breaches by the other party.

27. **NOTICES OR DEMANDS**

a. Any formal notice or demand to be given by one party to the other shall be given in writing by one of the following methods: (i) hand delivered; (ii) deposited in the mail, properly stamped with the required postage; (iii) sent via registered or certified mail; or (iv) sent via recognized overnight courier service. All such notices shall be addressed as follows:

b. If to UTA:	<u>with a required copy to</u>
Utah Transit Authority	Utah Transit Authority
ATTN: Vicki Woodward	ATTN: Legal Counsel
669 West 200 South	669 West 200 South
Salt Lake City, UT 84101	Salt Lake City, UT 84101

If to Consultant
Economic & Planning Systems, Inc.
Andrew Knudtsen, Managing Principal
730 17th Street
Suite 630
Denver, CO 80202

c. Any such notice shall be deemed to have been given, and shall be effective, on delivery to the notice address then applicable for the party to which the notice is directed; provided, however, that refusal to accept delivery of a notice or the inability to deliver a notice because of an address change which was not properly communicated shall not defeat or delay the giving of a notice. Either party may change the address at which such party desires to receive written notice by providing written notice of such change to any other party.

d. Notwithstanding Section 23.1, the parties may, through mutual agreement, develop alternative communication protocols to address change notices, requests for information and similar categories of communications. Communications provided pursuant to such agreed means shall be recognized as valid notices under this Contract.

28. **CONTRACT ADMINISTRATOR**

UTA's Contract Administrator for this Contract is Vicki Woodward, or designee. All questions and correspondence relating to the contractual aspects of this Contract should be directed to said Contract Administrator, or designee.

29. **INSURANCE COVERAGE REQUIREMENTS FOR CONSULTANT EMPLOYEES ON DESIGN AND CONSTRUCTION CONTRACTS**

- a. The following requirements apply to design and construction contracts to the extent that: (i) the initial value of this Contract is equal to or in excess of \$2 million; (ii) this Contract, with subsequent modifications, is reasonably anticipated to equal or exceed \$2 million; (iii) Consultant has a subcontract at any tier that involves a sub-consultant that has an initial subcontract equal to or in excess of \$1 million; or (iv) any subcontract, with subsequent modifications, is reasonably anticipated to equal or exceed \$1 million:
- b. Consultant shall, prior to the effective date of this Contract, demonstrate to UTA that Consultant has and will maintain an offer of qualified health insurance coverage (as defined by Utah Code Ann. § 17B-2a-818.5) for the Consultant's employees and the employee's dependents during the duration of this Contract.
- c. Consultant shall also demonstrate to UTA that subconsultants meeting the above-described subcontract value threshold have and will maintain an offer of qualified health insurance coverage (as defined by Utah Code Ann. § 17B-2a-818.5) for the subconsultant's employees and the employee's dependents during the duration of the subcontract.

30. **COSTS AND ATTORNEYS FEES**

If any party to this Agreement brings an action to enforce or defend its rights or obligations hereunder, the prevailing party shall be entitled to recover its costs and expenses, including mediation, arbitration, litigation, court costs and attorneys' fees, if any, incurred in connection with such suit, including on appeal

31. **NO THIRD PARTY BENEFICIARY**

The parties enter in to this Contract for the sole benefit of the parties, in exclusion of any third party, and no third party beneficiary is intended or created by the execution of this Contract.

32. **FORCE MAJEURE**

Neither party to the Contract will be held responsible for delay or default caused by fire, riot, acts of God and/or war which are beyond that party's reasonable control. UTA may terminate the Contract after determining such delay or default will reasonably prevent successful performance of the Contract.

33. **UTAH ANTI-BOYCOTT OF ISRAEL ACT**

Contractor agrees it will not engage in a boycott of the State of Israel for the duration of this contract.

34. **SEVERABILITY**

Any provision of this Contract prohibited or rendered unenforceable by operation of law shall be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Contract.

35. **ENTIRE AGREEMENT**

This Contract shall constitute the entire agreement and understanding of the parties with respect to the subject matter hereof, and shall supersede all offers, negotiations and other agreements with respect thereto. The terms of the Contract supersede any additional or conflicting terms or provisions that may be preprinted on Vendor’s work plans, cost estimate forms, receiving tickets, invoices, or any other related standard forms or documents of Vendor that may subsequently be used to implement, record, or invoice Goods and/or Services hereunder from time to time, even if such standard forms or documents have been signed or initialed by a representative of UTA. The terms of the Contract prevail in any dispute between the terms of the Contract and the terms printed on any such standard forms or documents, and such standard forms or documents will not be considered written amendments of the Contract.

35. **AMENDMENTS**

Any amendment to this Contract must be in writing and executed by the authorized representatives of each party.

36. **COUNTERPARTS**

This Contract may be executed in any number of counterparts and by each of the parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument. Any signature page of the Contract may be detached from any counterpart and reattached to any other counterpart hereof. The electronic transmission of a signed original of the Contract or any counterpart hereof and the electronic retransmission of any signed copy hereof shall be the same as delivery of an original.

37. **SURVIVAL**

Provisions of this Contract intended by their nature and content to survive termination of this Contract shall so survive including, but not limited to, Articles 5, 7, 8, 10, 14, 15, 17, 18, 19, 20, 23, 29 and 30.

IN WITNESS WHEREOF, the parties have made and executed this Contract as of the day, month and year of the last signature contained below.

**UTAH TRANSIT AUTHORITY:
INC.:**

ECONOMIC & PLANNING SYSTEMS,

By
Jay Fox
Executive Director


Date:

DocuSigned by:
Daniel Guimond
96CA9F862EE1440...
Daniel R. Guimond
Principal

Date: 9/23/2022

By
Mary DeLoretto
Chief Service Development Officer

Date:

DocuSigned by:

3720DBDB69C34DA...
By: Andrew Knudtsen: ~~Date:~~ 9/23/2022
Managing Principal

Approved as to Content and Form

DocuSigned by:

70E33A415BA44F6...
By: Mike Bell, AAG State of Utah
And UTA Legal Counsel

Date: 9/23/2022

Reviewed & Recommended

By:
Jordan Swain
TOD Project Manager

Date:

UTA Project Number 22-035674VW

EXHIBIT A – SCOPE OF SERVICES

All individual Task Orders that are issued to the Consultant will contain their own specific Statement of work. Each Individual Task Order will include a scope of services specific to the needed services which is within the scope of the statement of services contained in the RFQu.

Task Orders using FTA funds shall include required FTA assurances and clauses. DBE utilization shall be determined on a task order by task order basis.

UTA is awarding of one or more Master Tasks Ordering Agreements(s) (MTOA). Economic & Planning Systems, Inc., being awarded a MTOA for Pool G – Market Analysis.

The Period of Performance shall be until November 1, 2027. Task Orders will be issued as needed.

Overall management of the MTOA and Task Orders will be under the direction of UTA through the TOD Office. Work by the selected Contractor shall be in conformance with the pricing, schedule, staffing plan, and budget included in the MTOA and the individual Task Orders.

The Contractor is expected to perform and fulfill the following activities and requirements for Utah Transit Authority. UTA plans to invest in its people, leverage our human capital, and cultivate UTA way mindset and behaviors. Regular organizational assessments, intact team agility work and ongoing coaching and consulting with senior leadership will arm UTA employees and leaders with the tools and skills necessary to succeed.

POOL G: Market Analysis

Element 1: Station Area Market Analysis

A detailed study of the real estate and economic development opportunities within and around Station Areas. Consultant should have demonstrated background in providing objective analysis of land use and development opportunities driven by relevant local, regional, and national market indices. Analysis should focus on the “highest and best use” principle of Station Area properties participating in the study and plan process. In some instances, proposed land uses may be well defined within a station area, in which case the Consultant’s analysis should be useful for evaluating those proposed uses and providing advice on the feasibility of such uses. At minimum, each market study must include the assessment of uses that: contribute maximally to the tax base, take advantage of local and regional private and public investments and tax incentives, increase transit ridership, maximize property owner’s value, and provide greatest benefit to the municipality.

EXHIBIT B – PRICING

POOL G: Market Analysis:

POOL G: Market Analysis										
Economic & Planning Systems										
No.	Firm	Prime	Sub	Last Name	First Name	Discipline/Classification	Basic Hourly Rate	Overhead rate Percentage	Fully Burdened Bill Rate	
1	Economic & Planning Systems	x		Darin	Smith	Managing Principal	\$97.61	173%	10%	\$ 293.12
2	Economic & Planning Systems	x		Guimond	Daniel	Senior Principal	\$92.54	173%	10%	\$ 277.90
3	Economic & Planning Systems	x		Knudtsen	Andrew	Managing Principal	\$96.31	173%	10%	\$ 289.22
4	Economic & Planning Systems	x		Duffany	Brian	Principal	\$71.15	173%	10%	\$ 213.66
5	Economic & Planning Systems	x		Prosser	Matt	Executive Vice President	\$56.49	173%	10%	\$ 169.64
6	Economic & Planning Systems	x		Shindman	Rachel	Vice President	\$46.15	173%	10%	\$ 138.59
7	Economic & Planning Systems	x		Harguth	Colton	Associate	\$31.73	173%	10%	\$ 95.29
8	Economic & Planning Systems	x		Soister	Lena	Production	\$33.22	173%	10%	\$ 99.76
9	Economic & Planning Systems	x		Fytcheson	Lisa Marie	Production Manager Denver	\$44.60	173%	10%	\$ 133.93
10	Economic & Planning Systems	x		Dunmire	Sarah	Associate	\$32.69	173%	10%	\$ 98.17
11	Economic & Planning Systems	x		Maher	Keely	Associate	\$45.00	173%	10%	\$ 135.14
12	Economic & Planning Systems	x		Bryant	Carson	Associate	\$30.29	173%	10%	\$ 90.96
13	Economic & Planning Systems	x		Warner	Gray	Research Associate	\$25.00	173%	10%	\$ 75.08
14	Dig Studio		x	Vitak	William P.	Principal/Urban Designer	\$100.96	123%	10%	\$ 247.65
15	Dig Studio		x	Wilson	Gretchen	Principal/Landscape Architect	\$82.69	123%	10%	\$ 202.84
16	Dig Studio		x	Sotirakis	Ryan	Associate/Sr. Planner	\$43.27	123%	10%	\$ 106.14
17							\$	%	%	\$
18							\$	%	%	\$
	Signature:				Date: August 10, 2022					
	Title: Managing Principal									

Economic & Planning Systems, Inc., annual rate adjustment occur Oct 1 of each year starting 2023: * Annual escalation of 3%

Dig Studio annual rate adjustment occur Oct 1 of each year starting 2023: * Annual

CONTRACT PRICING STRUCTURE

For the avoidance of doubt, this contract is a firm fixed price labor hour contract. The labor rates for the various categories of labor to be used under this contract are loaded with overhead, profit and G&A and are fixed for the life of the contract subject to a yearly 3% escalation factor.

EXHIBIT C – TASK ORDER TEMPLATE

TASK ORDER NO. _____

TASK ORDER NAME: _____

This is Task Order No. _____ to Contract No. _____ entered into by and between Utah Transit Authority (UTA) and _____, (Contractor) as of _____, _____, 202_

This Task Order is part of the above-described Contract and is governed by the terms thereof. The purpose of this Task Order is to specifically define the scope, schedule, lump sum price, or not-to-exceed and other terms applicable to the work identified herein. UTA and Contractor hereby agree as follows:

1.0 SCOPE OF SERVICES

The scope of work for this Task Order _____ is hereby attached and incorporated into this Task Order.

2.0 SCHEDULE

The Substantial Completion Date for this Task is _____, _____, 202_. The Final Acceptance Date for this Task is _____, _____, 202_.

3.0 PRICE

The lump sum or not-to-exceed (select one) price for this task order is _____. Invoices will be billed on monthly, milestone or task completion basis (select one).

4.0 APPLICABILITY OF FEDERAL FORMS AND CLAUSES

This Task Order does does not [Check Applicable] include federal assistance funds which requires the application of the Federal Forms and Clauses appended as Exhibits D and E on the Contract.

IN WITNESS WHEREOF, this Task Order has been executed by UTA and the Contractor or its appointed representative

UTAH TRANSIT AUTHORITY:

CONTRACTOR:

By: _____
Date

By: _____

By: _____
Date

Date: _____

By: _____
Date

By: _____

ATTACHMENT 1 – TASK ORDER STATEMENT OF WORK OR SERVICES

EXHIBIT D – FEDERAL FORMS

ATTACHMENT A: EQUAL EMPLOYMENT OPPORTUNITY AND DISADVANTAGED BUSINESS ENTERPRISE STATEMENT

The undersigned states on behalf of the Bidder / Offeror Economic & Planning Systems, Inc.

A. The Bidder / Offeror has given or will give, prior to the commencement of an approved UTA project, notice to all pertinent personnel, i.e., managers, supervisors, employees, unions, subconsultants, etc. of the Bidder / Offeror EEO and DE policies and procedures and its intent and effort to realize such procedures in connection with the EEO and DE requirements that UTA is required to follow as a Federal Transit Administration Grantee.

B. Bidder / Offeror designates -- Name Andrew Knudtsen
Title Managing Principal

as the person assigned the responsibility for securing compliance with and reporting progress to the Bidders/ Offerors a UTA's Civil Rights Office on all EEO efforts initiated and taken.

C. Bidder / Offeror will cooperate fully with UTA and ensure equal employment opportunity to the maximum extent possible during the term of this contract. Attachment A-5 must be completed and submitted. If the Bidder / Offeror employs 50 or more persons and, or will be entering into a contract hereunder in an amount of \$50,000 or more, then EEO Plan for employment of minorities and women must be submitted. UTA will further be kept fully informed of a refusals by unions or others to cooperate with UTA's and the Bidder / Offeror EEO and DBE requirements.

D. Bidder / Offeror agrees to make every reasonably good faith effort to utilize DBE's in the performance of this contract. Bidder / Offeror will take affirmative steps to meet the DBE contract goal set for this bid.

Company Name: Economic & Planning Systems, Inc.

Address: 730 17th St., Suite 630, Denver, CO 80202

Signed: Andrew Knudtsen

Title: Managing Principal

Phone Number: 303 623 3557 720 460 3301 direct

ATTACHMENT A-1: DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION FORM

DBE PROJECT GOAL: Race Neutral

The Bidder / Offeror must check the appropriate box, provide the information requested, and sign this form certifying to the accuracy of the information provided, and submit this form with its bid. Failure to complete and submit this form may result in rejection of the bid/SOQ as non-responsive. Race neutral procurements do not require good faith effort documentation.



Bidder / Offeror will meet or exceed the DBE goal for this contract. If awarded this contract, Bidder / Offeror will subcontract with the DBEs listed below, which will be performing a total of TBD percent (TBD %) of the total dollar amount of the contract work.

Bidders/Offerors shall submit and attach evidence with this form that the DBEs being submitted for work on this project are presently certified by the Utah Uniform Certification Program (UUCP). The DBE Letters of Intent (Attachment A-2) are included with this DBE Participation Form.

<u>DBE Name & Address</u>	<u>Description of Work</u>	<u>\$ Amount of Participation</u>	<u>% of Total Price</u>
Dig Studio, Inc. 1501 15th St. Denver CO 80202	Planning / Urban Design	\$ TBD	TBD %
_____	_____	\$ _____	_____%
_____	_____	\$ _____	_____%
_____	_____	\$ _____	_____%

(Attach additional sheets if necessary)



Bidder / Offeror does not meet the DBE goal for this contract. Bidder / Offeror certifies that it has made good faith efforts in accordance with the bid/SOQ instructions to meet the DBE goal, but, despite those efforts, has been unable to meet the goal. The Good Faith Efforts Documentation Form (Attachment A-3) is attached to this DBE Participation Form. Please list above ANY DBE participation your firm has committed to.



Bidder / Offeror *does not* meet the DBE goal for this contract. Bidder / Offeror certifies that there exists no opportunity for subcontracting as part of this project. It is the general practice of Bidder / Offeror's firm to perform all work of this nature solely with its own work force and to do otherwise would constitute a violation of industry standards. Attachment A-3, Good Faith Effort Documentation Form, is not required under this selection.

Date: 4/20/2022

Company Name: Economic & Planning Systems, Inc.

Signature: Andrew Knudtsen

Printed Name: Andrew Knudtsen

Title: Managing Principal

ATTACHMENT A-2: SAMPLE LETTER OF INTENT TO SUBCONTRACT WITH DBE FIRM

(COMPANY LETTERHEAD)

(DATE)

(DBE)

(Name and Address)

Reference: (Project Name and Bid/SOQ Number)

(Appropriate Salutation)

Our firm is submitting a bid/SOQ with the intent to be awarded a contract with the Utah Transit Authority for the performance of the above-referenced project and if our firm is awarded the contract, shall as act as prime Consultant for this project.

Please sign this "Letter of Intent to Subcontract" to verify that you are willing to participate and enter into a subcontract with our firm to provide (specify equipment, materials, supplies, services, etc.) in the amount of \$ _____ if our firm is awarded the contract with Utah Transit Authority. A DBE company has to be certified in the State of Utah and current in its DBE certification. Please attach a copy of a recent certification letter/ annual update that states your firm is presently certified as a DBE by the Utah Uniform Certification Program (UUCP).

DBE firm has read and certifies to the above:

Prime Consultant:

Signature

Signature

Printed Name

Printed Name

Title

Title

NOTE: Submit this letter with specific information and it signed by the proposed DBE company. All equipment, materials, supplies, and services to be provided by the DBE subconsultant must be listed, and all amounts to be paid to the DBE subconsultant must be specified.

THE SUCCESSFUL BIDDERS/ OFFERORS SHALL REQUIRE ALL SUBCONSULTANTS TO COMPLETE AND SUBMIT THE FEDERAL CERTIFICATION ATTACHMENTS A, A-1, A-2, A-3, A-5, B, C, D, E, F AND G IF APPLICABLE.

The Economics of Land Use



April 20, 2022

Mr. William P. Vitek
Senior Principal | Partner
Dig Studio, Inc.
1521 15th Street
Denver, CO 80202

Subject: TOD Station Area Consulting Services Pools – RFQ # 22-03567VW; Letter of Intent to Subcontract with Dig Studio; EPS #223051

Dear Bill:

Economic & Planning Systems, Inc. is submitting a bid/SOQ with the intent to be awarded a contract with the Utah Transit Authority for the performance of the above-referenced project and if our firm is awarded the contract, shall as act as prime Consultant for this project.

We understand Dig Studio, Inc. is a DBE firm certified in good standing with the City of Denver and Colorado Dept. of Transportation, with reciprocal application documentation submitted to the Utah Uniform Certification Program. Assuming favorable approval of its DBE application, it will self-perform any stated DBE required scope for task orders for which it is selected. Dig Studio will provide **Planning and Urban Design services** as a DBE for any awarded Task Orders within Pool G, with a total amount of \$TBD, based upon Task Order requirements.

Please provide Economic & Planning Systems a copy of your certification letter / annual update indicating DBE certification by the Utah Uniform Certification Program, when the application is processed.

Dig Studio, Inc. has read and certifies to the above:

William P. Vitek
Senior Principal | Partner

Prime Consultant:
Economic & Planning Systems, Inc.

Andrew Knudtsen
Managing Principal

Economic & Planning Systems, Inc.
730 17th Street, Suite 630
Denver, CO 80202-3511
303 623 3557 tel
303 623 9049 fax

Denver
Los Angeles
Oakland
Sacramento

www.epsys.com

ATTACHMENT A-3: GOOD FAITH EFFORTS DOCUMENTATION FORM

Whether a Bidder / Offeror meets or does not meet the DBE goal, the Bidder / Offeror must submit this form with its DBE Participation Form (Attachment A-1). In the case of a race neutral project, the Bidder / Offeror is not required to submit good faith efforts documentation. The Bidder / Offeror must submit a copy of the document(s) sent to DBE's. Failure to submit this form with its bid/SOQ and requested additional documentation may render the bid/SOQ non-responsive. UTA's DBE Liaison Officer may require that the Bidder / Offeror provide additional substantiation of good faith efforts.

Firm Name	Contact Person	Area of Expertise	Date	Response
<u>Dig Studio, Inc.</u>	<u>Bill Vitek</u>	<u>Planning / Urban Design</u>	<u>4/12/2022</u>	<u>Confirmed - as needed per task order requirements</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

By submitting and signing this form, including any continuation form(s), the Bidder / Offeror certifies that it has contacted the identified DBE firms in good faith (per 49 CFR. 26 Appendix A or see DBE Requirements, Terms and Conditions) to discuss contracting opportunities.

Date: 4/20/2022

Signature: 

Printed Name: Andrew Knudtsen

Title: Managing Principal

ATTACHMENT A-5: EMPLOYMENT PRACTICES / EEO PLAN

A) Consultants that have less than 50 employees or have a contract for less than \$50,000 yet more than \$10,000 are responsible to complete the following information outlining their employment goals on this UTA project.

Prepared By: Economic & Planning Systems, Inc.

(Print name & title)

Solicitation No. 22-03567VW

Name of Project TOD Station Area Consulting Services Pools

Location of Workforce Denver, Colorado

Prime Consultant Economic & Planning Systems, Inc.

In keeping with UTA policy of nondiscrimination in employment practices, the Economic & Planning Systems, Inc. (Name of Company) has set as a project goal for the utilization of minorities, which is TBD %. Minority goals are formulated in terms of craft work hours performed in a specific Standard Metropolitan Statistical Area (SMSA). (Name of Company) has set as a project goal for the utilization of females, which is 6.9%. The Economic & Planning Systems, Inc. (Company name), by its Managing Principal, Andrew Knudtsen (Title of Company Representative) assures to the UTA that good faith efforts will be used to achieve said goals. The good faith efforts proposed are described in the attached narrative.

B) Requirements Concerning The Submission Of An EEO Plan (For all construction and non-construction Consultants)

If the Consultant has 50 or more employees and a contract of \$50,000 or more is contemplated, an EEO Plan should be submitted in lieu of this form per the specifications noted in the instruction to offerors.

Andrew Knudtsen Managing Principal

Signature and Title of Company Official (Consultant)

ATTACHMENT B: BUY AMERICA CERTIFICATE

Solicitation No. 22-03567VW

Exhibit ____

UTAH TRANSIT AUTHORITY

BUY AMERICA CERTIFICATE

(Federally assisted Contract)

SECTION (1); Certify only for IRON, Steel or MANUFACTURED PRODUCTS: ***(Mark One)***

- CERTIFICATE OF COMPLIANCE WITH SECTION 165(a).** The offeror hereby certifies that it *will comply* with the requirements of Section 165(a) of the Surface Transportation Assistance Act of 1982, as amended, and the applicable regulations of 49 CFR Part 661;

N/A there is no requirement for built products as a result of this contract. The procurement is for planning services only, not construction contracting.

—OR—

- CERTIFICATE FOR NON-COMPLIANCE WITH SECTION 165(a).** The offeror hereby certifies that it *cannot comply* with the requirements of Section 165(a) of the Surface Transportation Assistance Act of 1982, as amended, but it *may qualify* for an exception to the requirement pursuant to Section 165(b)(2) or (b)(4) of the Surface Transportation Assistance Act, as amended, and regulations in 49 CFR Part 661.7.

SECTION (2); Certify only for ROLLING STOCK and ASSOCIATED EQUIPMENT: ***(Mark One)***

- CERTIFICATE OF COMPLIANCE WITH SECTION 165(b)(3).** The offeror hereby certifies that it *will comply* with the requirements of Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, and the applicable regulations of 49 CFR Part 661.11;

N/A there is no requirement for built products as a result of this contract. The procurement is for planning services only, not construction contracting.

—OR—

- CERTIFICATE FOR NON-COMPLIANCE WITH SECTION 165(b)(3).** The offeror hereby certifies that it *cannot comply* with the requirements of Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, but it *may qualify* for an exception to the requirement consistent with Section 165(b)(2) or (b)(4) of the Surface Transportation Assistance Act, as amended, and regulations in 49 CFR Part 661.7.

SECTION (3); OFFEROR'S SIGNATURE: *(Sign, date and enter your title and the name of your company)*

Andrew Kaudstam 4/20/2022

Signature

Date

Managing Principal

Title

Economic & Planning Systems, Inc.

Name of Company/Offeror

ATTACHMENT C: CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER INELIGIBILITY AND VOLUNTARY EXCLUSION FROM TRANSACTIONS FINANCED IN PART BY THE U.S. GOVERNMENT

This certification is made in accordance with Executive Order 12549, 49 CFR Part 29, 31 USC §6101 and similar federal requirements regarding debarment, suspension and ineligibility with respect to federally-funded contracts.

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the Consultant is required to verify that none of the Consultant, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The Consultant is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or SOQ, the bidder or Offeror certifies as follows:

The certification in this clause is a material representation of fact relied upon by the Federal Transit Administration. If it is later determined that the bidder or Offeror knowingly rendered an erroneous certification, in addition to remedies available to the Federal Transit Administration, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or Offeror agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or Offeror further agrees to include a provision requiring such compliance in its lower tier covered transactions.

If the bidder or Offeror is unable to certify to the statement above, it shall attach an explanation, and indicate that it has done so, by placing an "X" in the following space _____.

Andrew Knudtsen

Signature of the Bidder or Offeror Authorized Official

Andrew Knudtsen, Managing Principal

Name and Title of the Bidder or Offeror Authorized Official

FEDERAL ID # 94-3056856

4/20/2022

Date

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

Instructions for Certification

1. By signing and submitting this bid or SOQ, the prospective Consultant is providing the signed certification set out below:

"Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction"

 - (1) The prospective Consultant certifies, by submission of this bid or SOQ, that neither it nor its "principals" [as defined at 49 C.F.R. § 29.105(p)] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
 - (2) When the prospective Consultant is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this bid or SOQ.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective Consultant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, UTA may pursue available remedies, including suspension and/or debarment.
3. The prospective Consultant shall provide immediate written notice to UTA if at any time the prospective Consultant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "persons," "lower tier covered transaction," "principal," "SOQ," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. You may contact UTA for assistance in obtaining a copy of those regulations.
5. The prospective Consultant agrees by submitting this SOQ that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by UTA.
6. The prospective Consultant further agrees by submitting this SOQ that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List issued by U.S. General Service Administration.
8. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, UTA may pursue available remedies including suspension and/or debarment.

ATTACHMENT D: CERTIFICATION OF RESTRICTIONS ON LOBBYING

I, Andrew Knudtsen, hereby certifies

(Name and Title of Company Official)

on behalf of Economic & Planning Systems, Inc. that:

(Name of Company)

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all sub recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Executed this 20th day of April, 2022.

By Andrew Knudtsen

(Signature of Authorized Official)

Managing Principal

(Title of Authorized Official)

ATTACHMENT E: CARGO PREFERENCE -- USE OF UNITED STATES-FLAG VESSELS

Pursuant to Maritime Administration regulations, "Cargo Preference -- U.S.-Flag Vessels", 46 C.F.R. Part 381, the Consultant shall insert the following clauses in contracts it awards in which equipment, materials or commodities may be transported by ocean vessel in carrying out the Project:

AS REQUIRED BY 46 C.F.R. PART 381, THE CONSULTANT AGREES --

(1) TO UTILIZE PRIVATELY OWNED UNITED STATES-FLAG COMMERCIAL VESSELS TO SHIP AT LEAST 50 PERCENT OF THE GROSS TONNAGE (COMPUTED SEPARATELY FOR DRY BULK CARRIERS, DRY CARGO LINERS, AND TANKERS) INVOLVED, WHENEVER SHIPPING ANY EQUIPMENT, MATERIALS, OR COMMODITIES PURSUANT TO THIS CONTRACT TO THE EXTENT SUCH VESSELS ARE AVAILABLE AT FAIR AND REASONABLE RATES FOR UNITED STATES-FLAG COMMERCIAL VESSELS.

(2) TO FURNISH WITHIN 20 DAYS FOLLOWING THE DATE OF LOADING FOR SHIPMENTS ORIGINATING WITHIN THE UNITED STATES, OR WITHIN 30 WORKING DAYS FOLLOWING THE DATE OF LOADING FOR SHIPMENT ORIGINATING OUTSIDE THE UNITED STATES, A LEGIBLE COPY OF A RATED, "ON-BOARD" COMMERCIAL OCEAN BILL-OF-LADING IN ENGLISH FOR EACH SHIPMENT OF CARGO DESCRIBED IN PARAGRAPH (1) ABOVE TO THE AUTHORITY (THROUGH THE PRIME CONSULTANT IN THE CASE OF SUBCONSULTANT BILLS-OF-LADING) AND TO THE DIVISION OF NATIONAL CARGO, OFFICE OF MARKET DEVELOPMENT, MARITIME ADMINISTRATION, 400 SEVENTH STREET, S.W., WASHINGTON, D.C. 20590, MARKED WITH APPROPRIATE IDENTIFICATION OF THE PROJECT.

(3) TO INSERT THE SUBSTANCE OF THE PROVISIONS OF THIS CLAUSE IN ALL SUBCONTRACTS ISSUED PURSUANT TO THIS CONTRACT.

N/A This contract is for professional services, and does not require the shipment of any goods or materials.

Date 4/20/2022

Signature Andrew Kaudtsen

Title Managing Principal



ATTACHMENT F: SOLICITATION STATISTICS

Dear Subconsultant:

The Utah Transit Authority maintains bidding statistics, regarding ALL firms bidding on prime contracts and subcontracts on DOT-assisted projects in accordance with the federal regulation 49 CFR Part 26.11. Include copies of this form with your bid package to **ANY SUBCONSULTANTS**. Return the form from each Offeror with your bid package, both Disadvantaged Business Enterprises' (DBE) and non-DBEs (A DBE is a firm that meets the criteria in 49 CFR 26). Thank you for your assistance with this request. If you have any questions, comments or suggestions, please contact Raymond Christy, UTA's DBE Liaison Officer (801) 262-5626 extension 3537.

This information will only be used for statistical purposes as allowed under 49 CFR Part 26.

Firm Name: Economic & Planning Systems, Inc.

Firm Address: 730 17th St., Suite 630, Denver, CO 80202

Status: Non-DBE DBE

Company's Type of Work: Real estate economics consulting firm

Month/Year firm started: 4/1983

Company Owner(s) Ethnic Background (optional)

<input type="checkbox"/> African American	<input type="checkbox"/> Asian	<input type="checkbox"/> Male
<input type="checkbox"/> Hispanic	<input type="checkbox"/> Native American	<input type="checkbox"/> Female
<input type="checkbox"/> Polynesian	<input type="checkbox"/> Caucasian	<input type="checkbox"/> Other _____

Annual Gross Receipts of the Firm: (check one)

0 to \$500,000	<input type="checkbox"/>	\$500,000 - \$1,000,000	<input type="checkbox"/>
\$1 Million - \$5 Million	<input type="checkbox"/>	\$5 Million - \$10 Million	<input checked="" type="checkbox"/>
\$10 Million - \$16.7 Million	<input type="checkbox"/>	Above \$16.7 Million	<input type="checkbox"/>

Name of Solicitation: TOD Station Area Consulting Services Pools

<u>Company Owner(s) Ethnic Background (optional)</u>		
<input type="checkbox"/> African American	<input type="checkbox"/> Asian	<input type="checkbox"/> Male
<input type="checkbox"/> Hispanic	<input type="checkbox"/> Native American	<input type="checkbox"/> Female
<input type="checkbox"/> Polynesian	<input type="checkbox"/> Caucasian	<input type="checkbox"/> Other _____

Annual Gross Receipts of the Firm: (check one)

0 to \$500,000	<input type="checkbox"/>	\$500,000 - \$1,000,000	<input type="checkbox"/>
\$1 Million - \$5 Million	<input checked="" type="checkbox"/>	\$5 Million - \$10 Million	<input type="checkbox"/>
\$10 Million - \$16.7 Million	<input type="checkbox"/>	Above \$16.7 Million	<input type="checkbox"/>

Name of Solicitation: UTA TOD Station Area Consulting Services Pools RFQU 22-03567VW



ATTACHMENT G: Requirement for Written Subcontracts
(To be submitted with Bid or SOQ)

Provided that your firms Bid or SOQ is determined to be the winner for this Procurement, (UTA Number: 22-03567VW, Bidder/Offeror: Economic & Planning Systems, Inc.), does hereby acknowledge and agree to comply with by signing below, the Authority's requirement to have written subcontracts for all the Work provided for by subconsultants at any tier for the Work awarded to them through this Procurement, and that Bidder/Offeror will pass along all applicable requirements, federal or otherwise, but not limited thereto to all sub tier Consultants.

Company Name: Economic & Planning Systems, Inc.

Signed by: Andrew Kaudtson

Title: Managing Principal

Date: 4/20/2022

Company Owner(s) Ethnic Background (optional)

<input type="checkbox"/> African American	<input type="checkbox"/> Asian	<input type="checkbox"/> Male
<input type="checkbox"/> Hispanic	<input type="checkbox"/> Native American	<input type="checkbox"/> Female
<input type="checkbox"/> Polynesian	<input type="checkbox"/> Caucasian	<input type="checkbox"/> Other _____

Annual Gross Receipts of the Firm: (check one)

0 to \$500,000	<input type="checkbox"/>	\$500,000 - \$1,000,000	<input type="checkbox"/>
\$1 Million - \$5 Million	<input checked="" type="checkbox"/>	\$5 Million - \$10 Million	<input type="checkbox"/>
\$10 Million - \$16.7 Million	<input type="checkbox"/>	Above \$16.7 Million	<input type="checkbox"/>

Name of Solicitation: UTA TOD Station Area Consulting Services Pools RFQU 22-03567VW



ATTACHMENT G: Requirement for Written Subcontracts
(To be submitted with Bid or SOQ)

Provided that your firms Bid or SOQ is determined to be the winner for this Procurement, (UTA Number: 22-03567VW, Bidder/Offeror: Economic & Planning Systems, Inc.), does hereby acknowledge and agree to comply with by signing below, the Authority's requirement to have written subcontracts for all the Work provided for by subconsultants at any tier for the Work awarded to them through this Procurement, and that Bidder/Offeror will pass along all applicable requirements, federal or otherwise, but not limited thereto to all sub tier Consultants.

Company Name: Economic & Planning Systems, Inc.

Signed by: Andrew Kautzman

Title: Managing Principal

Date: 4/20/2022

EXHIBIT E -FEDERAL CLAUES

ACCESS TO RECORDS AND REPORTS

The Consultant agrees to provide the Authority, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Consultant which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts and transcriptions. The Consultant also agrees, pursuant to 49 CFR 633.17 to provide the FTA Administrator or his authorized representatives including any project management oversight auditor access to the Consultant's records and construction sites pertaining to a major capital project (defined at 49 USC §5302(a)(1)), which is receiving federal financial assistance through the programs described at 49 USC §§5307, 5309 or 5311. The Consultant further agrees to include in all of its subcontracts and purchase orders under the Contract provision to the effect that the Subconsultant or Supplier agrees that the Authority, the United States Department of Transportation and the Comptroller General of the United States, the project management oversight auditor, or any of their duly authorized representatives shall, until the expiration of three (3) years after final payment under the subcontract, have access to and the right to examine any directly pertinent books, documents, papers, and other records of the Subconsultant or Supplier.

INCORPORATION OF FTA TERMS

All contractual provisions required by the United States Department of Transportation, as set forth in the most recent edition and revisions of FTA Circular 4220.1F, "Third Party Contracting Guidance," are incorporated by reference into the Contract Documents. All FTA mandated terms shall take precedence over other conflicting terms, if any in the Contract Documents. The Consultant shall not perform any act, fail to perform any act, or refuse to comply with any Authority requests that would cause the Authority to be in violation of any FTA terms and conditions.

FEDERAL CHANGES

The Consultant shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the Authority and the FTA, as they may be amended or promulgated from time to time during the term of the Contract. The Consultant's failure to so comply shall constitute a material breach of the Contract.

ENERGY CONSERVATION REQUIREMENTS

The Consultant agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

NO GOVERNMENT OBLIGATION TO THIRD PARTIES

The Authority and the Consultant acknowledge and agree that, notwithstanding any concurrence by the federal government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the federal government, the federal government is not a party to this Contract and shall not be subject to any obligations or liabilities to the Authority, the Consultant or any other party (whether or not a party to the Contract) pertaining to any matter resulting from the Contract. The Consultant agrees to include the above clause in each subcontract or purchase order financed in whole or in part with federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the Subconsultant or Supplier who will be subject to its provisions.

PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS

The Consultant acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC §3801, et seq. and United States Department of Transportation regulations, "Program Fraud Civil Remedies," 49 CFR Part31, apply to its actions pertaining to the Contract. Upon execution of the underlying Contract, the Consultant certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying Contract or the FTA assisted project for which the Work is being performed. In addition to other penalties that may be applicable, the Consultant further acknowledges that if it makes, or causes to be made, a false, fictitious or fraudulent claim, statement, submission, or certification, the federal government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Consultant to the extent the federal government deems appropriate. The Consultant also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission or certification to the federal government under a contract connected with a project that is financed in whole or in part with federal assistance originally awarded by FTA under the authority of 49 USC §5307, the federal government reserves the right to impose the penalties of 18 USC §1001 and 49 USC §5307(n)(1) on the Consultant, to the extent the federal government deems appropriate. The Consultant agrees to include the above two clauses in each subcontract or purchase order financed in whole or in part with federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the Subconsultant or Supplier who will be subject to the provisions.

GOVERNMENT-WIDE DEBARMENT AND SUSPENSION

The Contract is a covered transaction for purposes of 49 CFR Part 29. As such, the Consultant is required to verify that none of the Consultant, its principals (as defined at 49 CFR 29.995) or affiliates (as defined at 49 CFR 29.905) are excluded or disqualified as defined at 49 CFR 29.940 and 29.945. The Consultant is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any subcontract or purchase order that it enters into. (*A certification is to be submitted with each bid or offer of \$25,000 or more.*)

BUY AMERICA CERTIFICATION

Applicable Only to Contracts valued at more than \$100,000]

Consultant shall comply with 49 USC 5323(j) and 49 CFR 661, as amended by MAP-21 stating that federal funds may not be obligated unless steel, iron and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7. Separate requirements for rolling stock are set out at 49 USC §5323(j)(2)(C) and 49 CFR §661.11. Rolling stock must be assembled in the United States and have the applicable percentage of

domestic content required by 49 USC 5323(j) and 49 CFR 661. Consultant shall be responsible for ensuring that lower tier Consultants and subconsultants are in compliance with these requirements. All Offerors to the UTA solicitation for the Contract must include the appropriate Buy America certification with their responses and any response that is not accompanied by a completed Buy America Certification will be rejected as nonresponsive.

FLY AMERICA REQUIREMENTS

The Consultant agrees to comply with 49 USC §40118 and 41 CFR Part 301-10, which provide that Consultants are required to use United States -Flag air carriers for federally financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by 49 USC §40118 and CFR Part 301-10.

CIVIL RIGHTS REQUIREMENTS

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Consultant agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Consultant agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. §2000e, and Federal transit laws at 49 U.S.C. § 5332, the Consultant agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq ., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Consultant agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Consultant agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§623 and Federal transit law at 49 U.S.C. § 5332, the Consultant agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Consultant agrees to comply with any implementing requirements may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Consultant agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission,

"Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Consultant agrees to comply with any implementing requirements FTA may issue.

(3) The Consultant also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary, to identify the affected parties

DISADVANTAGED BUSINESS ENTERPRISES (DBE)

a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is 7%. A separate contract goal [of ___ % DBE participation has] [has not] been established for this procurement. The goal of Race Neutral is established on locally funded projects and task orders. On federally funded projects and task orders, each will be reviewed individually and assessed for DBE participation.

b. The Consultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Consultant shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the Consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as {insert agency name} deems appropriate. Each subcontract the Consultant signs with a subconsultant must include the assurance in this paragraph (see 49 CFR 26.13(b)).

c. *{If a separate contract goal has been established, use the following}* Bidders/offerors are required to document sufficient BE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49CFR 26.53. Award of this contract is conditioned on submission of the following [concurrent with and accompanying sealed bid] [concurrent with and accompanying an initial SOQ] [prior to award]: 1. The names and addresses of DBE firms that will participate in this contract; 2. A description of the work each DBE will perform; 3. The dollar amount of the participation of each DBE firm participating; 4. Written documentation of the bidder/offeror's commitment to use a DBE subconsultant whose participation it submits to meet the contract goal; 5. Written confirmation from the DBE that it is participating in the contract as provided in the prime Consultant's commitment; and 6. If the contract goal is not met, evidence of good faith efforts to do so. [Bidders][Offerors] must present the information required above [as a matter of responsiveness] [with initial SOQs] [prior to contract award] (see 49 CFR 26.53(3)). *{If no separate contract goal has been established, use the following}* The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

d. The Consultant is required to pay its subconsultants performing work related to this contract for satisfactory performance of that work no later than 30 days after the Consultant's receipt of payment for that work from the {insert agency name}. In addition, [the Consultant may not hold retainage from its subconsultants.] [is required to return any retainage payments to those subconsultants within 30 days after the subconsultant's work related to this contract is satisfactorily completed.] [is required to return any retainage payments to those subconsultants within 30 days after incremental acceptance of the subconsultant's work by the {insert agency name} and Consultant's receipt of the partial retainage payment related to the subconsultant's work.]

e. The Consultant must promptly notify {insert agency name}, whenever a DBE subconsultant performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subconsultant to perform at least the same amount of work. The Consultant may not terminate any DBE subconsultant and perform that work through its own forces or those of an affiliate without prior written consent of {insert agency name}.

TERMINATION

(For contracts over \$10,000.00)

a. Termination for Convenience (General Provision) The (Recipient) may terminate this contract, in whole or in part, at any time by written notice to the Consultant when it is in the Government's best interest. The Consultant shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Consultant shall promptly submit its termination claim to (Recipient) to be paid the Consultant. If the Consultant has any property in its possession belonging to the (Recipient), the Consultant will account for the same, and dispose of it in the manner the (Recipient) directs.

b. Termination for Default [Breach or Cause] (General Provision) If the Consultant does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Consultant

fails to perform in the manner called for in the contract, or if the Consultant fails to comply with any other provisions of the contract, the (Recipient) may terminate this contract for default. Termination shall be effected by serving a notice of termination on the Consultant setting forth the manner in which the Consultant is in default. The Consultant will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the (Recipient) that the Consultant had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Consultant, the (Recipient), after setting up a new delivery of performance schedule, may allow the Consultant to continue work, or treat the termination as a termination for convenience.

c. Opportunity to Cure (General Provision) The (Recipient) in its sole discretion may, in the case of a termination for breach or default, allow the Consultant [an appropriately short period of time] in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

If Consultant fails to remedy to (Recipient)'s satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by consultant of written notice from (Recipient) setting forth the nature of said breach or default, (Recipient) shall have the right to terminate the Contract without any further obligation to Consultant. Any such termination for default shall not in any way operate to preclude (Recipient) from also pursuing all available remedies against consultant and its sureties for said breach or default.

waiver of Remedies for any Breach In the event that (Recipient) elects to waive its remedies for any breach by Consultant of any covenant, term or condition of this Contract, such waiver by (Recipient) shall not limit (Recipient)'remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

e. Termination for Default (Construction) If the Consultant refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Consultant fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Consultant a Notice of Termination specifying the nature of the default. In this event, the Recipient may take over the work and compete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Consultant and its sureties shall be liable for any damage to the Recipient resulting from the Consultant's refusal or failure to complete the work within specified time, whether or not the Consultant's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Recipient in completing the work.

The Consultant's right to proceed shall not be terminated nor the Consultant charged with damages under this clause if-

1. the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Consultant. Examples of such causes include acts of God, acts of the Recipient, acts of another Consultant in the performance of a contract with the Recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and

2. the Consultant, within [10] days from the beginning of any delay, notifies the (Recipient) in writing of the causes of delay. If in the judgment of the (Recipient), the delay is excusable, the time for completing the work shall be extended. The judgment of the (Recipient) shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of the Consultant's right to proceed, it is determined that the Consultant was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Recipient.

DEBARMENT AND SUSPENSION

[Applicable Only to Contracts valued at more than \$25,000]

a.” Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through application of coatings, occurred in the United States.

Consultant shall comply and facilitate compliance with U.S. DOT regulations, “No procurement Suspension and Debarment,” 2 CFR Part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) “Guidelines to Agencies on Governmentwide Debarment and Suspension (No procurement),” 2 CFR Part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the Contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the Contract amount. As such, Consultant shall verify that its principals, affiliates, and subconsultants are eligible to participate in this federally funded contract and are not presently declared by any federal department or agency to be: (i) debarred from participation in any federally assisted award; (ii) suspended from participation in any federally assisted award; (iii) proposed for debarment from participation in any federally assisted award; (iv) declared ineligible to participate in any federally assisted award; (v) voluntarily excluded from participation in any federally assisted award; and/or (vi) disqualified from participation in any federally assisted award. By submitting a response to UTA’s solicitation for the Contract, Consultant has certified that the foregoing items (i) through (vi) are true. The certification in this clause is a material representation of fact relied upon by UTA. If it is later determined by UTA that Consultant knowingly rendered an erroneous certification, in addition to other remedies available that may be available to UTA, the federal government may pursue available remedies, including but not limited to suspension and/or debarment. Consultant agrees to comply with the requirements of 2 CFR Part 180, subpart C, as supplemented by 2 CFR Part 1200, during the Contract term. Consultant further agrees to include a provision requiring such compliance in its lower tier covered transactions.

ADA ACCESS

ADA Access for Individuals with Disabilities – The Consultant agrees to comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The Recipient also agrees to comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of programs or activities receiving Federal financial assistance; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities; with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities; and with other laws and amendments thereto pertaining to access for individuals with disabilities that may be applicable. In addition, the Recipient agrees to comply with applicable implementing Federal regulations, and any later amendments thereto, and agrees to follow applicable Federal implementing directives, except to the extent FTA approves otherwise in writing.

Domestic Preference

In accordance with 2 CFR 200.322 all Consultants shall, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products).

For purposes of this clause:

b. Manufacturing products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

This requirement must be included in all subcontracts awarded under this award.

Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment

In accordance with 2 CFR 200.216, Consultant and its subconsultants are prohibited from expending funds under this contract for the procurement of equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

- a. “covered telecommunications equipment or services” is telecommunications or video surveillance equipment or services produced by:
 - a. Huawei Technologies Company
 - b. ZTE Corporation
 - c. Hytera Communications Corporation
 - d. Hangzhou Hikvision Digital Technology Company
 - e. Dahua Technology Company
 - f. Any subsidiary of the above listed entities.

Federal Clauses Applicable only to Construction Contracts

CLEAN AIR REQUIREMENTS

The Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 USC §§ 7401, et seq. The Consultant agrees to report each violation to the Authority and understands and agrees that the Authority will, in turn, report each violation as required to assure notification to the FTA and the appropriate EPA Regional Office. The Consultant also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with federal assistance provided by FTA.

CLEAN WATER REQUIREMENTS

The Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC §1251, et seq. The Consultant agrees to report each violation to the Authority and understands and agrees that the Authority will, in turn, report each violation as required to assure notification to FTA and the appropriate Regional Office of the United States Environmental Protection Agency. The Consultant also agrees to include these requirements in each subcontract or purchase order exceeding \$100,000 financed in whole or in part with federal assistance provided by FTA.

FLY AMERICA REQUIREMENTS

The Consultant agrees to comply with 49 USC §40118 and 41 CFR Part 301-10, which provide that Consultants are required to use United States - Flag air carriers for federally financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by 49 USC §40118 and CFR Part 301-10.

SEISMIC SAFETY REQUIREMENTS

The Consultant agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The Consultant also agrees to ensure that all work performed under this contract including work performed by a subconsultant is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

DAVIS-BACON ACT PREVAILING WAGE AND COPELAND ACT ANTI-KICKBACK REQUIREMENTS

(1) **Minimum wages** – (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between Consultant and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by consultant and its subconsultants at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) UTA's Civil Rights Compliance Office shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. UTA's Civil Rights Compliance Office shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and

- (1) The classification is utilized in the area by the construction industry; and
- (2) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(3) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If Consultant and the laborers and mechanics to be employed in the classification (if known), or their representatives, and UTA's Civil Rights Compliance Office agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by UTA's Civil Rights Compliance Office to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise UTA's Civil Rights Compliance Office or will notify UTA's Civil Rights Compliance Office within the 30-day period that additional time is necessary.

(C) In the event Consultant, the laborers or mechanics to be employed in the classification or their representatives, and UTA's Civil Rights Compliance Office do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), UTA's Civil Rights Compliance Office shall refer the questions, including the views of all interested parties and the recommendation of UTA's Civil Rights Compliance Office, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise UTA's Civil Rights Compliance Office or will notify UTA's Civil Rights Compliance Office within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph (1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under the Contract from the first day on which work is performed in the classification.

i (iii) Whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, Consultant shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

ii (iv) If Consultant does not make payments to a trustee or other third person, Consultant may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of consultant, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require Consultant to set aside in a separate account assets for the meeting of obligations under the plan or program.

(v) (A) UTA's Civil Rights Compliance Office shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. UTA's Civil Rights Compliance Office shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If Consultant and the laborers and mechanics to be employed in the classification (if known), or their representatives, and UTA's Civil Rights Compliance Office agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by UTA's Civil Rights Compliance Office to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise UTA's Civil Rights Compliance Office or will notify UTA's Civil Rights Compliance Office within the 30-day period that additional time is necessary.

(C) In the event Consultant, the laborers or mechanics to be employed in the classification or their representatives, and UTA's Civil Rights Compliance Office do not agree on the proposed classification and wage rate (including the amount designated

for fringe benefits, where appropriate), UTA's Civil Rights Compliance Office shall refer the questions, including the views of all interested parties and the recommendation of UTA's Civil Rights Compliance Office, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise UTA's Civil Rights Compliance Office or will notify UTA's Civil Rights Compliance Office within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under the Contract from the first day on which work is performed in the classification.

(2) **Withholding** – UTA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from Consultant under the Contract or any other federal contract for which Consultant is the prime Consultant, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by Consultant, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by Consultant or any subconsultant the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the Contract, UTA may, after written notice to Consultant, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) **Payrolls and basic records** – (i) Payrolls and basic records relating thereto shall be maintained by consultant during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1 (b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, Consultant shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. If Consultant employs apprentices or trainees under approved programs, Consultant shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) Consultant shall submit weekly for each week in which any work under the Contract is performed a copy of all payrolls to UTA for transmission to the FTA. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under Section 5.5(a)(3)(i) of Regulations, 29 CFR Part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. Consultant is responsible for the submission of copies of payrolls by all subconsultants.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by consultant or subconsultant or his other agent who pays or supervises the payment of the persons employed under the Contract and shall certify the following: That the payroll for the payroll period contains the information required to be maintained under Section 5.5(a)(3)(i) of Regulations, 29CFR Part 5 and that such information is correct and complete:

(1) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been

made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR Part 3; and

(2) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents forth classification of work performed, as specified in the applicable wage determination incorporated into the Contract.

(C)The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (3)(ii)(B) of this section.

(D)The falsification of any of the above certifications may subject Consultant or subconsultant to civil or criminal prosecution under Section 1001 of title 18 and Section 231 of title 31 of the United States Code.

(iii)Consultant and any subconsultant shall make the records required under paragraph (3) of this section available for inspection, copying, or transcription by authorized representatives of the FTA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If Consultant or subconsultant fails to submit the required records or to make them available, the federal agency may, after written notice to consultant, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR §5.12.

(4) **Apprentices and trainees** – (i) Apprentices – Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to consultant as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where Consultant is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in Consultant's or subconsultant's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, Consultant will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

i (ii)Trainees – Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate forth work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of

progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the

i trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, Consultant will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

ii (iii) Equal employment opportunity – The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

iii **(5) Compliance with Copeland “Anti-Kickback” Act Requirements** – Consultant shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in the Contract. Consultant is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

iv **(6) Subcontracts** – Consultant and any subconsultant shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the FTA may by appropriate instructions require, and also a clause requiring the subconsultants to include these clauses in any lower tier subcontracts. Consultant shall be responsible for the compliance by any subconsultant or lower tier subconsultant with all the contract clauses in 29 CFR 5.5.

BONDING REQUIREMENTS

(Applicable Only to Contracts valued at more than \$150,000]

Unless a different requirement is set forth in the Contract, Consultant shall maintain the following bonds:
A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.

A performance bond in the amount of **100%** of the Contract value is required by the Recipient to ensure faithful performance of the Contract. The performance bond shall be provided by consultant and shall remain in full force for the term of the Contract. Consultant will provide the performance bond to UTA within ten (10) business days from execution of the Contract. The performance bond must be provided by a fully qualified surety company acceptable to the UTA and listed as a company currently authorized under 31 CFR Part 22 as possessing a certificate of authority as described thereunder. UTA may require additional performance bond protection if the Contract price is increased. The increase in protection shall generally equal 100 percent of the increase in Contract price. UTA may secure additional protection by directing Consultant to increase the amount of the existing bond or to obtain an additional bond.

A labor and materials payment bond equal to the full value of the Contract must be furnished by Consultant to UTA as security for payment by consultant and subconsultants for labor, materials, and rental of equipment. The bond may be issued by a fully qualified surety company acceptable to UTA and listed as a company currently authorized under 31 CFR Part 223 as possessing a certificate of authority as described thereunder.



Utah Transit Authority

MEETING MEMO

669 West 200 South
Salt Lake City, UT 84101

Board of Trustees

Date: 10/12/2022

TO: Board of Trustees
THROUGH: Jay Fox, Executive Director
FROM: Mary DeLoretto, Chief Service Development Officer
PRESENTER(S): Sean Murphy, TOC Project Manager

TITLE:

Contract: Task Ordering Agreement for Owner Representative for Headquarter Redevelopment Project (MOCA Systems)

AGENDA ITEM TYPE:

Procurement Contract/Change Order

RECOMMENDATION:

Approve award and authorize the Executive Director to execute the Task Ordering Agreement and associated disbursements with MOCA Systems for owner's representative services on the Salt Lake Central redevelopment project.

BACKGROUND:

UTA is procuring a team of specialized consultants to serve in support and advisory roles as UTA plans the redevelopment of the Salt Lake Central site.

DISCUSSION:

MOCA Systems has been selected to act as UTA's owner's representative for the redevelopment of the Intermodal Hub which will include UTA's new headquarter building. MOCA will support the project by providing owner's representation services in the organization, coordination, management, and administration required for the project, including design oversight, construction oversight, commissioning, and close-out. MOCA also has capacity to assist UTA with coordinating and executing the relocation and move of UTA staff, furniture, and equipment from FLHQ to the new building upon completion.

The Task Ordering Agreement is set to expire on November 1, 2027. This will allow UTA to retain MOCA for the duration of the redevelopment project if both parties choose. We expect the first Task to cost approximately \$50,000, based on previous experience. This will include an "Early Project Definition and Alignment" process conducted in workshops with UTA leadership to clearly identify the agency's goals and objectives that will

guide the life of the project.

MOCA Systems has built a strong reputation for successfully representing complex public building projects in Utah, including the renovation of the Utah State Capitol and the development of the Salt Lake City Public Safety Building, the Salt Lake County District Attorney Office, and the George S. and Dolores Dore' Eccles Theater. Individual tasks exceeding \$200,000 will come back for Board approval. If the cumulative value of tasks issued exceeds \$650,000, this contract will come back to the Board for review and approval.

CONTRACT SUMMARY:

Contractor Name:	MOCA Systems, Inc.
Contract Number:	22-03578VW
Base Contract Effective Dates:	November 1, 2022 - November 1, 2027
Extended Contract Dates:	N/A
Existing Contract Value:	N/A
Amendment Amount:	N/A
New/Total Contract Value:	\$650,000 est. total cost (EAC)
Procurement Method:	RFQU
Budget Authority:	Project included in the 2022-2027 capital plan

ALTERNATIVES:

Alternative delivery methods for the new headquarter building and station redesign, such as design-build or fee-based developer model, would eliminate UTA's need to retain an owner's representative. However, these methods would also reduce UTA's ability to influence design of the project and/or reduce UTA's value capture.

FISCAL IMPACT:

Initial Tasks are funded through UTA capital budget. Bond activity for construction phases will be considered once a full project scope is developed.

ATTACHMENTS:

Task Ordering Agreement

TASK ORDERING AGREEMENT FOR PROFESSIONAL SERVICES
22-03578VW Owner Representative for Headquarter Redevelopment

This Task Ordering Agreement (TOA) is entered into and made effective as of the date of last signature below (the “Effective Date”) by and between UTAH TRANSIT AUTHORITY, a public transit district organized under the laws of the State of Utah (“UTA”), and MOCA Systems, Inc. (“Consultant”).

RECITALS

WHEREAS, UTA desires to award a task ordering contract for professional consulting services per the Statement of Services contained at Exhibit A

WHEREAS, On June 7, 2022, UTA issued Request for Qualifications Package Number 22-03578VW (“RFQu”) encouraging interested parties to submit Statement of Qualifications (SOQ) to perform the services described in the RFQu.

WHEREAS, Upon evaluation of the SOQs submitted in response to the RFQU, UTA selected Consultant as the preferred entity with whom to negotiate a contract to perform the Work.

WHEREAS, Consultant is qualified and willing to perform the Work as set forth in the Scope of Services.

AGREEMENT

NOW, THEREFORE, in accordance with the foregoing Recitals, which are incorporated herein by reference, and for and in consideration of the mutual covenants and agreements hereafter set forth, the mutual benefits to the parties to be derived here from, and for other valuable consideration, the receipt and sufficiency of which the parties acknowledge, it is hereby agreed as follows:

1. SERVICES TO BE PROVIDED

- a. Consultant shall perform all Tasks issued under this TOA as set forth in the Scope of Services (Exhibit A). Except for items (if any) which this Contract specifically states will be UTA-provided, Consultant shall furnish all the labor, material and incidentals necessary for the Work.
- b. Consultant shall perform all Work under this TOA in a professional manner, using at least that standard of care, skill and judgment which can reasonably be expected from similarly situated professionals.
- c. All Work shall conform to generally accepted standards in the transit industry. Consultant shall perform all Work in compliance with applicable laws, regulations, rules, ordinances, permit constraints and other legal requirements including, without limitation, those related

to safety and environmental protection.

- d. Consultant shall furnish only qualified personnel and materials necessary for the performance of the Work.
- e. When performing Work on UTA property, Consultant shall comply with all UTA work site rules including, without limitation, those related to safety and environmental protection.
- f. Consultant is not guaranteed to receive any minimum number of task orders under this Agreement.

2. TASK ORDER ISSUANCE

- a. The Consultant's shall perform services with respect to a wide variety of tasks, as described in Exhibit A at the request of UTA.
- b. Each discrete item is referred to as a "Task." UTA and the Consultant will negotiate scope, schedule, and lump sum or not-to-exceed price for each Task, and document those and other terms, as necessary, in a written "Task Order" in substantively the same format as that attached as Exhibit A. The lump sum or not-to-exceed price for each Task shall be developed in accordance with Section 5 of this Contract and Exhibit C. Upon the execution of a Task Order, the Consultant shall perform services for that Task, including furnishing all the materials, appliances, tools, and labor of every kind required, and constructing and completing in the most substantial and skillful manner, the work identified in the scope of work attached as an Exhibit to that Task Order.
- c. If UTA, in its sole discretion, decides not to issue additional task orders beyond those already issued, this agreement shall be cancelled at no additional cost (beyond task orders already issued) to either Party.
- d. If UTA and the Consultant are unable to agree on the price, scope, or other terms of a Task Order, UTA shall retain the right to remove the Task from the scope of the on-call Consultant and procure the item outside this Contract.

3. PROGRESS OF WORK

- a. Consultant shall prosecute the Work in a diligent and continuous manner and in accordance with all applicable notice to proceed, critical path schedule and guaranteed completion date requirements set forth in (or developed and agreed by the parties in accordance with) the Scope of Services.
- b. Consultant shall conduct regular meetings to update UTA's Project Manager regarding the progress of the Work including, but not limited to, any unusual conditions or critical path schedule items that could affect or delay the Work. Such meetings shall be held at intervals mutually agreed to between the parties.
- c. Consultant shall deliver monthly progress reports and provide all Contract submittals and

other deliverables as specified in the Scope of Services.

- d. Any drawing or other submittal reviews to be performed by UTA in accordance with the Scope of Services are for the sole benefit of UTA, and shall not relieve Consultant of its responsibility to comply with the Contract requirements.
- e. UTA will have the right to inspect, monitor and review any Work performed by Consultant hereunder as deemed necessary by UTA to verify that such Work conforms to the Contract requirements. Any such inspection, monitoring and review performed by UTA is for the sole benefit of UTA, and shall not relieve Consultant of its responsibility to comply with the Contract requirements.
- f. UTA shall have the right to reject Work which fails to conform to the requirements of this Contract. Upon receipt of notice of rejection from UTA, Consultant shall (at its sole expense and without entitlement to equitable schedule relief) promptly re-perform, replace or re-execute the Work so as to conform to the Contract requirements.
- g. If Consultant fails to promptly remedy rejected Work as provided in Section 3 (f) UTA may (without limiting or waiving any rights or remedies, it may have) perform necessary corrective action using other Consultants or UTA's own forces. Any costs reasonably incurred by UTA in such corrective action shall be chargeable to Consultant.

4. **FINAL ACCEPTANCE OF TASKS**

Each Task shall be entirely completed – including all punch list items, final cleanup, etc. – by the final acceptance date specified in the applicable Task Order. When, in the opinion of UTA's PM, the Consultant has fully performed the work under a Task Order, UTA's PM will notify the Consultant of final acceptance.

Final acceptance will be final and conclusive except for defects not readily ascertainable by UTA, actual or constructive fraud, gross mistakes amounting to fraud, or other errors which the Consultant knew or should have known about, as well as UTA's rights under any warranty or guarantee. Final acceptance may be revoked by UTA at any time prior to the issuance of the final payment by UTA or upon UTA's discovery of such defects, mistakes, fraud, or errors in the work even after final payment is issued.

5. **PERIOD OF PERFORMANCE**

This Contract shall commence as of the Effective Date. This Contract shall remain in full force and effect until all Work is completed in accordance with this Contract, as reasonably determined by UTA. Consultant shall complete all Work no later than **November 1, 2027**. This guaranteed completion date may be extended if Consultant and UTA mutually agree to an extension evidenced by a written Change Order. The rights and obligations of UTA and Consultant under this Contract shall at all times be subject to and conditioned upon the provisions of this Contract.)

6. **COMPENSATION**

Unless otherwise agreed in a Task Order, payment for the completion of Tasks will be in the form of a lump sum or not-to-exceed price negotiated between UTA and the Consultant and set forth in an executed Task Order. The lump sum or not-to-exceed price will be negotiated through an open-book cost estimating process based on the pricing elements set forth in Exhibit C. The lump sum or not-to-exceed price will be paid to the Consultant for

satisfactory completion of all work identified in the applicable Task Order. Except as amended by UTA-issued change orders, the amount to be paid to the Consultant for all costs necessary to complete the work, whether stated or reasonably implied in the Task Order or other contract documents, will not exceed the lump sum or not-to-exceed price, including all labor, materials, equipment, supplies, small tools, incidental expenses, and any other direct or indirect associated costs'.

7. INCORPORATED DOCUMENTS

- a. The following documents hereinafter listed in chronological order, are hereby incorporated into the Contract by reference and made a part hereof:
 - 1. The terms and conditions of this Task Ordering Agreement (including any exhibits and attachments hereto).
 - 2. UTA's RFQU including, without limitation, all attached or incorporated terms, conditions, federal clauses (as applicable), drawings, plans, specifications and standards and other descriptions of the Goods and Services;
 - 3. Consultant's Proposal including, without limitation, all federal certifications (as applicable);
- b. The above-referenced documents are made as fully a part of the Contract as if hereto included.

8. ORDER OF PRECEDENCE

The Order of Precedence for this contract is as follows:

- 1. UTA Contract including all attachments
- 2. UTA Terms and Conditions
- 3. UTA Solicitation Terms
- 4. Contractor's Bid or Proposal including proposed terms or conditions

Any Consultant proposed term or condition which is in conflict with a UTA contract or solicitation term or condition will be deemed null and void.

9. CHANGES

- a. UTA's Project Manager or designee may, at any time, by written order designated or indicated to be a Change Order, direct changes in the Work including, but not limited to, changes:
 - 1. In the Scope of Services;
 - 2. In the method or manner of performance of the Work; or
 - 3. In the schedule or completion dates applicable to the Work.To the extent that any change in Work directed by UTA causes an actual and demonstrable impact to: (i) Consultant's cost of performing the work; or (ii) the time required for the Work, then (in either case) the Change Order shall include an equitable adjustment to this Contract to make Consultant whole with respect to the impacts of such change.
- b. A change in the Work may only be directed by UTA through a written Change Order or

(alternatively) UTA’s expressed, written authorization directing Consultant to proceed pending negotiation of a Change Order. Any changes to this Contract undertaken by Consultant without such written authority shall be at Consultant’s sole risk. Consultant shall not be entitled to rely on any other manner or method of direction.

- c. Consultant shall also be entitled to an equitable adjustment to address the actual and demonstrable impacts of “constructive” changes in the Work if: (i) subsequent to the Effective Date of this Contract, there is a material change with respect to any requirement set forth in this Contract; or (ii) other conditions exist or actions are taken by UTA which materially modify the magnitude, character or complexity of the Work from what should have been reasonably assumed by Consultant based on the information included in (or referenced by) this Contract. In order to be eligible for equitable relief for “constructive” changes in Work, Consultant must give UTA’s Project Manager or designee written notice stating:

- A. The date, circumstances, and source of the change; and
- B. That Consultant regards the identified item as a change in Work giving rise to an adjustment in this Contract.

Consultant must provide notice of a “constructive” change and assert its right to an equitable adjustment under this Section within ten (10) days after Consultant becomes aware (or reasonably should have become aware) of the facts and circumstances giving rise to the “constructive” change. Consultant’s failure to provide timely written notice as provided above shall constitute a waiver of Consultant’s rights with respect to such claim.

- d. As soon as practicable, but in no event longer than 30 days after providing notice, Consultant must provide UTA with information and documentation reasonably demonstrating the actual cost and schedule impacts associated with any change in Work. Equitable adjustments will be made via Change Order. Any dispute regarding the Consultant’s entitlement to an equitable adjustment (or the extent of any such equitable adjustment) shall be resolved in accordance with Article 21 of this Contract.

10. INVOICING PROCEDURES

- a. Contractor shall invoice UTA after achievement of contractual milestones or delivery of all Goods and satisfactory performance of all Services. Contractor shall submit invoices to ap@rideuta.com for processing and payment. In order to timely process invoices, Contractor shall include the following information on each invoice:
- i. Contractor Name
 - ii. Unique Invoice Number
 - iii. PO Number
 - iv. Invoice Date
 - v. Detailed Description of Charges
 - vi. Total Dollar Amount Due
- b. UTA shall have the right to disapprove (and withhold from payment) specific line items of each invoice to address non-conforming Goods or Services. Approval by UTA shall not be unreasonably withheld. UTA shall also have the right to offset

(against payments) amounts reasonably reflecting the value of any claim which UTA has against Contractor under the Contract. Payment for all invoice amounts not specifically disapproved or offset by UTA shall be provided to Contractor within thirty (30) calendar days of invoice submittal.

11. OWNERSHIP OF DESIGNS, DRAWINGS, AND WORK PRODUCT

Any deliverables prepared or developed pursuant to the Contract including without limitation drawings, specifications, manuals, calculations, maps, sketches, designs, tracings, notes, reports, data, computer programs, models and samples, shall become the property of UTA when prepared, and, together with any documents or information furnished to Consultant and its employees or agents by UTA hereunder, shall be delivered to UTA upon request, and, in any event, upon termination or final acceptance of the Goods and Services. UTA shall have full rights and privileges to use and reproduce said items. To the extent that any deliverables include or incorporate preexisting intellectual property of Consultant, Consultant hereby grants UTA a fully paid, perpetual license to use such intellectual property for UTA's operation, maintenance, modification, improvement and replacement of UTA's assets. The scope of the license shall be to the fullest extent necessary to accomplish those purposes, including the right to share same with UTA's Consultants, agent, officers, directors, employees, joint owners, affiliates and consultants.

12. USE OF SUBCONSULTANTS

- a. Consultant shall give advance written notification to UTA of any proposed subcontract (not indicated in Consultant's Proposal) negotiated with respect to the Work. UTA shall have the right to approve all subconsultants, such approval not to be withheld unreasonably.
- b. No subsequent change, removal or substitution shall be made with respect to any such subconsultant without the prior written approval of UTA.
- c. Consultant shall be solely responsible for making payments to subconsultants, and such payments shall be made within thirty (30) days after Consultant receives corresponding payments from UTA.
- d. Consultant shall be responsible for and direct all Work performed by subconsultants.
- e. Consultant agrees that no subcontracts shall provide for payment on a cost-plus-percentage-of-cost basis. Consultant further agrees that all subcontracts shall comply with all applicable laws.

13. KEY PERSONNEL

Consultant shall provide the key personnel as indicated in Consultant's Proposal (or other applicable provisions of this Contract), and shall not change any of said key personnel without the express written consent of UTA. The following personnel are considered to be "key" under this clause:
David Milne, Owner's Representative-Point of Contact
David Hart, Project Executive

Paul Ernst, Senior Program Manager
Paul Brown, Project Definition and Design Manager
Robert Czubak, Controls Manager
J.D. Simmons, Construction Manager

If the key personnel listed above are changed without UTA's permission, the Consultant is in default of the contract and liable for damages which shall consist of the lost time and project interruption expenses caused by the change in key personnel. UTA's permission will not be unreasonably withheld.

14. **SUSPENSION OF WORK**

- a. UTA may, at any time, by written order to Consultant, require Consultant to suspend, delay, or interrupt all or any part of the Work called for by this Contract. Any such order shall be specifically identified as a "Suspension of Work Order" issued pursuant to this Article. Upon receipt of such an order, Consultant shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of further costs allocable to the Work covered by the order during the period of Work stoppage.
- b. If a Suspension of Work Order issued under this Article is canceled, Consultant shall resume Work as mutually agreed to in writing by the parties hereto.
- c. If a Suspension of Work Order is not canceled and the Work covered by such order is terminated for the convenience of UTA, reasonable costs incurred as a result of the Suspension of Work Order shall be considered in negotiating the termination settlement.
- d. If the Suspension of Work causes an increase in Consultant's cost or time to perform the Work, UTA's Project Manager or designee shall make an equitable adjustment to compensate Consultant for the additional costs or time, and modify this Contract by Change Order.

15. **TERMINATION**

- a. **FOR CONVENIENCE**: UTA shall have the right to terminate the Contract at any time by providing written notice to Consultant. If the Contract is terminated for convenience, UTA shall pay Consultant: (i) in full for Goods delivered and Services fully performed prior to the effective date of termination; and (ii) an equitable amount to reflect costs incurred (including Contract close-out and subconsultant termination costs that cannot be reasonably mitigated) and profit on work-in-progress as of to the effective date of the termination notice. UTA shall not be responsible for anticipated profits based on the terminated portion of the Contract. Consultant shall promptly submit a termination claim to UTA. If Consultant has any property in its possession belonging to UTA, Consultant will account for the same, and dispose of it in the manner UTA directs.
- b. **FOR DEFAULT**: If Consultant (a) becomes insolvent; (b) files a petition under

any chapter of the bankruptcy laws or is the subject of an involuntary petition; (c) makes a general assignment for the benefit of its creditors; (d) has a receiver appointed; (e) should fail to make prompt payment to any subconsultants or suppliers; or (f) fails to comply with any of its material obligations under the Contract, UTA may, in its discretion, after first giving Consultant seven (7) days written notice to cure such default:

1. Terminate the Contract (in whole or in part) for default and obtain the Goods and Services using other Consultants or UTA's own forces, in which event Consultant shall be liable for all incremental costs so incurred by UTA;
2. Pursue other remedies available under the Contract (regardless of whether the termination remedy is invoked); and/or
3. Except to the extent limited by the Contract, pursue other remedies available at law.

c. **CONSULTANT'S POST TERMINATION OBLIGATIONS:**

Upon receipt of a termination notice as provided above, Consultant shall (i) immediately discontinue all work affected (unless the notice directs otherwise); and (ii) deliver to UTA all data, drawings and other deliverables, whether completed or in process. Consultant shall also remit a final invoice for all services performed and expenses incurred in full accordance with the terms and conditions of the Contract up to the effective date of termination. UTA shall calculate termination damages payable under the Contract, shall offset such damages against Consultant's final invoice, and shall invoice Consultant for any additional amounts payable by Consultant (to the extent termination damages exceed the invoice). All rights and remedies provided in this Article are cumulative and not exclusive. If UTA terminates the Contract for any reason, Consultant shall remain available, for a period not exceeding 90 days, to UTA to respond to any questions or concerns that UTA may have regarding the Goods and Services furnished by Consultant prior to termination.

d. **TERMINATION OF TASKS OR TOA**

UTA's termination rights under this Article shall apply, in UTA's discretion, to either an individual task order or the entire TOA. Where the TOA is terminated for convenience, the Consultant shall be entitled to payment in full for all tasks satisfactorily completed prior to the termination date. Where a task is terminated prior to acceptance by UTA, Consultant shall be entitled to its actual allowable and allocable costs expended to the date of termination for the terminated task.

16. **INFORMATION, RECORDS and REPORTS; AUDIT RIGHTS**

Consultant shall retain all books, papers, documents, accounting records and other evidence to support any cost-based billings allowable under Exhibit B (or any other provision of this Contract). Such records shall include, without limitation, time sheets and other cost documentation related to the performance of labor services, as well as subcontracts, purchase orders, other contract documents, invoices, receipts or other documentation supporting non-labor costs. Consultant shall also retain other books and records related to the performance, quality or management of this Contract and/or Consultant's compliance with this Contract.

Records shall be retained by Consultant for a period of at least six (6) years after completion of the Work, or until any audit initiated within that six-year period has been completed (whichever is later). During this six-year period, such records shall be made available at all reasonable times for audit and inspection by UTA and other authorized auditing parties including, but not limited to, the Federal Transit Administration. Copies of requested records shall be furnished to UTA or designated audit parties upon request. Consultant agrees that it shall flow-down (as a matter of written contract) these records requirements to all subconsultants utilized in the performance of the Work at any tier.

17. FINDINGS CONFIDENTIAL

Any documents, reports, information, or other data and materials delivered or made available to or prepared or assembled by Contractor or subcontractor under this Contract are considered confidential and shall not be made available to any person, organization, or entity by Contractor without consent in writing from UTA. If confidential information is released to any third party without UTA's written consent as described above, contractor shall notify UTA of the data breach within 10 days and provide its plan for immediate mitigation of the breach for review and approval by UTA.

- a. It is hereby agreed that the following information is not considered to be confidential:
 - A. Information already in the public domain.
 - B. Information disclosed to Contractor by a third party who is not under a confidentiality obligation.
 - C. Information developed by or in the custody of Contractor before entering into this Contract.
 - D. Information developed by Contractor through its work with other clients; and
 - E. Information required to be disclosed by law or regulation including, but not limited to, subpoena, court order or administrative order.

18. PUBLIC INFORMATION.

Consultant acknowledges that the Contract and related materials (invoices, orders, etc.) will be public documents under the Utah Government Records Access and Management Act (GRAMA). Consultant's response to the solicitation for the Contract will also be a public document subject to GRAMA, except for legitimate trade secrets, so long as such trade secrets were properly designated in accordance with terms of the solicitation.

19. GENERAL INDEMNIFICATION

Consultant shall indemnify, hold harmless and defend UTA, its officers, trustees, agents, and employees (hereinafter collectively referred to as "Indemnitees") from and against all liabilities, claims, actions, damages, losses, and expenses including without limitation reasonable attorneys' fees and costs (hereinafter referred to collectively as "claims") related to bodily injury, including death, or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the acts or omissions of Consultant or any of its owners, officers, directors, agents, employees or subconsultants. This indemnity includes any claim or amount arising out of the failure of such Consultant to

conform to federal, state, and local laws and regulations. If an employee of Consultant, a subconsultant, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable brings a claim against UTA or another Indemnitee, Consultant’s indemnity obligation set forth above will not be limited by any limitation on the amount of damages, compensation or benefits payable under any employee benefit acts, including workers’ compensation or disability acts. The indemnity obligations of Consultant shall not apply to the extent that claims arise out of the sole negligence of UTA or the Indemnitees.

20. INSURANCE REQUIREMENTS

Standard Insurance Requirements

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The Utah Transit Authority in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this contract by the Contractor, his agents, representatives, employees or subcontractors and Contractor is free to purchase additional insurance as may be determined necessary.

A. **MINIMUM SCOPE AND LIMITS OF INSURANCE:** Contractor shall provide coverage with limits of liability not less than those Stated below. An excess liability policy or umbrella liability policy may be used to meet the minimum liability requirements provided that the coverage is written on a “following form” basis.

1. **Commercial General Liability – Occurrence Form**

Policy shall include bodily injury, property damage and broad form contractual liability coverage.

- General Aggregate \$4,000,000
- Products – Completed Operations Aggregate \$1,000,000
- Personal and Advertising Injury \$1,000,000
- Each Occurrence \$2,000,000

a. The policy shall be endorsed to include the following additional insured language: "The Utah Transit Authority shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor".

2. **Automobile Liability**

Bodily Injury and Property Damage for any owned, hired, and non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL) \$2,000,000

a. The policy shall be endorsed to include the following additional insured language: "The Utah Transit Authority shall be named as an additional insured with respect to liability arising out of the activities performed by, or

on behalf of the Contractor, including automobiles owned, leased, hired or borrowed by the Contractor".

3. Worker's Compensation and Employers' Liability

Workers' Compensation	Statutory
Employers' Liability	
Each Accident	\$100,000
Disease – Each Employee	\$100,000
Disease – Policy Limit	\$500,000

- a. Policy shall contain a waiver of subrogation against the Utah Transit Authority.
- b. This requirement shall not apply when a contractor or subcontractor is exempt under UCA 34A-2-103, AND when such contractor or subcontractor executes the appropriate waiver form.

4. Professional Liability (Errors and Omissions Liability)

The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Services of this contract.

Each Claim	\$1,000,000
Annual Aggregate	\$2,000,000

- a. In the event that the professional liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of three (3) years beginning at the time work under this Contract is completed.

B. ADDITIONAL INSURANCE REQUIREMENTS: The policies shall include, or be endorsed to include the following provisions:

- 1. On insurance policies where the Utah Transit Authority is named as an additional insured, the Utah Transit Authority shall be an additional insured to the full limits of liability purchased by the Consultant. Insurance limits indicated in this agreement are minimum limits. Larger limits may be indicated after the consultant’s assessment of the exposure for this contract; for their own protection and the protection of UTA.
- 2. The Contractor's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.

C. NOTICE OF CANCELLATION: Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be

suspended, voided or canceled except after thirty (30) days prior written notice has been given to the Utah Transit Authority, except when cancellation is for non-payment of premium, then ten (10) days prior notice may be given. Such notice shall be sent directly to (Utah Transit Authority agency Representative's Name & Address).

- D. **ACCEPTABILITY OF INSURERS:** Insurance is to be placed with insurers duly licensed or authorized to do business in the State and with an “A.M. Best” rating of not less than A-VII. The Utah Transit Authority in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

- E. **VERIFICATION OF COVERAGE:** Contractor shall furnish the Utah Transit Authority with certificates of insurance (on standard ACORD form) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.
All certificates and any required endorsements are to be sent to insurancercerts@rideuta.com and received and approved by the Utah Transit Authority before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract. All certificates required by this Contract shall be emailed directly to Utah Transit Authority’s insurance email address at insurancercerts@rideuta.com. The Utah Transit Authority project/contract number and project description shall be noted on the certificate of insurance. The Utah Transit Authority reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE UTAH TRANSIT AUTHORITY’S CLAIMS AND INSURANCE DEPARTMENT.**

- F. **SUBCONTRACTORS:** Contractors’ certificate(s) shall include all subcontractors as additional insureds under its policies or subcontractors shall maintain separate insurance as determined by the Contractor, however, subcontractor's limits of liability shall not be less than \$1,000,000 per occurrence / \$2,000,000 aggregate. Sub-contractors maintaining separate insurance shall name Utah Transit Authority as an additional insured on their policy. Blanket additional insured endorsements are not acceptable from sub-contractors. Utah Transit Authority must be scheduled as an additional insured on any sub-contractor policies.

- G. **APPROVAL:** Any modification or variation from the insurance requirements in this Contract shall be made by Claims and Insurance Department or the UTA Legal Services, whose decision shall be final. Such action will not require a formal Contract may be made by administrative action.

21. INTELLECTUAL PROPERTY INDEMNIFICATION

- a. Consultant shall protect, release, defend, indemnify and hold harmless UTA and the other

Indemnitees against and from any and all Claims of any kind or nature whatsoever on account of infringement relating to Consultant's performance under this Contract. If notified promptly in writing and given authority, information and assistance, Consultant shall defend, or may settle at its expense, any suit or proceeding against UTA so far as based on a claimed infringement and Consultant shall pay all damages and costs awarded therein against UTA due to such breach. In case any portion of the Work is in such suit held to constitute such an infringement or an injunction is filed that interferes with UTA's rights under this Contract, Consultant shall, at its expense and through mutual agreement between the UTA and Consultant, either procure for UTA any necessary intellectual property rights, or modify Consultant's services or deliverables such that the claimed infringement is eliminated.

- b. Consultant shall: (i) protect, release, defend, indemnify and hold harmless UTA and the other Indemnitees against and from any and all liens or Claims made or filed against UTA or upon the Work or the property on which the Work is located on account of any labor performed or labor, services, and equipment furnished by subconsultants of any tier; and (ii) keep the Work and said property free and clear of all liens or claims arising from the performance of any Work covered by this Contract by Consultant or its subconsultants of any tier. If any lien arising out of this Contract is filed, before or after Work is completed, Consultant, within ten (10) calendar days after receiving from UTA written notice of such lien, shall obtain a release of or otherwise satisfy such lien. If Consultant fails to do so, UTA may take such steps and make such expenditures as in its discretion it deems advisable to obtain a release of or otherwise satisfy any such lien or liens, and Consultant shall upon demand reimburse UTA for all costs incurred and expenditures made by UTA in obtaining such release or satisfaction. If any non-payment claim is made directly against UTA arising out of non-payment to any subconsultant, Consultant shall assume the defense of such claim within ten (10) calendar days after receiving from UTA written notice of such claim. If Consultant fails to do so, Consultant shall upon demand reimburse UTA for all costs incurred and expenditures made by UTA to satisfy such claim.

22. INDEPENDENT CONTRACTOR

Consultant is an independent Consultant and agrees that its personnel will not represent themselves as, nor claim to be, an officer or employee of UTA by reason of this Contract. Consultant is responsible to provide and pay the cost of all its employees' benefits.

23. PROHIBITED INTEREST

No member, officer, agent, or employee of UTA during his or her tenure or for one year thereafter shall have any interest, direct or indirect, including prospective employment by Consultant in this Contract or the proceeds thereof without specific written authorization by UTA.

24. CLAIMS/DISPUTE RESOLUTION

- a. "Claim" means any disputes between UTA and the Consultant arising out of or relating to the Contract Documents including any disputed claims for Contract

- adjustments that cannot be resolved in accordance with the Change Order negotiation process set forth in Article 6. Claims must be made by written notice. The responsibility to substantiate claims rests with the party making the claim.
- b. Unless otherwise directed by UTA in writing, Consultant shall proceed diligently with performance of the Work pending final resolution of a Claim, including litigation. UTA shall continue to pay any undisputed payments related to such Claim.
 - c. The parties shall attempt to informally resolve all claims, counterclaims and other disputes through the escalation process described below. No party may bring a legal action to enforce any term of this Contract without first having exhausted such process.
 - d. The time schedule for escalation of disputes, including disputed requests for change order, shall be as follows:

Level of Authority

<u>UTA</u>	<u>MOCA Systems</u>	<u>Time Limit</u>
Project Manager /	Project Manager David Milne	Five calendar days
UTA's Director of Real Estate	Vice President Senior Project Manager Paul Ernst	Five calendar days
UTA's Executive Director	Executive Vice President David Hart, FAIA	Five calendar days

Unless otherwise directed by UTA's Project Manager, Consultant shall diligently continue performance under this Contract while matters in dispute are being resolved.

If the dispute cannot be resolved informally in accordance with the escalation procedures set forth above, then either party may commence formal mediation under the Juris Arbitration and Mediation (JAMS) process using a mutually agreed upon JAMS mediator. If resolution does not occur through Mediation, then legal action may be commenced in accordance the venue and governing law provisions of this contract.

25. GOVERNING LAW

This Contract shall be interpreted in accordance with the substantive and procedural laws of the State of Utah. Any litigation between the parties arising out of or relating to this Contract will be conducted exclusively in federal or state courts in the State of Utah and Consultant consents to the jurisdiction of such courts.

26. ASSIGNMENT OF CONTRACT

Consultant shall not assign, sublet, sell, transfer, or otherwise dispose of any interest in this Contract without prior written approval of UTA, and any attempted transfer in violation of this restriction shall be void.

27. NONWAIVER

No failure or waiver or successive failures or waivers on the part of either party in the enforcement of any condition, covenant, or article of this Contract shall operate as a discharge of any such condition, covenant, or article nor render the same invalid, nor impair the right of either party to enforce the same in the event of any subsequent breaches by the other party.

28. NOTICES OR DEMANDS

- a. Any formal notice or demand to be given by one party to the other shall be given in writing by one of the following methods: (i) hand delivered; (ii) deposited in the mail, properly stamped with the required postage; (iii) sent via registered or certified mail; or (iv) sent via recognized overnight courier service. All such notices shall be addressed as follows:

If to UTA
Utah Transit Authority
ATTN: Vicki Woodward
669 West 200 South
Salt Lake City, UT 84101

with a required copy to:
Utah Transit Authority
ATTN: Legal Counsel
669 west 200 South
Salt Lake City, UT 84101

If to Consultant:
MOCA Systems, Inc.
David Milne
17 Exchange Place
Salt Lake City, UT 84111

- b. Any such notice shall be deemed to have been given, and shall be effective, on delivery to the notice address then applicable for the party to which the notice is directed; provided, however, that refusal to accept delivery of a notice or the inability to deliver a notice because of an address change which was not properly communicated shall not defeat or delay the giving of a notice. Either party may change the address at which such party desires to receive written notice by providing written notice of such change to any other party.
- c. Notwithstanding Section 23.1, the parties may, through mutual agreement, develop alternative communication protocols to address change notices, requests for information and similar categories of communications. Communications provided pursuant to such agreed means shall be recognized as valid notices under this Contract.

29. CONTRACT ADMINISTRATOR

UTA's Contract Administrator for this Contract is Vicki Woodward, or designee. All questions and correspondence relating to the contractual aspects of this Contract should be directed to said Contract Administrator, or designee.

30. INSURANCE COVERAGE REQUIREMENTS FOR CONSULTANT EMPLOYEES ON DESIGN AND CONSTRUCTION CONTRACTS

- a. The following requirements apply to design and construction contracts to the extent that: (i) the initial value of this Contract is equal to or in excess of \$2 million; (ii) this Contract, with subsequent modifications, is reasonably anticipated to equal or exceed \$2 million; (iii) Consultant has a subcontract at any tier that involves a sub-consultant that has an initial subcontract equal to or in excess of \$1 million; or (iv) any subcontract, with subsequent modifications, is reasonably anticipated to equal or

exceed \$1 million:

- b. Consultant shall, prior to the effective date of this Contract, demonstrate to UTA that Consultant has and will maintain an offer of qualified health insurance coverage (as defined by Utah Code Ann. § 17B-2a-818.5) for the Consultant's employees and the employee's dependents during the duration of this Contract.
- c. Consultant shall also demonstrate to UTA that subconsultants meeting the above-described subcontract value threshold have and will maintain an offer of qualified health insurance coverage (as defined by Utah Code Ann. § 17B-2a-818.5) for the subconsultant's employees and the employee's dependents during the duration of the subcontract.

31. COSTS AND ATTORNEYS' FEES

If any party to this Agreement brings an action to enforce or defend its rights or obligations hereunder, the prevailing party shall be entitled to recover its costs and expenses, including mediation, arbitration, litigation, court costs and attorneys' fees, if any, incurred in connection with such suit, including on appeal

32. NO THIRD-PARTY BENEFICIARY

The parties enter into this Contract for the sole benefit of the parties, in exclusion of any third-party, and no third-party beneficiary is intended or created by the execution of this Contract.

33. FORCE MAJEURE

Neither party to the Contract will be held responsible for delay or default caused by fire, riot, acts of God and/or war which are beyond that party's reasonable control. UTA may terminate the Contract after determining such delay or default will reasonably prevent successful performance of the Contract.

34. UTAH ANTI-BOYCOTT OF ISRAEL ACT

Contractor agrees it will not engage in a boycott of the State of Israel for the duration of this contract.

35. SEVERABILITY

Any provision of this Contract prohibited or rendered unenforceable by operation of law shall be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Contract.

36. ENTIRE AGREEMENT

This Contract shall constitute the entire agreement and understanding of the parties with respect to the subject matter hereof, and shall supersede all offers, negotiations and other agreements with respect thereto. The terms of the Contract supersede any additional or conflicting terms or provisions that may be preprinted on Vendor's work plans, cost estimate forms, receiving tickets, invoices, or any other related standard forms or documents of Vendor that may subsequently be used to implement, record, or invoice Goods and/or Services hereunder from time to time, even if such standard forms or

documents have been signed or initialed by a representative of UTA. The terms of the Contract prevail in any dispute between the terms of the Contract and the terms printed on any such standard forms or documents, and such standard forms or documents will not be considered written amendments of the Contract.

37. AMENDMENTS

Any amendment to this Contract must be in writing and executed by the authorized representatives of each party.

38. COUNTERPARTS

This Contract may be executed in any number of counterparts and by each of the parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument. Any signature page of the Contract may be detached from any counterpart and reattached to any other counterpart hereof. The electronic transmission of a signed original of the Contract or any counterpart hereof and the electronic retransmission of any signed copy hereof shall be the same as delivery of an original.

39. SURVIVAL

Provisions of this Contract intended by their nature and content to survive termination of this Contract shall so survive including, but not limited to, Articles 5, 7, 8, 10, 14, 15, 17, 18, 19, 20, 23, 29 and 30.

IN WITNESS WHEREOF, the parties have made and executed this Contract as of the day, month and year of the last signature contained below.

UTAH TRANSIT AUTHORITY:

By
Jay Fox
Executive Director

Date:

By
Mary DeLoretto
Chief Service Development Officer

Date:

MOCA SYSTEMS, INC.:

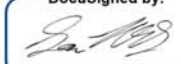
DocuSigned by:
By:  *David Harris Hart, FAIA, Executive Vice President*
Date: *10/21/10*
B417E82E588F48E...
David Harris Hart, FAIA
Executive Vice President
FED IN#04-3474437

Approved as to Content and Form

DocuSigned by:
By: 
70E33A415BA44F6
Mike Bell, AAG State of Utah
And UTA Legal Counsel

Date: 9/21/2022

Reviewed & Recommended

DocuSigned by:
By: 
458BCB8311A241E...
Sean Murphy, TOD Project Manager
UTA Project Number 22-035674VW

Date: 9/21/2022

EXHIBIT A – SCOPE OF SERVICES

All individual Task Orders that are issued to the Consultant will contain their own specific Statement of work. Each Individual Task Order will include a scope of services specific to the needed services which is within the scope of the statement of services contained in the RFQU.

EXHIBIT B – PRICING

EXHIBIT B – PRICING

22-03578VW UTA Owner's Representative for Headquarter Redevelopment

MOCA (Confidential)

No.	Firm	Prime	Sub	Last Name	First Name	Discipline/Classification	Basic Hourly Rate	Overhead rate Percentage	Fee	Fully Burdened Bill Rate
1	MOCA	X		Milne	David (Miles)	Project Manager*	\$ 70.28	150%	12%	\$ 196.78
2	MOCA	X		Ernst	Paul	Senior Program Manager*	\$ 91.20	135%	12%	\$ 240.04
3	MOCA	X		Brown	Paul	Project Definition Leader*	\$ 95.06	135%	12%	\$ 250.20
4	MOCA	X		Hart	David	Executive*	\$ 120.19	123%	12%	\$ 299.51
5	MOCA	X		Simmons	J. D.	Construction Manager*	\$ 58.45	150%	12%	\$ 163.66
6	MOCA	X		Cuzbak	Robert	Controls*	\$ 51.65	150%	12%	\$ 144.62
7							\$	%	%	\$
8							\$	%	%	\$
9							\$	%	%	\$
10							\$	%	%	\$

Signature:  Date: 08/16/22
 Title: Executive Vice President

MOCA Systems Inc., annual rate adjustment occurs November 1 of each year starting 2023: * Annual escalation of 3%

CONTRACT PRICING STRUCTURE

For the avoidance of doubt, this contract is a firm fixed price labor hour contract. The labor rates for the various categories of labor to be used under this contract are loaded with overhead, profit and G&A and are fixed for the life of the contract subject to a yearly 3% escalation factor.

EXHIBIT C – TASK ORDER TEMPLATE

TASK ORDER NO. _____

TASK ORDER NAME: _____

This is Task Order No. _____ to Contract No. _____ entered into by and between Utah Transit Authority (UTA) and _____, (Contractor) as of _____, _____, 202_

This Task Order is part of the above-described Contract and is governed by the terms thereof. The purpose of this Task Order is to specifically define the scope, schedule, lump sum price, or not-to-exceed and other terms applicable to the work identified herein.

UTA and Contractor hereby agree as follows:

1.0 SCOPE OF SERVICES

The scope of work for this Task Order _____ is hereby attached and incorporated into this Task Order.

2.0 SCHEDULE

The Substantial Completion Date for this Task is _____, _____, 202_ . The Final Acceptance Date for this Task is _____, _____, 202_ .

3.0 PRICE

The lump sum or not-to-exceed (select one) price for this task order is _____.

Invoices will be billed on monthly, milestone or task completion basis (select one).

4.0 APPLICABILITY OF FEDERAL FORMS AND CLAUSES

This Task Order does does not [Check Applicable] include federal assistance funds which requires the application of the Federal Forms and Clauses appended as Exhibits D and E on the Contract.

IN WITNESS WHEREOF, this Task Order has been executed by UTA and the Contractor or its appointed representative

UTAH TRANSIT AUTHORITY:

CONTRACTOR:

By: _____
Date

By: _____

By: _____
Date

Date: _____

By: _____
Date

By: _____

ATTACHMENT 1 – TASK ORDER STATEMENT OF WORK OR SERVICES



Utah Transit Authority

MEETING MEMO

669 West 200 South
Salt Lake City, UT 84101

Board of Trustees

Date: 10/12/2022

TO: Board of Trustees
THROUGH: Jay Fox, Executive Director
FROM: Mary DeLoretto, Chief Service Development Officer
PRESENTER(S): Hal Johnson, Manager of Project Research and Development

TITLE:

Contract: Polarized Infrared Optical Imaging of Transit Infrastructure Cooperative Agreement (University of Utah and AutoFill Technologies B.V.)

AGENDA ITEM TYPE:

Non-Procurement Agreement

RECOMMENDATION:

Approve the Cooperative Agreement between the Utah Transit Authority, the University of Utah, and AutoFill Technologies B.V. (Autofill) for implementation of the Polarized Infrared Optical Imaging System research project.

BACKGROUND:

UTA, in partnership with the University of Utah and AutoFill was awarded a Federal Transit Administration (FTA) grant through the FY 2020 Research Innovation Program - Transit Infrastructure Condition Assessment. The FTA grant agreement was executed through authority granted by the Board in resolution R2021-01-03 on January 13, 2021. The total project cost is \$436,432.

The project team proposes to develop and demonstrate a system that can identify, quantify, and monitor both the internal and external defects of rail track and tie structures with the potential for high-speed full track section inspection. The system employs a polarized infrared camera and a polarized optical camera, whose data collection will be immune from adverse infrared or optical illumination conditions in a field environment. An envisioned fully developed system can be mounted on an inspection vehicle or revenue service train and provide early warning and long-term monitoring of track and tie conditions. The proposed work plan is composed of three tasks: technology development, demonstration, and evaluation.

DISCUSSION:

This cooperative agreement between the University of Utah, AutoFill, and UTA is intended to describe the roles and responsibilities of the Parties with regard to the Polarized Infrared and Optical Imaging System for Transit Infrastructure Condition Assessment.

UTA Responsibilities & Obligations: UTA will manage the grant application, award, and implementation processes. UTA's operations and maintenance teams will also coordinate with the other Parties to ensure the imaging hardware can be installed on revenue vehicles and tested in real situations. Data from UTA's regular inspections will also be provided to the University of Utah and AutoFill to compare with data collected during this demonstration.

University Responsibilities & Obligations: The University of Utah group will be responsible for polarized infrared thermography system development, data collection, system demonstration, and technology evaluation. The University will contribute \$43,039 cost share support to this project.

AutoFill Responsibilities & Obligations: AutoFill will lead the development of the polarized optical imaging system. AutoFill is specialized in damage detection using polarized imaging technology. AutoFill will contribute \$55,238 cost share to contribute to this project.

CONTRACT SUMMARY:

Contractor Name:	UTA / University of Utah / AutoFill
Contract Number:	22-P00190
Base Contract Effective Dates:	18 months from effective date
Extended Contract Dates:	NA
Existing Contract Value:	NA
Amendment Amount:	NA
New/Total Contract Value:	\$436,432 (covered by \$98,277 combined cost share and \$338,155 federal grant)
Procurement Method:	NA
Budget Authority:	5-Year Capital Budget

ALTERNATIVES:

If UTA does not complete this agreement with the University of Utah and AutoFill, we will be unable to proceed with the research project for which the agency was awarded grant funding.

FISCAL IMPACT:

The University of Utah and AutoFill are providing the local match for the grant. UTA has no financial obligations for this project. UTA has \$475,000 of appropriation authority in the 2022 approved budget and \$108,000 is programmed in 2023. This will cover the expenditure authority needed for this grant activity and UTA support costs.

ATTACHMENTS:

1. Cooperative Agreement
2. Exhibit 1: UT-2021-020-00 FY 2020 Research Innovation Program - Transit Infrastructure Condition Assessment
3. Exhibit 2: FTA-Master-Agreement v29-2022-02-07

Cooperative Agreement between

Utah Transit Authority (UTA),

The University of Utah (University),

and

AutoFill Technologies B.V. (AutoFill)

This cooperative agreement between the University of Utah, a body politic and corporate of the State of Utah, AutoFill, and UTA (hereinafter “Parties”) is intended to describe the roles and responsibilities of the Parties with regard to the Polarized Infrared and Optical Imaging System for Transit Infrastructure Condition Assessment (hereinafter “Project”).

The Parties hereby agree as follows:

1. Project Description: The project team proposes to develop and demonstrate a system that can identify, quantify, and monitor both the internal and external defects of rail track and tie structures with the potential for high-speed full track section inspection. The system employs a polarized infrared camera and a polarized optical camera, whose data collection will be immune from adverse infrared or optical illumination conditions in a field environment. An envisioned fully developed system can be mounted on an inspection vehicle or revenue service train and provide early warning and long-term monitoring of track and tie conditions. The proposed work plan is composed of three tasks: technology development, demonstration, and evaluation. The work plan allows a rapid technology demonstration starting at the tenth project month and contains over nine months of data collection and evaluation effort. It is the intent of the partners that the research will lead to a developed product that will eventually be applied as a commercial product with the goal of deployment at scale.

The mission of this project is to serve the transit industry by increasing safety, improving infrastructure reliability, and minimizing the risks of accidents induced by rail defects and tie degradation. The proposal team will investigate the polarized infrared and optical imaging technology as tools for transit asset assessment by (i) developing a robust passive infrared thermography for rail track and tie inspection, covering variations in defect types, sizes, temperature, and weather conditions; and (ii) developing a robust optical imaging solution, along with machine learning algorithms, that can detect and classify rail and tie external defects, such as rail surface condition and missing rail fasteners. Upon its success, the proposed research will open up a new avenue for high-speed real-time full track section inspection.

2. Each Party will use reasonable efforts consistent with their mission to effectuate the purpose of the grant as described in Exhibit 1 to this Agreement.

3. Each party agrees that as a recipient or sub-recipient of an FTA grant, it will abide by the terms and conditions contained in the FTA-UTA Master Agreement attached as Exhibit 2 to this Agreement.

4. Each Party shall use their reasonable efforts consistent with their mission to perform its responsibilities and obligations as described below:

1. UTA Responsibilities & Obligations.

a. Technical and Management Contribution. UTA will manage the grant application, award, and implementation processes. UTA's operations and maintenance teams will also coordinate with the other Parties to ensure the imaging hardware can be installed on revenue vehicles and tested in real situations. Data from UTA's regular inspections will also be provided to the University of Utah and AutoFill to compare with data collected during this demonstration.

b. Financial Match Contribution. Zero

2. University Responsibilities & Obligations.

a. Technical Contribution. The University of Utah group will be responsible for polarized infrared thermography system development, data collection, system demonstration, and technology evaluation. The University of Utah group has unique experience and capability in polarized infrared thermography, rail defect detection, and understanding the complex field environment for rail and transit industry. The Infrastructure Sensing and Experimental Mechanics (iSEM) lab at the University of Utah will develop the proposed polarized infrared thermography, data acquisition system, and algorithms. And the iSEM lab shall address questions such as the ones that are posed in this project proposal. The lab houses commercial IR cameras AVIO R450 Pro with an ultra-high sensitivity of 25 mK. The research team's highly qualified student research assistants will work on the project as part of their compensation. Their involvement will also contribute to the development of future rail and transit workforce in the U.S.

b. Financial Contribution. The University will contribute \$43,039 cost share support to this project. Detailed information on the cost sharing can be found in Exhibit 1.

3. AutoFill Responsibilities & Obligations.

a. Technical Contribution: AutoFill will lead the development of the polarized optical imaging system. AutoFill is specialized in damage detection using polarized imaging technology. The team members have previously worked in several large automated

structural damage inspection projects, resulting in models that exceed expert inspection accuracy

- b. Financial Match Contribution: AutoFill will contribute \$55,238 cost share to contribute to this project. Detailed information on the cost sharing can be found in Exhibit 1.
4. Payment: UTA shall receive, manage, and distribute contributions provided by the other Parties. Each party shall submit invoices and expenditure summaries to UTA on a quarterly basis which receive and manage the grant funds provided by UTA as well as the cash describe in-kind contributions made during the prior quarter request reimbursement for time and materials expended under this Agreement which are not part of the Party's matching contribution. Support documentation for each grant account line item (ALI) for which reimbursement is sought shall be sufficient to adequately document allowable reimbursable expenses. Such support documentation will include at a minimum itemized expense documentation related to University of Utah and AutoFill personnel expenditures, fringe benefits, University of Utah lab supplies, AutoFill supplies, University of Utah indirect costs, University of Utah domestic travel, AutoFill travel, and University of Utah tuition expenses. Appropriate documentation for personnel and fringe benefit expenditures will be construed as documentation for each staff member working on the project indicating the percentage of effort worked for each respective staff for the invoicing period. Fringe benefit expenses supporting documentation shall be construed as the associated fringe, or "overhead" expenses stated in \$US or as a percentage of unburdened labor associated with the personnel expenditures for which reimbursement is requested. Appropriate and adequate supporting documentation for supplies, travel and tuition shall be deemed as receipts relating to the aforementioned reimbursement items. The tables below indicate the federal grant and local/in-kind match budgets for the University of Utah and AutoFill and the manner in which UTA would prefer to see quarterly reimbursement requests/invoices submitted along with associated support documentation noted above.

University of Utah Reimbursement Request								
Activity Line Item	Budgeted		Current Expenditures		Expenditures to Date		Remaining	
	Federal	Local (In Kind)	Federal	Local (In Kind)	Federal	Local (In Kind)	Federal	Local (In Kind)
Tuition/Fees	\$ 8,753	\$ -						
Other (Personnel)	\$ 68,975	\$ 14,637						
Travel	\$ 1,630	\$ -						
Fringe Benefits	\$ 23,544	\$ 1,464						
Supplies	\$ 13,000	\$ 12,121						
General & Administrative (Indirect Costs)	\$ 56,253	\$ 14,817						
Total	\$ 172,155	\$ 43,039	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -

AutoFill Technologies B.V. Reimbursement Request								
Activity Line Item	Budgeted		Current Expenditures		Expenditures to Date		Remaining	
	Federal	Local (In Kind)	Federal	Local (In Kind)	Federal (In Kind)	Local (In Kind)	Federal	Local (In Kind)
Managerial, Technical, & Professional (Personnel)	\$ 103,551	\$ 34,458						
Travel	\$ 7,914	\$ 2,634						
Fringe Benefits	\$ 28,630	\$ 9,527						
Supplies	\$ 25,905	\$ 8,619						
Total	\$ 166,000	\$ 55,238	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -

5. Quarterly Progress Updates. Each Party agrees to participate in quarterly progress and status meetings and/or reports as scheduled by UTA. Each Party shall provide a full and transparent accounting of its efforts under this Agreement as well as its plans moving forward.
6. Duration and Termination. The duration of this Agreement shall be 18 months from the Effective Date. Any Party may terminate its participation in the Agreement at any time with 60 days advance notice. If termination occurs from any Party, UTA shall reimburse the other Parties for all activities carried out until the date of termination and all non-cancellable fees and costs incurred up to the date of termination. UTA's reimbursement obligation under this paragraph shall not exceed the amount of federal grant funds received. The Parties will be liable for their promised cost match in proportion with its receipt and expenditure of federal grant funds as of the date of Termination, as well as any repayment of unearned federal funds required by FTA.
7. Railway Training. Any employee, agent or representative of the University or AutoFill who performs work under this Agreement in proximity to a UTA rail line must complete UTA's Roadway Workers Protection (RWP).
8. General Provisions
 - a. MUTUAL INDEMNITY
 - i. Each Party to the fullest extent permitted by law, shall indemnify, hold harmless and defend the other Party's officers, directors, and employees from and against claims, losses, damages, liabilities, resulting from its negligent acts or omissions.
 - ii. The University of Utah is a governmental entity under the Governmental Immunity Act of Utah, Utah Code §§ 63G -7-101 to 904, as amended (the "Act"). Nothing in the Agreement shall be construed as a waiver by the University of Utah of any protections, rights, or defenses applicable to the University of Utah under the Act, including without limitation, the provisions of section 63G-7-604 regarding limitation of judgments. It is not the intent of the University of Utah to incur by contract any liability for the operations, acts, or omissions of the other Parties or any third party and nothing in the Agreement shall be so interpreted or construed. Without limiting the generality of the foregoing, and notwithstanding any provisions to the contrary in the Agreement, or the application of any law other than the laws of the State of Utah to this Agreement any indemnity obligations of the University of Utah contained in the Agreement are subject to the Act, are limited to the amounts

established in section 63G-7-604 of the Act, and are further limited only to claims that arise from the negligent acts or omissions of the University of Utah.

- b. OWNERSHIP OF DESIGNS, DRAWINGS, AND WORK PRODUCT Any intellectual property prepared or developed pursuant to this Agreement including without limitation drawings, specifications, manuals, calculations, maps, sketches, designs, tracings, notes, reports, data, computer programs, models and samples (“Foreground IP”), shall remain the property of the Party or Parties who developed the IP. For the avoidance of doubt, all three parties (UTA, Autofill, and U of U) to this cooperative research and development agreement shall be considered as developers and owners of any IP developed within the scope and funding of this agreement by any of the three parties.
- c. FORCE MAJEURE No party to the Contract will be held responsible for delay or default caused by fire, riot, acts of God and/or war which are beyond that party's reasonable control. UTA may terminate the Contract after determining such delay or default will reasonably prevent successful performance of the Contract.
- d. DISPUTES Disputes arising under this Agreement shall be resolved by discussion at successive levels of management culminating with the respective Chief Executive Officers or Executive Directors. If resolution doesn't occur through good faith discussion at the Executive Director level, the Parties shall submit the matter to the mediation under the auspices of JAMS dispute resolution services. Each Party to this Agreement will be responsible for its own costs and expense related to the mediation process.
- e. WAIVER Failure of any Party at any time to require performance of any provision of this Agreement shall not limit the other Parties' rights to enforce the provision. Waiver of any breach of any provision shall not be a waiver of any succeeding breach of the provision of a waiver of the provision itself or any other provision.
- f. GOVERING LAW The Agreement and all Contract Documents are governed by the laws of the State of Utah, without giving effect to its conflict of law principles. Actions to enforce the terms of this Agreement may only be brought in the Third District Court for Salt Lake County, Utah.
- g. ENTIRE AGREEMENT This Agreement supersedes and replaces all written and oral agreements previously made or existing between the Agencies regarding the subject matter hereof. Any amendment to this Agreement must be in writing and executed by an authorized representative of each Party.
- h. PUBLICATION The University of Utah and its personnel shall have the right, consistent with academic standards and subject to this Section, to publish in scientific or other journals, or to present at professional or academic conferences or other meetings, data and results created by the University of Utah under this Agreement. Sixty (60) days prior to submission of any material for publication or presentation, the University of Utah shall provide UTA with such material for its review. No publication or presentation shall be made unless and until any confidential

information provided to the University of Utah by UTA has been removed, unless otherwise approved in writing by UTA. If requested in writing by UTA, the University of Utah shall withhold, or shall cause its personnel to withhold, material from submission for publication or presentation for an additional Sixty (60) days from the date of UTA's request to allow for the filing of a patent application or the taking of such measures as UTA deems appropriate to establish and preserve its proprietary rights in the information or material being submitted for publication or presentation. If the University of Utah does not receive UTA's written response to the proposed publication within the sixty (60) day period, then UTA shall be deemed to have consented to such submission or public disclosure of the proposed publication delivered to UTA.

- i. CONFIDENTIALITY UTA and the University of Utah is subject to the Utah Government Records Access and Management Act, Section 63G-2-101, et. seq., Utah Code Ann. ("GRAMA"), as amended; Under GRAMA, certain records in connection with this Agreement may be subject to public disclosure; the Parties acknowledge that UTA and the University of Utah's confidentiality obligations under this Agreement shall be subject in all respects to compliance with GRAMA.
- j. EXPORT CONTROL In the event that a party under this Agreement intends to provide information, equipment or materials restricted under applicable export control law or regulations (including but not limited to Export Administration Regulations and International Traffic in Arms Regulations, to the other party during the course of any activity under this Agreement, the disclosing party must first notify the receiving party of its intention to provide this data at least 30 days in advance of actually providing this information, equipment or materials, and indicate to whom at receiving party the information, equipment or materials is being provided, along with specific reference to the applicable regulatory sections. Receiving party will then determine whether it will accept such information, equipment or materials or decline. In addition, each party's performance of any activity under this Agreement is subject to compliance with all U.S. export control and Office of Foreign Assets Controls (OFAC) regulations.
- k. INSURANCE The Parties to this Agreement shall either self-insure or maintain insurance coverage sufficient to meet their obligations hereunder and consistent with applicable law.
- l. USE OF NAME No Party may not use the name of any of the other Parties in any news release or advertising or any publications directed to the general public without written approval of the other Party.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the last date written below.

UTAH TRANSIT AUTHORITY

UNIVERSITY OF UTAH

Title: Executive Director
Date: _____

Title: Sponsored Projects Officer
Date: _____

Title: Chief Service Development Officer
Date: _____

AATF:
DocuSigned by:
Mike Bell _____
70E33A415BA44F6...
Title: Utah Office of Attorney General
Date: 9/12/2022

AUTOFILL TECHNOLOGIES B.V.

Title: CEO & Co-Founder
Date: _____

EXHIBIT 1 – FTA GRANT

Real-Time Transit Infrastructure and Rolling Stock Condition Assessment Demonstration Program

EXHIBIT 2 – MASTER AGREEMENT TERMS AND CONDITIONS

Award

Federal Award Identification Number (FAIN)	UT-2021-020-00
Temporary Application Number	1167-2021-13
Award Name	FY 2020 Research Innovation Program - Transit Infrastructure Condition Assessment
Award Status	Active (Executed)
Award Budget Number	0

Period of Performance Start Date	9/8/2021
Original Period of Performance End Date	3/31/2023
Current Period of Performance End Date	3/31/2023
	Revision #: 0

Part 1: Recipient Information

Name: Utah Transit Authority (UTA)

Recipient ID	Recipient OST Type	Recipient Alias	Recipient DUNS
1167	Transit Authority	Utah Transit Authority	069816163

Location Type	Address	City	State	Zip
Headquarters	669 W 200 S	SALT LAKE CITY	UT	841011014
Physical Address	669 W 200 S	SALT LAKE CITY	UT	84101
Mailing Address	669 W 200 S	SALT LAKE CITY	UT	84101

Union Information

Union Name	AMALGAMATED TRANSIT UNION
Address 1	2261 South Redwood Road
Address 2	Suite B
City	Salt Lake City
State	UT
Zipcode	84119
Contact Name	Rod Dunn
Telephone	8019728560
Fax	8019724938

E-mail	rdunn@atu382.com
Website	

Part 2: Award Information

Title: FY 2020 Research Innovation Program - Transit Infrastructure Condition Assessment

FAIN	Award Status	Award Type	Date Created	Last Updated Date	From TEAM?
UT-2021-020-00	Active (Executed)	Cooperative Agreement	8/18/2021	8/18/2021	No

Award Executive Summary

The project was awarded through the FY 2020 Real-Time Transit Infrastructure and rolling Stock Condition Assessment Program. This funding will use FY 2011 and FY 2016 5312 funds to develop and demonstrate a system that can identify, quantify, and monitor both the internal and external defects of rail track and tie structures with the potential for high-speed full track section inspection. The match ratio of this grant is 77.5/22.5. Specific match ratios per ALI are indicated in the extended budget description. The University of Utah will use indirect costs for this grant application. UTA will not be applying indirect costs. Attachments to this grant include: FARateAgreement2016_UU, Figures & Bibliography, FTA_SOW_PolarizedInfraredOpticalCameraSystem_UTA, Rail Defect Detection Deferred Local Match Letter_Signed, STIP Page 132.

Frequency of Milestone Progress Reports (MPR)

Quarterly

Frequency of Federal Financial Reports (FFR)

Quarterly

Does this application include funds for research and/or development activities?

This award includes research and development activities.

Pre-Award Authority

This award is not using Pre-Award Authority.

Does this application include suballocation funds?

Recipient organization is directly allocated these funds and is eligible to apply for and receive these funds directly.

Will this Grant be using Lapsing Funds?

No, this Grant does not use Lapsing Funds.

Will indirect costs be applied to this application?

This award is applying an approved Indirect cost rate(s).

Indirect Rate Details: The indirect document "FARate Agreement2016_UU" is attached to the grant. The approved rates are 52.50% for On-Campus Organized Research and 26% Off-Campus Research. The federal share requested for indirect costs is \$56,253.

Requires E.O. 12372 Review

Yes, this application requires E.O. 12372 Review

State Application ID: Application not selected for review.

Date Received by State:

Delinquent Federal Debt

No, my organization does not have delinquent federal debt.

Award Point of Contact Information

First Name	Last Name	Title	E-mail Address	Phone
Alma	Haskell	Grants Development Administrator	ahaskell@rideuta.com	801-741-8813
	samuel.yimer@dot.gov	General Engineer		

Award Budget Control Totals

Funding Source	Section of Statute	CFDA Number	Amount
5312 - Research, Development, Demonstration, Deployment (FY2012 and Prior)	5312	20514	\$15,691
5312 - Research, Dev., Demo/Deploy., and Evaluation Projects	5312-1	20514	\$322,464
Local			\$98,277
Local/In-Kind			\$0
State			\$0
State/In-Kind			\$0
Other Federal			\$0
Transportation Development Credit			\$0
Adjustment			\$0
Total Eligible Cost			\$436,432

Award Budget

Project Number	Budget Item	FTA Amount	Non-FTA Amount	Total Eligible Amount	Quantity
UT-2021-020-01-00	550-00 (550-A1) Research Projects	\$15,691.00	\$4,560.00	\$20,251.00	7
UT-2021-020-01-00	50.20.00 TUITION/FEES	\$406.00	\$0.00	\$406.00	1
UT-2021-020-01-00	55.14.00 MANAGERIAL, TECHNICAL & PROFESSIONAL	\$4,805.00	\$1,599.00	\$6,404.00	1
UT-2021-020-01-00	55.19.00 OTHER	\$3,201.00	\$919.00	\$4,120.00	1
UT-2021-020-01-00	55.20.00 TRAVEL	\$443.00	\$122.00	\$565.00	1
UT-2021-020-01-00	55.30.00 FRINGE BENEFITS	\$2,421.00	\$592.00	\$3,013.00	1
UT-2021-020-01-00	55.49.00 SUPPLIES	\$1,805.00	\$640.00	\$2,445.00	1
UT-2021-020-01-00	55.82.00 GENERAL & ADMINISTRATIVE	\$2,610.00	\$688.00	\$3,298.00	1
UT-2021-020-02-00	550-00 (550-A2) Research Projects	\$322,464.00	\$93,717.00	\$416,181.00	7
UT-2021-020-02-00	50.20.00 TUITION/FEES	\$8,347.00	\$0.00	\$8,347.00	1
UT-2021-020-02-00	55.14.00 MANAGERIAL, TECHNICAL & PROFESSIONAL	\$98,746.00	\$32,859.00	\$131,605.00	1
UT-2021-020-02-00	55.19.00 OTHER	\$65,774.00	\$18,897.00	\$84,671.00	1

UT-2021-020-02-00	55.20.00 TRAVEL	\$9,101.00	\$2,512.00	\$11,613.00	1
UT-2021-020-02-00	55.30.00 FRINGE BENEFITS	\$49,753.00	\$12,160.00	\$61,913.00	1
UT-2021-020-02-00	55.49.00 SUPPLIES	\$37,100.00	\$13,160.00	\$50,260.00	1
UT-2021-020-02-00	55.82.00 GENERAL & ADMINISTRATIVE	\$53,643.00	\$14,129.00	\$67,772.00	1

Discretionary Allocations

Discretionary ID	Project Title	Amount Applied	FAIN	Congressional Release Date
D2021-RIRP-006	Polarized Infrared and Optical Imaging System for Transit Infrastructure Condition Assessment	\$322,464	UT-2021-020-00	8/25/2021
D2021-RIRP-007	Polarized Infrared and Optical Imaging System for Transit Infrastructure Condition Assessment	\$15,691	UT-2021-020-00	8/25/2021

Sources of Federal Financial Assistance

PO Number	Project Number	Scope Name	Scope Number	Scope Suffix	UZA Code	Area Name	Account Class Code	FPC	Description	Amendment Amount	Cumulative Amount
UT-26-7008	UT-2021-020-01-00	Research Project s	550-00 (550)	A1	490000	Utah	2011.23.26.06.1	01	RESEARCH AND TRAINING	\$15,691	\$15,691
UT-26-7008	UT-2021-020-02-00	Research Project s	550-00 (550)	A2	490000	Utah	2016.25.26.TD.2	01	Research, Development, Demonstration, and Deployment	\$322,464	\$322,464

Part 3: Project Information

Project Title: Polarized Infrared and Optical Imaging System for Transit Infrastructure Condition Assessment - FY 2011 Funds

Project Number	Temporary Project Number	Date Created	Start Date	End Date
UT-2021-020-01-00	1167-2021-13-P1	8/18/2021	1/1/2021	12/31/2022

Project Description

This project is for \$15,691 federal dollars in FY 2011 5012 funds. The rest of the project is funded through FY 2016 funds in another project in this award.

The project team will develop and demonstrate a system that can identify, quantify, and monitor both the internal and external defects of rail track and tie structures with the potential for high-speed full track section inspection. The system employs a polarized infrared camera and a polarized optical camera, whose data collection will be immune from adverse infrared or optical illumination conditions in a field environment. An envisioned fully developed system can be mounted on an inspection vehicle or revenue service train and provide early warning and long-term monitoring of track and tie conditions. The work plan is composed of three tasks: technology development, demonstration, and evaluation. The work plan allows a rapid technology demonstration, data collection and evaluation effort. It is the intent of the partners that the research will lead to a developed product that will eventually be applied as a commercial product with the goal of deployment at scale. The match ratio of this grant is 77.5/22.5. Specific match ratios per ALI are indicated in the extended budget description. Attachments to this grant include: FARateAgreement2016_UU, Figures & Bibliography, FTA_SOW_PolarizedInfraredOpticalCameraSystem_UTA, Rail Defect Detection Deferred Local Match Letter_Signed, STIP Page 134.

Project Benefits

The benefits of this project are to serve the transit industry by increasing safety, improving infrastructure reliability, and minimizing the risks of accidents induced by rail defects and tie degradation. The project team will investigate the polarized infrared and optical imaging technology as tools for transit asset assessment by (i) developing a robust passive infrared thermography for rail track and tie inspection, covering variations in defect types, sizes, temperature, and weather conditions; and (ii) developing a robust optical imaging solution, along with machine learning algorithms, that can detect and classify rail and tie external defects, such as rail surface condition and missing rail fasteners. Upon its success, the proposed research will open up a new avenue for high-speed real-time full track section inspection.

Additional Information

None provided.

Location Description

The project will be located along the Utah Transit Authority Rail corridors which cover all congressional districts.

Project Location (Urbanized Areas)

UZA Code	Area Name
490520	Salt Lake City--West Valley City, UT
491750	Provo--Orem, UT
499560	Ogden--Layton, UT

Congressional District Information

State	District	Representative
Utah	1	Blake Moore
Utah	2	Chris Stewart
Utah	3	John Curtis
Utah	4	Clarence "Burgess" Owens

Program Plan Information

STIP/TIP

Date: 10/1/2020

Description: STIP Page 134 - PIN T-010411

UPWP

Date: N/A

Description: N/A

Long Range Plan

Date: N/A

Description: N/A

Project Control Totals

Funding Source	Section of Statute	CFDA Number	Amount
5312 - Research, Development, Demonstration, Deployment (FY2012 and Prior)	5312	20514	\$15,691
Local			\$4,560
Local/In-Kind			\$0
State			\$0

State/In-Kind			\$0
Other Federal			\$0
Transportation Development Credit			\$0
Adjustment			\$0
Total Eligible Cost			\$20,251

Project Budget

Project Number	Budget Item	FTA Amount	Non-FTA Amount	Total Eligible Amount	Quantity
UT-2021-020-01-00	550-00 (550-A1) Research Projects	\$15,691.00	\$4,560.00	\$20,251.00	7
UT-2021-020-01-00	50.20.00 TUITION/FEES	\$406.00	\$0.00	\$406.00	1
UT-2021-020-01-00	55.14.00 MANAGERIAL, TECHNICAL & PROFESSIONAL	\$4,805.00	\$1,599.00	\$6,404.00	1
UT-2021-020-01-00	55.19.00 OTHER	\$3,201.00	\$919.00	\$4,120.00	1
UT-2021-020-01-00	55.20.00 TRAVEL	\$443.00	\$122.00	\$565.00	1
UT-2021-020-01-00	55.30.00 FRINGE BENEFITS	\$2,421.00	\$592.00	\$3,013.00	1
UT-2021-020-01-00	55.49.00 SUPPLIES	\$1,805.00	\$640.00	\$2,445.00	1
UT-2021-020-01-00	55.82.00 GENERAL & ADMINISTRATIVE	\$2,610.00	\$688.00	\$3,298.00	1

Project Budget Activity Line Items

Budget Activity Line Item: 55.82.00 - GENERAL & ADMINISTRATIVE

Scope Name / Code	Line Item #	Line Item Name	Activity	Quantity
Research Projects (550-00)	55.82.00	GENERAL & ADMINISTRATIVE	INDIRECT COSTS	1

Extended Budget Description

This Activity Line Item covers indirect costs for the University of Utah. This is for all phases of the project including the data management plan, interim/final report and dissemination. The indirect cost FAR Rate Agreement is attached to this grant. The match ratio for this line item is 80/20. See the local deferred match letter attached to this grant.

Will 3rd Party contractors be used to fulfill this activity line item?

No, 3rd Party Contractors will not be used for this line item.

Funding Source	Section of Statute	CFDA Number	Amount
5312 - Research, Development, Demonstration, Deployment (FY2012 and Prior)	5312	20514	\$2,610
Local			\$688
Local/In-Kind			\$0

State		\$0
State/In-Kind		\$0
Other Federal		\$0
Transportation Development Credit		\$0
Adjustment		\$0
Total Eligible Cost		\$3,298

Milestone Name	Est. Completion Date	Description
Start Date	7/1/2021	
End Date	12/31/2022	

Budget Activity Line Item: 55.49.00 - SUPPLIES

Scope Name / Code	Line Item #	Line Item Name	Activity	Quantity
Research Projects (550-00)	55.49.00	SUPPLIES	EQUIPMENT	1

Extended Budget Description

This ALI will include research project related supplies for both the University of Utah and Autofill for all phases of the project. The match ratio for this line item is 74/26. See the local deferred match letter attached to this grant.

Will 3rd Party contractors be used to fulfill this activity line item?

No, 3rd Party Contractors will not be used for this line item.

Funding Source	Section of Statute	CFDA Number	Amount
5312 - Research, Development, Demonstration, Deployment (FY2012 and Prior)	5312	20514	\$1,805
Local			\$640
Local/In-Kind			\$0
State			\$0
State/In-Kind			\$0
Other Federal			\$0
Transportation Development Credit			\$0
Adjustment			\$0
Total Eligible Cost			\$2,445

Milestone Name	Est. Completion Date	Description
Start Date	8/1/2021	
End Date	12/31/2022	

Budget Activity Line Item: 55.30.00 - FRINGE BENEFITS

Scope Name / Code	Line Item #	Line Item Name	Activity	Quantity
Research Projects (550-00)	55.30.00	FRINGE BENEFITS	RESEARCH PROJECTS	1

Extended Budget Description

This ALI will cover fringe benefits for both University of Utah and Autofill staff for all phases of the project including the data management plan, interim/final report and dissemination of information. The match ratio for this line item is 80/20. See the local deferred match letter attached to this grant.

Will 3rd Party contractors be used to fulfill this activity line item?

No, 3rd Party Contractors will not be used for this line item.

Funding Source	Section of Statute	CFDA Number	Amount
5312 - Research, Development, Demonstration, Deployment (FY2012 and Prior)	5312	20514	\$2,421
Local			\$592
Local/In-Kind			\$0
State			\$0
State/In-Kind			\$0
Other Federal			\$0
Transportation Development Credit			\$0
Adjustment			\$0
Total Eligible Cost			\$3,013

Milestone Name	Est. Completion Date	Description
Start Date	7/1/2021	
End Date	12/31/2022	

Budget Activity Line Item: 55.20.00 - TRAVEL

Scope Name / Code	Line Item #	Line Item Name	Activity	Quantity
Research Projects (550-00)	55.20.00	TRAVEL	RESEARCH PROJECTS	1

Extended Budget Description

Travel related to the project will be during phases 1, 2 and 3 for both University of Utah and Autofill staff. The match ratio for this line item is 78/22. See the local deferred match letter attached to this grant.

Will 3rd Party contractors be used to fulfill this activity line item?

No, 3rd Party Contractors will not be used for this line item.

Funding Source	Section of Statute	CFDA Number	Amount
5312 - Research, Development, Demonstration, Deployment (FY2012 and Prior)	5312	20514	\$443
Local			\$122
Local/In-Kind			\$0
State			\$0
State/In-Kind			\$0
Other Federal			\$0
Transportation Development Credit			\$0
Adjustment			\$0
Total Eligible Cost			\$565

Milestone Name	Est. Completion Date	Description
Start Date	1/1/2021	
End Date	12/31/2022	

Budget Activity Line Item: 55.19.00 - OTHER

Scope Name / Code	Line Item #	Line Item Name	Activity	Quantity
Research Projects (550-00)	55.19.00	OTHER	PERSONNEL	1

Extended Budget Description

Funding for this ALI is for personnel costs for the University of Utah staff. University of Utah staff are responsible for the polarized infrared camera system research, development and demonstration. The data management plan, interim, final report and dissemination of information are included in this ALI. The match ratio for this line item is 78/22. See the local deferred match letter attached to this grant.

Will 3rd Party contractors be used to fulfill this activity line item?

No, 3rd Party Contractors will not be used for this line item.

Funding Source	Section of Statute	CFDA Number	Amount
5312 - Research, Development, Demonstration, Deployment (FY2012 and Prior)	5312	20514	\$3,201
Local			\$919
Local/In-Kind			\$0
State			\$0
State/In-Kind			\$0
Other Federal			\$0
Transportation Development Credit			\$0
Adjustment			\$0
Total Eligible Cost			\$4,120

Milestone Name	Est. Completion Date	Description
Start Date	7/1/2021	
End Date	12/31/2022	

Budget Activity Line Item: 55.14.00 - MANAGERIAL, TECHNICAL & PROFESSIONAL

Scope Name / Code	Line Item #	Line Item Name	Activity	Quantity
Research Projects (550-00)	55.14.00	MANAGERIAL, TECHNICAL & PROFESSIONAL	PERSONNEL	1

Extended Budget Description

Funding for this ALI is for personnel costs for Autofill staff. Autofill staff are responsible for the polarized optical camera system research, development and demonstration. The data management plan, interim, final report and dissemination of information are included in this ALI. The match ratio for this line item is 75/25. See the local deferred match letter attached to the grant.

Will 3rd Party contractors be used to fulfill this activity line item?

No, 3rd Party Contractors will not be used for this line item.

Funding Source	Section of Statute	CFDA Number	Amount
----------------	--------------------	-------------	--------

5312 - Research, Development, Demonstration, Deployment (FY2012 and Prior)	5312	20514	\$4,805
Local			\$1,599
Local/In-Kind			\$0
State			\$0
State/In-Kind			\$0
Other Federal			\$0
Transportation Development Credit			\$0
Adjustment			\$0
Total Eligible Cost			\$6,404

Milestone Name	Est. Completion Date	Description
Start Date	7/1/2021	
End Date	1/31/2022	

Budget Activity Line Item: 50.20.00 - TUITION/FEEES

Scope Name / Code	Line Item #	Line Item Name	Activity	Quantity
Research Projects (550-00)	50.20.00	TUITION/FEEES	RESEARCH/OVERSIGHT TRAINING	1

Extended Budget Description

This project will be using 5312 funding for tuition reimbursement for students involved in phases 2 and 3 data collection. For this ALI there is no local match. See the local deferred match letter attached to the grant.

Will 3rd Party contractors be used to fulfill this activity line item?

No, 3rd Party Contractors will not be used for this line item.

Funding Source	Section of Statute	CFDA Number	Amount
5312 - Research, Development, Demonstration, Deployment (FY2012 and Prior)	5312	20514	\$406
Local			\$0
Local/In-Kind			\$0
State			\$0
State/In-Kind			\$0
Other Federal			\$0
Transportation Development Credit			\$0
Adjustment			\$0
Total Eligible Cost			\$406

Milestone Name	Est. Completion Date	Description
Start Date	1/31/2022	
End Date	2/28/2022	

Project Environmental Findings

Finding: Class II(c) - Categorical Exclusions (C-List)

Class Level Description

Class II(c) consists of projects that do not have a significant environmental impact on the human or natural environment and are therefore categorically excluded from the requirement to prepare an environmental assessment or an environmental impact statement. FTA requires a sufficient project description to support a CE determination. The project may require additional documentation to comply with other environmental laws.

Categorical Exclusion Description

Type 05: Activities, including repairs, replacements, and rehabilitations, designed to promote transportation safety, security, accessibility and effective communication within or adjacent to existing right-of-way, such as: the deployment of Intelligent Transportation Systems and components; installation and improvement of safety and communications equipment, including hazard elimination and mitigation; installation of passenger amenities and traffic signals; and retrofitting existing transportation vehicles, facilities or structures, or upgrading to current standards.

Date Description	Date
Class IIc CE Approved	

Project Title: Polarized Infrared and Optical Imaging System for Transit Infrastructure Condition Assessment - FY 2016 Funds

Project Number	Temporary Project Number	Date Created	Start Date	End Date
UT-2021-020-02-00	1167-2021-13-P2	8/18/2021	7/1/2021	12/31/2022

Project Description

This project is for \$322,464 federal dollars in FY 2016 5012 funds. The rest of the project is funded through FY 2011 funds in another project in this award.

The project team will develop and demonstrate a system that can identify, quantify, and monitor both the internal and external defects of rail track and tie structures with the potential for high-speed full track section inspection. The system employs a polarized infrared camera and a polarized optical camera, whose data collection will be immune from adverse infrared or optical illumination conditions in a field environment. An envisioned fully developed system can be mounted on an inspection vehicle or revenue service train and provide early warning and long-term monitoring of track and tie conditions. The work plan is composed of three tasks: technology development, demonstration, and evaluation. The work plan allows a rapid technology demonstration, data collection and evaluation effort. It is the intent of the partners that the research will lead to a developed product that will eventually be applied as a commercial product with the goal of deployment at scale. The match ratio of this grant is 77.5/22.5. Specific match ratios per ALI are indicated in the extended budget description. Attachments to this grant include: FARateAgreement2016_UU, Figures & Bibliography, FTA_SOW_PolarizedInfraredOpticalCameraSystem_UTA, Rail Defect Detection Deferred Local Match Letter_Signed, STIP Page 134.

Project Benefits

The benefits of this project are to serve the transit industry by increasing safety, improving infrastructure reliability, and minimizing the risks of accidents induced by rail defects and tie degradation. The project team will investigate the polarized infrared and optical imaging technology as tools for transit asset assessment by (i) developing a robust passive infrared thermography for rail track and tie inspection, covering variations in defect types, sizes, temperature, and weather conditions; and (ii) developing a robust optical imaging solution, along with machine learning algorithms, that can detect and classify rail and tie external defects, such as rail surface condition and missing rail fasteners. Upon its success, the proposed research will open up a new avenue for high-speed real-time full track section inspection.

Additional Information

None provided.

Location Description

The project will be located along the Utah Transit Authority Rail corridors which cover all congressional districts.

Project Location (Urbanized Areas)

UZA Code	Area Name
----------	-----------

490520	Salt Lake City--West Valley City, UT
491750	Provo--Orem, UT
499560	Ogden--Layton, UT

Congressional District Information

State	District	Representative
Utah	1	Blake Moore
Utah	2	Chris Stewart
Utah	3	John Curtis
Utah	4	Clarence "Burgess" Owens

Program Plan Information

STIP/TIP

Date: 10/1/2020

Description: STIP Page 134. PIN T-010411

UPWP

Date: N/A

Description: N/A

Long Range Plan

Date: N/A

Description: N/A

Project Control Totals

Funding Source	Section of Statute	CFDA Number	Amount
5312 - Research, Dev., Demo/Deploy., and Evaluation Projects	5312-1	20514	\$322,464
Local			\$93,717
Local/In-Kind			\$0
State			\$0
State/In-Kind			\$0
Other Federal			\$0
Transportation Development Credit			\$0
Adjustment			\$0
Total Eligible Cost			\$416,181

Project Budget

Project Number	Budget Item	FTA Amount	Non-FTA Amount	Total Eligible Amount	Quantity
UT-2021-020-02-00	550-00 (550-A2) Research Projects	\$322,464.00	\$93,717.00	\$416,181.00	7

UT-2021-020-02-00	50.20.00	TUITION/FEES	\$8,347.00	\$0.00	\$8,347.00	1
UT-2021-020-02-00	55.14.00	MANAGERIAL, TECHNICAL & PROFESSIONAL	\$98,746.00	\$32,859.00	\$131,605.00	1
UT-2021-020-02-00	55.19.00	OTHER	\$65,774.00	\$18,897.00	\$84,671.00	1
UT-2021-020-02-00	55.20.00	TRAVEL	\$9,101.00	\$2,512.00	\$11,613.00	1
UT-2021-020-02-00	55.30.00	FRINGE BENEFITS	\$49,753.00	\$12,160.00	\$61,913.00	1
UT-2021-020-02-00	55.49.00	SUPPLIES	\$37,100.00	\$13,160.00	\$50,260.00	1
UT-2021-020-02-00	55.82.00	GENERAL & ADMINISTRATIVE	\$53,643.00	\$14,129.00	\$67,772.00	1

Project Budget Activity Line Items

Budget Activity Line Item: 55.82.00 - GENERAL & ADMINISTRATIVE

Scope Name / Code	Line Item #	Line Item Name	Activity	Quantity
Research Projects (550-00)	55.82.00	GENERAL & ADMINISTRATIVE	INDIRECT COSTS	1

Extended Budget Description

This Activity Line Item covers indirect costs for the University of Utah. This is for all phases of the project including the data management plan, interim/final report and dissemination. The indirect cost FAR Rate Agreement is attached to this grant. The match ratio for this line item is 80/20. See the local deferred match letter attached to this grant.

Will 3rd Party contractors be used to fulfill this activity line item?

No, 3rd Party Contractors will not be used for this line item.

Funding Source	Section of Statute	CFDA Number	Amount
5312 - Research, Dev., Demo/Deploy., and Evaluation Projects	5312-1	20514	\$53,643
Local			\$14,129
Local/In-Kind			\$0
State			\$0
State/In-Kind			\$0
Other Federal			\$0
Transportation Development Credit			\$0
Adjustment			\$0
Total Eligible Cost			\$67,772

Milestone Name	Est. Completion Date	Description
Start Date	7/1/2021	
End Date	12/31/2022	

Budget Activity Line Item: 55.49.00 - SUPPLIES

Scope Name / Code	Line Item #	Line Item Name	Activity	Quantity
Research Projects (550-00)	55.49.00	SUPPLIES	EQUIPMENT	1

Extended Budget Description

This ALI will include research project related supplies for both the University of Utah and Autofill for all phases of the project. The match ratio for this line item is 74/26. See the local deferred match letter attached to this grant.

Will 3rd Party contractors be used to fulfill this activity line item?

No, 3rd Party Contractors will not be used for this line item.

Funding Source	Section of Statute	CFDA Number	Amount
5312 - Research, Dev., Demo/Deploy., and Evaluation Projects	5312-1	20514	\$37,100
Local			\$13,160
Local/In-Kind			\$0
State			\$0
State/In-Kind			\$0
Other Federal			\$0
Transportation Development Credit			\$0
Adjustment			\$0
Total Eligible Cost			\$50,260

Milestone Name	Est. Completion Date	Description
Start Date	8/1/2021	
End Date	12/31/2022	

Budget Activity Line Item: 55.30.00 - FRINGE BENEFITS

Scope Name / Code	Line Item #	Line Item Name	Activity	Quantity
Research Projects (550-00)	55.30.00	FRINGE BENEFITS	RESEARCH PROJECTS	1

Extended Budget Description

This ALI will cover fringe benefits for both University of Utah and Autofill staff for all phases of the project including the data management plan, interim/final report and dissemination of information. The match ratio for this line item is 80/20. See the local deferred match letter attached to this grant.

Will 3rd Party contractors be used to fulfill this activity line item?

No, 3rd Party Contractors will not be used for this line item.

Funding Source	Section of Statute	CFDA Number	Amount
5312 - Research, Dev., Demo/Deploy., and Evaluation Projects	5312-1	20514	\$49,753
Local			\$12,160
Local/In-Kind			\$0
State			\$0
State/In-Kind			\$0
Other Federal			\$0
Transportation Development Credit			\$0
Adjustment			\$0
Total Eligible Cost			\$61,913

Milestone Name	Est. Completion Date	Description
Start Date	7/1/2021	
End Date	12/31/2022	

Budget Activity Line Item: 55.20.00 - TRAVEL

Scope Name / Code	Line Item #	Line Item Name	Activity	Quantity
Research Projects (550-00)	55.20.00	TRAVEL	RESEARCH PROJECTS	1

Extended Budget Description

Travel related to the project will be during phases 1, 2 and 3 for both University of Utah and Autofill staff. The match ratio for this line item is 78/22. See the local deferred match letter attached to this grant.

Will 3rd Party contractors be used to fulfill this activity line item?

No, 3rd Party Contractors will not be used for this line item.

Funding Source	Section of Statute	CFDA Number	Amount
5312 - Research, Dev., Demo/Deploy., and Evaluation Projects	5312-1	20514	\$9,101
Local			\$2,512
Local/In-Kind			\$0
State			\$0
State/In-Kind			\$0
Other Federal			\$0
Transportation Development Credit			\$0
Adjustment			\$0
Total Eligible Cost			\$11,613

Milestone Name	Est. Completion Date	Description
Start Date	1/1/2022	
End Date	12/31/2022	

Budget Activity Line Item: 55.19.00 - OTHER

Scope Name / Code	Line Item #	Line Item Name	Activity	Quantity
Research Projects (550-00)	55.19.00	OTHER	PERSONNEL	1

Extended Budget Description

Funding for this ALI is for personnel costs for the University of Utah staff. University of Utah staff are responsible for the polarized infrared camera system research, development and demonstration. The data management plan, interim, final report and dissemination of information are included in this ALI. The match ratio for this line item is 78/22. See the local deferred match letter attached to this grant.

Will 3rd Party contractors be used to fulfill this activity line item?

No, 3rd Party Contractors will not be used for this line item.

Funding Source	Section of Statute	CFDA Number	Amount
5312 - Research, Dev., Demo/Deploy., and Evaluation Projects	5312-1	20514	\$65,774
Local			\$18,897
Local/In-Kind			\$0
State			\$0
State/In-Kind			\$0
Other Federal			\$0
Transportation Development Credit			\$0
Adjustment			\$0

Total Eligible Cost	\$84,671
----------------------------	-----------------

Milestone Name	Est. Completion Date	Description
Start Date	7/1/2021	
End Date	12/31/2022	

Budget Activity Line Item: 55.14.00 - MANAGERIAL, TECHNICAL & PROFESSIONAL

Scope Name / Code	Line Item #	Line Item Name	Activity	Quantity
Research Projects (550-00)	55.14.00	MANAGERIAL, TECHNICAL & PROFESSIONAL	PERSONNEL	1

Extended Budget Description

Funding for this ALI is for personnel costs for Autofill staff. Autofill staff are responsible for the polarized optical camera system research, development and demonstration. The data management plan, interim, final report and dissemination of information are included in this ALI. The match ratio for this line item is 75/25. See the local deferred match letter attached to the grant.

Will 3rd Party contractors be used to fulfill this activity line item?

No, 3rd Party Contractors will not be used for this line item.

Funding Source	Section of Statute	CFDA Number	Amount
5312 - Research, Dev., Demo/Deploy., and Evaluation Projects	5312-1	20514	\$98,746
Local			\$32,859
Local/In-Kind			\$0
State			\$0
State/In-Kind			\$0
Other Federal			\$0
Transportation Development Credit			\$0
Adjustment			\$0
Total Eligible Cost			\$131,605

Milestone Name	Est. Completion Date	Description
Start Date	7/1/2021	
End Date	1/31/2022	

Budget Activity Line Item: 50.20.00 - TUITION/FEEES
--

Scope Name / Code	Line Item #	Line Item Name	Activity	Quantity
Research Projects (550-00)	50.20.00	TUITION/FEEES	RESEARCH/OVERSIGHT TRAINING	1

Extended Budget Description

This project will be using 5312 funding for tuition reimbursement for students involved in phases 2 and 3 data collection. For this ALI there is no local match. See the local deferred match letter attached to the grant.

Will 3rd Party contractors be used to fulfill this activity line item?

No, 3rd Party Contractors will not be used for this line item.

Funding Source	Section of Statute	CFDA Number	Amount
5312 - Research, Dev., Demo/Deploy., and Evaluation Projects	5312-1	20514	\$8,347

Local		\$0
Local/In-Kind		\$0
State		\$0
State/In-Kind		\$0
Other Federal		\$0
Transportation Development Credit		\$0
Adjustment		\$0
Total Eligible Cost		\$8,347

Milestone Name	Est. Completion Date	Description
Start Date	1/31/2022	
End Date	2/28/2022	

Project Environmental Findings

Finding: Class II(c) - Categorical Exclusions (C-List)

Class Level Description

Class II(c) consists of projects that do not have a significant environmental impact on the human or natural environment and are therefore categorically excluded from the requirement to prepare an environmental assessment or an environmental impact statement. FTA requires a sufficient project description to support a CE determination. The project may require additional documentation to comply with other environmental laws.

Categorical Exclusion Description

Type 05: Activities, including repairs, replacements, and rehabilitations, designed to promote transportation safety, security, accessibility and effective communication within or adjacent to existing right-of-way, such as: the deployment of Intelligent Transportation Systems and components; installation and improvement of safety and communications equipment, including hazard elimination and mitigation; installation of passenger amenities and traffic signals; and retrofitting existing transportation vehicles, facilities or structures, or upgrading to current standards.

Date	Description	Date
	Class IIc CE Approved	

Part 4: Fleet Details

No fleet data exists for this application.

Part 5: FTA Review Comments

There are no review comments to display at this time.

Part 6: Agreement

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
FEDERAL TRANSIT ADMINISTRATION

**COOPERATIVE AGREEMENT
(FTA C-28, February 9, 2021)**

On the date the authorized U.S. Department of Transportation, Federal Transit Administration (FTA) official sign this Cooperative Agreement, FTA has obligated and awarded federal assistance as provided below. Upon execution of this Cooperative Agreement by the Recipient named below, the Recipient affirms this FTA Award, enters into this Cooperative Agreement with FTA, and binds its compliance with the terms of this Cooperative Agreement.

The following documents are incorporated by reference and made part of this Cooperative Agreement:

- (1) "Federal Transit Administration Master Agreement," FTA MA(28), February 9, 2021, <http://www.transit.dot.gov>,
- (2) The Certifications and Assurances applicable to the FTA Award that the Recipient has selected and provided to FTA, and
- (3) Any Award notification containing special conditions or requirements, if issued.

WHEN THE TERM "FTA AWARD" OR "AWARD" IS USED, EITHER IN THIS COOPERATIVE AGREEMENT OR THE APPLICABLE MASTER AGREEMENT, "AWARD" ALSO INCLUDES ALL TERMS AND CONDITIONS SET FORTH IN THIS COOPERATIVE AGREEMENT.

FTA OR THE FEDERAL GOVERNMENT MAY WITHDRAW ITS OBLIGATION TO PROVIDE FEDERAL ASSISTANCE IF THE RECIPIENT DOES NOT EXECUTE THIS COOPERATIVE AGREEMENT WITHIN 90 DAYS FOLLOWING FTA'S AWARD DATE SET FORTH HEREIN.

FTA AWARD

Federal Transit Administration (FTA) hereby awards a Federal Cooperative Agreement as follows:

Recipient Information

Recipient Name: Utah Transit Authority (UTA)

Recipient ID: 1167

DUNS No: 069816163

Award Information

Federal Award Identification Number: UT-2021-020-00

Award Name: FY 2020 Research Innovation Program - Transit Infrastructure Condition Assessment

Award Start Date: 9/8/2021

Original Award End Date: 3/31/2023

Current Award End Date: 3/31/2023

Award Executive Summary: The project was awarded through the FY 2020 Real-Time Transit Infrastructure and rolling Stock Condition Assessment Program. This funding will use FY 2011 and FY 2016 5312 funds to develop and demonstrate a system that can identify, quantify, and monitor both the internal and external defects of rail track and tie structures with the potential for high-speed full track section inspection. The match ratio of this grant is 77.5/22.5. Specific match ratios per ALI are indicated in the extended budget description. The University of Utah will use indirect costs for this grant application. UTA will not be applying indirect costs. Attachments to this grant include: FARateAgreement2016_UU, Figures & Bibliography, FTA_SOW_PolarizedInfraredOpticalCameraSystem_UTA, Rail Defect Detection Deferred Local Match Letter_Signed, STIP Page 132.

Research and Development: This award includes research and development activities.

Indirect Costs: This award is applying an approved Indirect cost rate(s).

Suballocation Funds: Recipient organization is directly allocated these funds and is eligible to apply for and receive these funds directly.

Pre-Award Authority: This award is not using Pre-Award Authority.

Award Budget

Total Award Budget: \$436,432.00

Amount of Federal Assistance Obligated for This FTA Action (in U.S. Dollars): \$338,155.00

Amount of Non-Federal Funds Committed to This FTA Action (in U.S. Dollars): \$98,277.00

Total FTA Amount Awarded and Obligated (in U.S. Dollars): \$338,155.00

Total Non-Federal Funds Committed to the Overall Award (in U.S. Dollars): \$98,277.00

Award Budget Control Totals

(The Budget includes the individual Project Budgets (Scopes and Activity Line Items) or as attached)

Funding Source	Section of Statute	CFDA Number	Amount
5312 - Research, Development, Demonstration, Deployment (FY2012 and Prior)	5312	20514	\$15,691
5312 - Research, Dev., Demo/Deploy., and Evaluation Projects	5312-1	20514	\$322,464
Local			\$98,277
Local/In-Kind			\$0
State			\$0
State/In-Kind			\$0
Other Federal			\$0
Transportation Development Credit			\$0
Adjustment			\$0
Total Eligible Cost			\$436,432

(The Transportation Development Credits are not added to the amount of the Total Award Budget.)

U.S. Department of Labor Certification of Public Transportation Employee Protective Arrangements:

Original Certification Date:

Special Conditions

There are no special conditions.

FINDINGS AND DETERMINATIONS

By signing this Award on behalf of FTA, I am making all the determinations and findings required by federal law and regulations before this Award may be made.

FTA AWARD OF THE COOPERATIVE AGREEMENT

Awarded By:
Mary Leary
Deputy Associate Administrator
FEDERAL TRANSIT ADMINISTRATION
U.S. DEPARTMENT OF TRANSPORTATION
Contact Info: mary.leary@dot.gov
Award Date: 9/8/2021

EXECUTION OF THE COOPERATIVE AGREEMENT

Upon full execution of this Cooperative Agreement by the Recipient, the Effective Date will be the date FTA or the Federal Government awarded Federal assistance for this Cooperative Agreement.

There are several identical counterparts of this Cooperative Agreement in typewritten hard copy. Each counterpart is:

- (1) Fully signed in writing by the duly authorized officials of FTA or the Federal Government and the Recipient, and
- (2) Deemed to be an original having identical legal effect.

By executing this Cooperative Agreement, the Recipient intends to enter into a legally binding agreement in which the Recipient:

- (1) Affirms this FTA Award,
- (2) Adopts and ratifies all of the following information it has submitted to FTA:
 - (a) Statements,
 - (b) Representations,
 - (c) Warranties,
 - (d) Covenants, and
 - (e) Materials,
- (3) Consents to comply with the requirements of this FTA Award, and
- (4) Agrees to all terms and conditions set forth in this Cooperative Agreement.

Executed By:
William Greene
Chief Financial Officer
Utah Transit Authority (UTA)
9/13/2021

**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
FEDERAL TRANSIT ADMINISTRATION**

MASTER AGREEMENT

**For Federal Transit Administration Agreements authorized by
49 U.S.C. chapter 53 and Title 23, United States Code (Highways), as amended by
the Infrastructure Investment and Jobs Act of 2021, the Fixing America’s Surface
Transportation (FAST) Act, the Moving Ahead for Progress in the 21st Century Act
(MAP-21), the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy
for Users (SAFETEA-LU), the SAFETEA-LU Technical Corrections Act of 2008, or other
federal laws that FTA administers.**

**FTA MA(29)
February 7, 2022**

<http://www.transit.dot.gov>

TABLE OF CONTENTS

Table of Contents	i
Preface	1
Statutory Authorities	1
Purpose of this Master Agreement.....	1
Generally Applicable Provisions	3
Section 1. Terms of this Master Agreement and Compliance.....	3
Section 2. Definitions.....	4
Section 3. Implementation.	12
Section 4. Ethics, Political Activity, Disqualification, and Certain Criminal Activity.....	19
Section 5. Federal Assistance.....	27
Section 6. Non-Federal Share.	28
Section 7. Payments to the Recipient.....	30
Section 8. Records and Reports Related to the Award and the Underlying Agreement.....	41
Section 9. Record Retention and Access to Sites of Performance.	47
Section 10. Completion, Audit, Settlement, and Closeout.....	48
Section 11. Right of the Federal Government to Terminate.	50
Section 12. Civil Rights.	50
Section 13. Planning.	59
Section 14. Private Enterprise.....	60
Section 15. Preference for United States Products and Services.	61
Section 16. Procurement.	61
Section 17. Patent Rights.	68
Section 18. Rights in Data and Copyrights.	69
Section 19. Use of Real Property, Equipment, and Supplies.	72
Section 20. Transit Asset Management.....	77
Section 21. Insurance.	77
Section 22. Relocation and Real Property.....	78
Section 23. Construction.....	79
Section 24. Employee Protections.	80
Section 25. Early Systems Work Agreement.....	82
Section 26. Environmental Protections.....	84
Section 27. State Management and Monitoring Systems.....	88
Section 28. Charter Service.....	88

Section 29.	School Bus Operations.....	88
Section 30.	Geographic Information and Related Spatial Data.	89
Section 31.	Federal “\$1 Coin” Requirements.	89
Section 32.	Public Transportation Safety.....	89
Section 33.	Motor Carrier Safety.	89
Section 34.	Safe Operation of Motor Vehicles.	90
Section 35.	Substance Abuse.	91
Section 36.	Protection of Sensitive Security and Other Sensitive Information.	92
Section 37.	Special Notification Requirements for States.	92
Section 38.	Freedom of Information.....	93
Section 39.	Disputes, Breaches, Defaults, and Litigation.	94
Section 40.	Amendments to the Underlying Agreement.	95
Section 41.	FTA’s Transit Award Management System (TrAMS).	96
Section 42.	Information Obtained through Internet Links.	96
Section 43.	Severability.	96
Special Provisions for Specific Programs.....		97
Section 44.	Special Provisions for All Public Transportation Innovation, Technical Assistance or Workforce Development Programs.	97
Section 45.	Special Provisions for the State Safety Oversight Grant Program.....	99
Section 46.	Special Provisions for the State Infrastructure Bank (SIB) Program.....	99
Section 47.	Special Provisions for the TIFIA and RRIF Programs.	100
Section 48.	Special Provisions for the Joint FTA–FRA Program.....	101
Special Provision for Promoting COVID-19 Safety.....		103
Section 49.	Centers for Disease Control and Prevention Order on Requirements for Persons to Wear Masks While on Conveyances and at Transportation Hubs.....	103
Appendix A Tribal Transit Program—Applicable Provisions.....		104

**UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL TRANSIT ADMINISTRATION**

MASTER AGREEMENT

PREFACE

Statutory Authorities

This is the official Federal Transit Administration (FTA) Master Agreement that applies to each Underlying Agreement (Grant Agreement, Cooperative Agreement, Loan Agreement, Loan Guarantee Agreement, or Line of Credit Agreement) for a specific Award authorized by:

- (a) Federal transit laws, 49 U.S.C. chapter 53, as amended, including the following:
 - (1) The Infrastructure Investment and Jobs Act of 2021, Public Law No. 117-58, November 15, 2021, and other authorizing legislation that may be enacted;
 - (2) The Fixing America's Surface Transportation (FAST) Act, Public Law No. 114-94, December 4, 2015;
 - (3) The Moving Ahead for Progress in the 21st Century Act (MAP-21), Public Law No. 112- 141, July 6, 2012, as amended by the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015, Public Law No. 114-41, July 31, 2015; and
 - (4) The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Public Law No. 109-59, August 10, 2005, as amended by the SAFETEA-LU Technical Corrections Act of 2008, Public Law No 110-244, June 6, 2008.
- (b) Continuing Resolutions or Other Appropriations Resolutions or Acts funding the Department of Transportation during Fiscal Year 2021.
- (c) Title 23, United States Code (Highways).
- (d) Other federal legislation that FTA administers, as FTA so determines.

Purpose of this Master Agreement

This FTA Master Agreement contains the standard terms and conditions that apply to the Underlying Agreement with the Recipient, which Underlying Agreement may take the form of an:

- (a) FTA Grant Agreement, including an FTA Grant Agreement for an award of federal assistance under the Tribal Transit Program;
- (b) FTA Cooperative Agreement; or
- (c) Transportation Infrastructure Finance Innovation Act (TIFIA) or Railroad Rehabilitation and Improvement Financing (RRIF) Loan, Loan Guarantee, Line of Credit, Master Credit Agreement for a Project overseen by FTA, or State Infrastructure Bank (SIB) Cooperative Agreement.

THEREFORE, in consideration of the mutual covenants, promises, and representations herein, FTA and the Recipient agree as follows:

GENERALLY APPLICABLE PROVISIONS

Section 1. Terms of this Master Agreement and Compliance.

- (a) The Recipient must comply with all applicable federal laws, regulations, and requirements, and should follow applicable federal guidance, except as FTA determines otherwise in writing.
- (b) To assure compliance with federal laws, regulations, and requirements, the Recipient must take measures to assure that other participants in its Underlying Agreements (e.g., Third Party Participants) comply with applicable federal laws, regulations, and requirements, and follow applicable federal guidance, except as FTA determines otherwise in writing.
- (c) FTA may take enforcement action if the Recipient or a Third Party Participant violates an applicable federal law, regulation, or requirement, or does not follow applicable federal guidance.
- (d) FTA and the Recipient agree that not every provision of this Master Agreement will apply to every Recipient or Underlying Agreement.
 - (1) FTA has divided this Master Agreement into the “Preface,” “Generally Applicable Provisions,” and “Special Provisions for Specific Programs.”
 - (2) This Master Agreement has an Appendix A illustrating the specific provisions of this Master Agreement that apply to the Tribal Transit Programs.
 - (3) Criteria determining which federal laws, regulations, requirements, and guidance apply include the type of Award, the federal law authorizing federal assistance for the Award, the federal law, regulations, or requirements governing how the Award must be implemented, the federal guidance pertaining to the Award, and the Recipient’s legal status as a “state,” “state instrumentality,” a “local government,” a federally recognized Indian Tribe (Indian Tribe), a “private nonprofit entity,” a “private for-profit entity,” or an individual.
- (e) As provided in federal laws, regulations, requirements, and guidance, FTA will enforce only those federal laws, regulations, requirements, and guidance that apply to the specific FTA Recipient, its Third Party Participants, or to any Project and related activities encompassed in the Award, the accompanying Underlying Agreement, and any Amendments thereto.

- (f) Each provision of this Master Agreement must be interpreted in context with all other provisions of this Master Agreement and the Underlying Agreement. If a single provision is read apart from the rest of this Master Agreement or the Underlying Agreement, that provision might not convey the extent of the Recipient's responsibility to comply with the requirements of this Master Agreement and the Underlying Agreement.
- (g) This Master Agreement does not have an Expiration Date. This Master Agreement continues to apply to the Recipient and its Underlying Agreement, until modified or superseded by a more recently enacted or issued applicable federal law, regulation, requirement, or guidance, or Amendment to this Master Agreement or the Underlying Agreement.

Section 2. Definitions.

- (a) *List of Definitions.* In addition to the definitions provided in 49 U.S.C. § 5302, as amended, or in previous legislation if circumstances may require, the Recipient agrees that the following definitions apply:
 - (1) *Application* means the request for federal assistance submitted that is signed and dated by the Applicant or an official authorized to act on the behalf of the Applicant, and includes all explanatory, supporting, and supplementary documents filed with FTA by or on behalf of the Applicant, and has been reviewed by FTA staff and addresses FTA's comments and concerns. An application for federal assistance in the form of a Grant or Cooperative Agreement must be submitted in in FTA's Transit Award Management System (TrAMS).
 - (2) *Approval*, unless FTA determines otherwise in writing, means a written statement of an authorized federal official transmitted electronically or in typewritten hard copy expressly permitting the Recipient to take or omit an action in connection with its Underlying Agreement, and signed by a federal official authorized to permit the Recipient to take or omit an action that may not be taken or omitted without the Federal Government's permission. Approval does not mean permission to take or omit a similar action other than the specific action for which approval was given and does not include an oral permission or interpretation, which has no legal force, authority, or effect. For purposes of this Master Agreement, the definition of "approval" also applies to "concurrence" and "waiver."
 - (3) *Associated Transit Improvement* means, with respect to a Project or an area to be served by a Project, an activity that is designed to enhance transit service or use and that is physically or functionally related to transit facilities.

- (4) *Award* means the Scope of Work that FTA has approved when FTA agreed to provide federal assistance. The Award also includes the requirements of all documents, terms, and conditions incorporated by reference and made part of the Underlying Agreement, which may be a Grant or Cooperative Agreement.
- (5) *Award Budget* [formerly, *Approved Project Budget*] means the budget for all the Projects encompassed by the FTA Award. In contrast, *Project Budget* means the budget allocated for a single Project contained within an Award that FTA or a pass-through entity approves during the federal award process or in subsequent amendments to the FTA Award. It may include the federal and non-federal share or only the federal share, as determined by FTA or the pass-through entity. For legal and other purposes, FTA reserves the right to consider information other than that displayed electronically or on paper in the “Award Budget” to determine the scope of the Award, eligible Project activities, and other terms used in connection with the Award.
- (6) *Common Rules* means any one or more of the following:
- (i) U.S. DOT regulations, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards,” 2 CFR Part 1201, which incorporates by reference U.S. Office of Management and Budget (OMB) regulatory guidance, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards,” 2 CFR Part 200;
 - (ii) U.S. DOT regulations, “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,” former 49 CFR Part 18; and
 - (iii) U.S. DOT regulations, “Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-profit Organizations,” former 49 CFR Part 19.
- (7) *Concurrence* has the same meaning as the definition of Approval in this section of this Master Agreement.
- (8) *Cooperative Agreement* means an instrument that the Federal Government uses to award federal assistance to the Recipient to support each specific Project and related activities described in the Underlying Agreement in which, consistent with 31 U.S.C. § 6305, the Federal Government takes an active role and retains substantial control. An FTA Cooperative Agreement consists of three parts:

- (i) The FTA Award, consisting of the amount of federal assistance FTA is providing to support each specific Project and related activities, and a description of each Project as set forth in the Application submitted to FTA in TrAMS or on paper if permitted;
 - (ii) The Terms and Conditions incorporated by reference and made part of the Cooperative Agreement consisting of the following documents, irrespective of whether electronic or in typewritten hard copy, including:
 - (A) The most recent “Federal Transit Administration Master Agreement, which applies to this Cooperative Agreement;
 - (B) The current Certifications and Assurances applicable to the FTA Award that the Recipient has selected and provided to FTA; and
 - (C) Any Award notification containing special conditions or requirements if issued; and
 - (iii) The Execution of the Cooperative Agreement by the Recipient.
- (9) *Designated Recipient* means an entity designated, in accordance with the planning process under 49 U.S.C. §§ 5303 and 5304, by the governor of a state, responsible local officials, and publicly owned operators of public transportation, to receive and apportion amounts under 49 U.S.C. § 5336 to urbanized areas of 200,000 or more in population; or a state or regional authority, if the authority is responsible under the laws of a state for a Capital Project and for financing and directly providing public transportation.
- (10) *Disability* has the same meaning as in section 3(1) of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12102.
- (11) *Federal Assistance* means a type of federal funding that the Recipient receives through the Underlying Agreement.
- (12) *Federal Award Identification Number* has the same meaning as “Project No.” in previous Grant Agreements and Cooperative Agreements with FTA.
- (13) *Federal Government* means the United States of America and any of its executive departments or agencies.
- (14) *Federal Guidance* includes any federal document or publication signed by an authorized federal official providing official instructions or advice about a federal program that is not defined as a “federal requirement” and applies to

entities other than the Federal Government. Federal Guidance also may apply to the Federal Government, and may take the form of a:

- (i) Federal directive;
- (ii) Federal circular;
- (iii) Federal order;
- (iv) Federal published policy;
- (v) Federal administrative practice;
- (vi) Federal guideline;
- (vii) Federal guidance document;
- (viii) Letter signed by an authorized federal official; or
- (ix) Similar document.

(15) *Federal Requirement* means:

- (i) An applicable federal law, regulation, or executive order;
- (ii) An applicable provision of the Underlying Agreement, including any Special Condition, Requirement, Provision, or Condition of Award;
- (iii) This Master Agreement;
- (iv) A later Master Agreement after FTA and the Recipient have entered into the Underlying Agreement; or
- (v) Another applicable federal mandate.

(16) *Federal Transit Administration (FTA)* is an operating administration of the Department of Transportation (U.S. DOT). Any reference to the “Urban Mass Transportation Administration” (also referred to as “UMTA”) refers to the “Federal Transit Administration” or “FTA” when appearing in any records of the United States.

(17) *Federal Transit Administrator* is the head of the Federal Transit Administration.

(18) *Federally Recognized Indian Tribe* means an Indian tribe that is federally recognized by the Bureau of Indian Affairs of the U.S. Department of the

Interior in accordance with the provisions of the Federally Recognized Indian Tribe List Act of 1994, as amended, 25 U.S.C. § 5130.

- (19) *Fiscal Year*, as used in this Master Agreement, means “federal fiscal year,” which begins on October 1 of each calendar year and ends on September 30 of the next calendar year.
- (20) *Governor* means the governor of a state, the mayor of the District of Columbia, or the chief executive officer of a territory of the United States and includes the designee thereof.
- (21) *Grant Agreement* means a legal instrument that the Federal Government uses to award federal assistance to the Recipient to support each specific Project and related activities described in the Underlying Agreement in which, consistent with 31 U.S.C. § 6304, the Federal Government does not take an active role and does not retain substantial control. An FTA Grant Agreement consists of three parts:
 - (i) The FTA Award, consisting of the amount of federal assistance FTA is providing to support each specific Project and related activities, and a description of each Project as set forth in the Application submitted to FTA in TrAMS or on paper if permitted;
 - (ii) The Terms and Conditions incorporated by reference and made part of the Grant Agreement consisting of the following documents, irrespective of whether electronic or in typewritten hard copy, including:
 - (A) The most recent “Federal Transit Administration Master Agreement, which applies to this Grant Agreement;
 - (B) The current Certifications and Assurances applicable to the FTA Award that the Recipient has selected and provided to FTA; and
 - (C) Any Award notification containing special conditions or requirements if issued; and
 - (iii) The Execution of the Grant Agreement by the Recipient.
- (22) *Indian Tribe* means the Recipient or Subrecipient that receives “Tribal Transit Program” assistance authorized by 49 U.S.C. § 5311(c)(1) to support its Underlying Agreement.

- (23) *Internal Controls* means a process, implemented by a Recipient or Subrecipient, designed to provide reasonable assurance regarding the achievement of objectives in the following categories: (a) effectiveness and efficiency of operations, (b) reliability of reporting for internal and external use, and (c) compliance with applicable laws, regulations, and requirements.
- (24) *Local Government Authority* includes (a) a political subdivision of a state; (b) an authority of at least one state or political subdivision of a state; (c) an Indian tribe; and (d) a public corporation, board, or commission established under the laws of a state.
- (25) *Low-Income Individual*, for purposes of 49 U.S.C. § 5311(j)(1)(A)(iii), means an individual whose family income is at or below 100 percent of the poverty line, as that term is defined in section 673(2) of the Community Services Block Grant Act, 42 U.S.C. § 9902(2), including any revision required under that section, for a family of the size involved.
- (26) *Master Credit Agreement* means a conditional agreement to extend one or more loans to a Recipient under the Transportation Infrastructure Finance and Innovation Act (TIFIA) of 1998, as amended, 23 U.S.C. §§ 601 – 609, or the Railroad Rehabilitation and Improvement Financing (RRIF) program, 45 U.S.C. §§ 821 – 823, and also means the type of Underlying Agreement used for the TIFIA or RRIF loans.
- (27) *Non-Federal Funds* or *Non-Federal Share* includes the following sources of funding or in-kind property or services used to match the federal assistance awarded for the Grant or Cooperative Agreement:
- (i) Local funds;
 - (ii) Local in-kind property or services;
 - (iii) State funds;
 - (iv) State in-kind property or services;
 - (v) Other federal funds for which the federal statute authorizing a program specifically provides that federal funds made available for that program can be applied to the cost sharing requirements of other federal programs.
- (28) *Non-Tribal Service Provider*, for purposes of 49 U.S.C. § 5311(j)(2), means a non-tribal provider of public transportation that connects residents of tribal

lands with surrounding communities, improves access to employment or healthcare, or otherwise addresses the mobility needs of tribal members.

- (29) *Project* means the public transportation improvement activities eligible for federal assistance in an application to FTA and/or in an FTA Award.
- (30) *Public Transportation*, has the same meaning as “transit” or “mass transportation,” and, consistent with the definition at 49 U.S.C. § 5302, means regular, continuing shared- ride surface transportation services that are open to the general public, or open to a segment of the general public defined by age, disability, or low income, but does not include:
- (i) Intercity passenger rail transportation provided by Amtrak or a successor thereof as described in 49 U.S.C. chapter 243;
 - (ii) Intercity bus service;
 - (iii) Charter service;
 - (iv) School bus service;
 - (v) Sightseeing service;
 - (vi) Courtesy shuttle service for patrons of one or more specific establishments; or
 - (vii) Intra-terminal or intra-facility shuttle services.
- (31) *Recipient* or *Direct Recipient* means a non-federal entity that receives a federal award directly from a federal awarding agency to carry out an activity under a federal program. The term “Recipient” does not include a Subrecipient.
- (32) *Scope of Work* means the purpose of the Grant Agreement or Cooperative Agreement and the activities and approaches required to carry out a Project. The scope of work consists of various components, including the Award Budget, beneficiaries, locations, and other aspects identified in the approved application. FTA reserves the right to consider other information in determining the scope of the Project or the “scope of work of a Grant Agreement or Cooperative Agreement” when “scope” is used for other purposes. See the latest edition of the FTA Master Agreement.
- (33) *Split Letter* (sometimes referred to as a suballocation letter or government subapportionment letter) means a letter in which a Designated Recipient of Urbanized Area Formula Grant Program funding authorized by 49 U.S.C.

§ 5307, a Designated Recipient of Formula Grants for Enhanced Mobility of Seniors and Individuals with Disabilities authorized by 49 U.S.C. § 5310, a Designated Recipient of the State of Good Repair Formula Grants, 49 U.S.C. § 5337, agrees to a reassignment or reallocation of that federal assistance to one or more direct Recipients.

- (34) *Subagreement* or *Subgrant* means an agreement through which the Recipient awards federal assistance to its Subrecipient(s) to support or stimulate any of the Recipient's or Subrecipient's Projects or related activities supported under the Award, the accompanying Underlying Agreement, or Amendments thereto, but does not include a third party contract, third party subcontract, or lease.
- (35) *Subrecipient* or *Subgrantee* means any entity or person that receives federal assistance provided by an FTA Recipient instead of FTA directly, but does not include a Third Party Contractor, Third Party Subcontractor, or Lessee.
- (36) *Third Party Agreement* includes agreements or arrangements supported in whole or in part with federal assistance awarded to a Recipient by FTA, including a subagreement with a subrecipient, a third party contract, a third party subcontract, a lease, or similar arrangement or agreement as FTA may recognize.
- (37) *Third Party Contract* means a legal instrument by which a Recipient or Subrecipient purchases property or services needed to carry out the Grant Agreement or Cooperative Agreement. This does not include an instrument describing a transaction that meets the definition of a federal Award, Grant, Cooperative Agreement, Subaward, or Subagreement.
- (38) *Third Party Participant* means each participant in the Recipient's Project, except for FTA and the Recipient, whose work under the Project is supported with FTA funding, eligible non-federal share dedicated to the Project, or is dedicated as an in-kind contribution eligible for non-federal share. A Third Party Participant may be a Subrecipient, Third Party Contractor, Third Party Subcontractor, Lessee, or Similar Participant in the Recipient's Project (for example, a partner in a joint development venture).
- (39) *Third Party Subcontract* means a subcontract entered into by the Third Party Contractor with a Third Party Subcontractor, or a Third Party Subcontractor with another Third Party Subcontractor at any tier, and is supported in whole or in part with the federal assistance originally derived from FTA, or non-federal share dedicated to the Recipient's Underlying Agreement.

- (40) *Underlying Agreement* means a specific Grant Agreement, Cooperative Agreement, or, with respect to TIFIA or RRIF assistance, a specific Loan Agreement, Line of Credit Agreement, or Loan Guarantee Agreement that incorporates the terms of this Master Agreement, in each case including any amendments thereto, supported with federal assistance appropriated or made available under the authorized program.
- (41) *Unique Entity Identifier* has two meanings:
- (i) A Recipient's or a Subrecipient's unique entity identifier for purposes of the "System of Award Management" (SAM), which currently is the DUNS Number; but
 - (ii) For FTA purposes, FTA assigns a separate Recipient/Vendor ID as a "unique entity identifier," which is a four-digit number and is displayed on the Grant Agreement and the Cooperative Agreement following the heading "Recipient ID."
- (42) *Waiver* has the same meaning as the definition of Approval in this section of this Master Agreement.
- (b) *Application of Definitions.* The Recipient also agrees that the definitions in section 2(a) above apply throughout this Master Agreement.

Section 3. Implementation.

- (a) *Effective Date.* The Effective Date of Recipient's Underlying Agreement is the date when the authorized FTA official signs the Underlying Agreement.
- (b) *Description of Each Project.* The "Description of Each Project" in the "Executive Summary" of the "FTA Award" section of the Recipient's Underlying Agreement often provides only a brief description of each Project and related activities to be undertaken by the Recipient; therefore, the Recipient agrees to perform the work described in the terms of its Underlying Agreement, including all the documents and information incorporated by reference and made part of that Underlying Agreement.
- (c) *Prompt Implementation.* After receiving notice that the FTA official signed the Underlying Agreement, the Recipient agrees to undertake promptly each Project and related activities described in the Underlying Agreement.
- (d) *Completion Dates.* The Recipient agrees to complete each Project within the time periods specified in the Underlying Agreement and all activities must be completed by the Award's end date, unless FTA agrees in writing to extend the end date. Unless FTA determines otherwise in writing, interim milestone dates and other completion

dates applicable to the Award are good faith estimates and are not intended to be firm contractual requirements. However, FTA and the Recipient agree that milestone dates and other completion dates for Full Funding Grant Agreements, Small Starts Grant Agreements or other specific agreements in which FTA expressly states that the milestone dates or other completion dates for the Underlying Agreement are firm dates that may be enforced.

- (e) *The Recipient's Capacity.* To carry out its Underlying Agreement, the Recipient agrees to maintain:
- (1) Sufficient legal, financial, technical, and managerial capacity, and adequate functional capacity to:
 - (i) Plan, manage, and complete its responsibilities outlined in the Underlying Agreement;
 - (ii) Use the Project property;
 - (iii) Carry out the safety and security aspects of the Underlying Agreement;
 - (iv) Comply with the terms and conditions of the Underlying Agreement, the Recipient's annual Certifications and Assurances to FTA, and applicable federal laws, regulations, and requirements; and
 - (v) Follow applicable federal guidance, except as the Federal Government determines otherwise in writing.
 - (2) Strong internal controls to assure that it is managing its Award in compliance with federal laws, regulations, requirements, and the terms and conditions of the Underlying Agreement including, but not limited to:
 - (i) Amendments or revisions to its Award Budget;
 - (ii) Salaries and wages of the Recipient's and Subrecipient's personnel;
 - (iii) Protection of personally identifiable information and other sensitive information; and
 - (iv) Other matters that must be in compliance with federal laws, regulations, requirements, and the terms and conditions of the Underlying Agreement.
- (f) *U.S. DOT Administrative Requirements.* The Recipient agrees to comply with the following U.S. DOT regulations (Common Rules) to the extent applicable:

- (1) *Requirements Applicable On or After December 26, 2014.* The following requirements apply to the Award, the accompanying Underlying Agreement, and any Amendments thereto signed by an authorized FTA official on or after December 26, 2014 as follows:
- (i) U.S. DOT regulations, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards,” 2 CFR Part 1201, which incorporates by reference U.S. OMB regulatory guidance, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards,” 2 CFR Part 200, and which applies to an Award, the accompanying Underlying Agreement, and any Amendments to any Underlying Agreement with a state, local government, Indian tribe, institution of higher education (IHE), or nonprofit organization; and
 - (ii) Except as FTA determines otherwise in writing, U.S. DOT regulations, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards,” 2 CFR Part 1201, and subparts A through E of U.S. OMB regulatory guidance, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards,” 2 CFR Part 200, apply to a private for-profit entity; notably, the Cost Principles of Part 31 of the Federal Acquisition Regulation, which permits the payment of profits or fees for work under procurement contracts, generally will not apply to private for-profit entities.
- (2) *Requirements Applicable Before December 26, 2014.* The following requirements apply to the Award, the accompanying Underlying Agreement, and any Amendments thereto signed by an authorized FTA official before December 26, 2014 as follows:
- (i) For a state, local government, or Indian tribal government, U.S. DOT regulations, “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,” former 49 CFR Part 18;
 - (ii) For an institution of higher education or a nonprofit organization, U.S. DOT regulations, “Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education; Hospitals, and Other Non-Profit Organizations,” former 49 CFR Part 19; or
 - (iii) For a private for-profit organization, U.S. DOT regulations, “Uniform Administrative Requirements for Grants and Agreements with

Institutions of Higher Education, Hospitals, and Other Non-profit Organizations,” former 49 CFR Part 19.

- (g) *Application of Federal, State, and Local Laws, Regulations, Requirements, and Guidance.* The Recipient agrees to comply with all applicable federal requirements and follow applicable federal guidance. All standards or limits are minimum requirements when those standards or limits are included in the Recipient’s Underlying Agreement or this Master Agreement. At the time the FTA official awards federal assistance to the Recipient in support of the Underlying Agreement, the federal requirements and guidance that apply then may be modified from time to time, and will apply to the Recipient or the accompanying Underlying Agreement, except as FTA determines otherwise in writing.

- (h) *The Recipient’s Responsibility to Comply with Federal Requirements.* Irrespective of involvement by any other entity in the Underlying Agreement:
 - (1) *General.* The Recipient agrees to comply with all federal requirements that apply to itself and the Underlying Agreement.

 - (2) *Primary Responsibility for Compliance.*
 - (i) The Recipient, as the Direct Recipient of federal assistance, agrees that it is ultimately responsible for full compliance with federal requirements related to itself, its Award, the accompanying Underlying Agreement, and any Amendments thereto, even though:
 - (A) A Third Party Participant provides property or services to support a Project or related activities implementing the Award, the accompanying Underlying Agreement, any Amendments thereto; or
 - (B) Another entity or person is involved with the Award, the accompanying Underlying Agreement, or any Amendments thereto.

 - (ii) FTA and the Recipient agree that if FTA makes an Award to a Recipient other than the Designated Recipient as defined under 49 U.S.C. § 5302, the Designated Recipient is not a party to the Award or the Underlying Agreement and is not responsible for compliance with federal requirements related to the Underlying Agreement. However, if FTA makes an Award to a Designated Recipient, then that Designated Recipient is responsible for compliance with federal requirements related to its Underlying Agreement. FTA and the Recipient further agree to the terms of the

Designated Recipient's Split Letter, Suballocation Letter, or Government Subapportionment Letter attached in TrAMS, including the amounts allocated by the Designated Recipient to each Direct Recipient, and the commitment to comply with the associated transit improvement requirement as stated in that letter.

- (iii) Apart from other oversight and reviews FTA may conduct, the Recipient agrees that FTA is expressly authorized to conduct oversight of the Recipient's and its Subrecipients' compliance with federal requirements for safety and security, procurement (including Buy America requirements), management, and finance.

- (i) *The Recipient's Responsibility to Extend Federal Requirements to Third Party Participants.* In certain circumstances, the Recipient's compliance with specific federal requirements depends on compliance by its Third Party Participant(s) with those federal requirements, and therefore:
 - (1) *General.* The Recipient agrees to ensure that its Third Party Participant(s) will comply with applicable federal requirements, and follow applicable federal guidance.
 - (2) *The Recipient as a "Pass-Through" Entity.* If the Recipient is providing a subaward to a Subrecipient to carry out all or part of its Award, the Recipient agrees to obtain the agreement of each Subrecipient to comply with U.S. DOT's administrative requirements, as set forth above.
 - (3) *Performance of the Recipient's Responsibilities.* If a Third Party Participant is expected to fulfill any responsibilities typically performed by the Recipient, the Recipient agrees to ensure that the Third Party Participant will carry out the Recipient's responsibilities in compliance with federal requirements, and provide enough information to each Third Party Participant so that it understands that it will be expected to follow federal guidance.
 - (4) *Risk.* As provided in 2 CFR Part 1201, which incorporates by reference 2 CFR Part 200, the Recipient agrees to evaluate the risk involved before awarding a subagreement to any entity.
 - (5) *Third Party Agreements.* To comply with federal requirements, the Recipient agrees to enter into a written Third Party Agreement with each Third Party Participant in its Underlying Agreement and must include all appropriate provisions stating the Third Party Participant's responsibilities to assure the Recipient's capability to comply with applicable federal requirements and

guidance and specifying the responsibilities that the Third Party Participant will fulfill on the Recipient's behalf.

- (6) *Notice to Third Party Participants.* The Recipient agrees to include notice in each Third Party Agreement that:
 - (i) Federal requirements that apply to the Recipient or the Award, the accompanying Underlying Agreement, and any Amendments thereto may change due to changes in federal law, regulation, other requirements, or guidance, or changes in the Recipient's Underlying Agreement including any information incorporated by reference and made part of that Underlying Agreement; and
 - (ii) Applicable changes to those federal requirements will apply to each Third Party Agreement and parties thereto at any tier.

- (j) *Changed Circumstances.* The Recipient agrees that changed circumstances may occur that may impact the Recipient's ability to comply with the terms and conditions of the Underlying Agreement.
 - (1) *Types of Changes.* Certain circumstances can cause significant changes in performance of a Project or related activities or adversely affect the Recipient's ability to carry out its Underlying Agreement, such as:
 - (i) A change in federal requirements or guidance;
 - (ii) A change in state, territorial, local, or tribal requirements;
 - (iii) A change in the Recipient's circumstances, including:
 - (A) Its legal, financial, technical, or managerial capacity;
 - (B) Its continuing control of Project property; or
 - (C) Another similar situation; and
 - (iv) Any current or prospective legal matter with potentially serious consequences, including a major dispute, default, breach, or litigation, or knowledge that the Recipient's principal, official, employee, agent, or a Third Party Participant, or other person has submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has committed a criminal or civil violation of law pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving federal assistance; suspension, debarment, or other similar administrative or enforcement action against the Recipient or any

Third Party Participant; or any matter or situation, including any other change or legal action that may adversely affect the Federal Government's interest in a Project or related activities.

- (2) *Notice.* In the circumstances described above, the Recipient agrees to provide immediate written notice to the:
 - (i) FTA Regional Counsel for the Region in which the Recipient operates public transportation or implements the Underlying Agreement;
 - (ii) FTA Headquarters Manager that administers the Underlying Agreement; or
 - (iii) FTA Chief Counsel.

- (k) *Conflict Between Federal Requirements and State, Territorial, Local, or Tribal Requirements.* FTA and the Recipient understand that a federal requirement may conflict with a state, territorial, local, or tribal requirement, and agree that the Recipient must comply with each applicable federal requirement that pre-empts the conflicting state, territorial, local, or tribal requirement.
 - (1) *Compliance with State, Territorial, Local or Tribal Requirements.* Unless otherwise pre-empted by a federal requirement, FTA and the Recipient agree that:
 - (i) FTA expects the Recipient to comply with applicable state, territorial, local, and tribal requirements; and
 - (ii) FTA does not require the Recipient to take any action involving the Underlying Agreement that would violate a state, territorial, local, or tribal requirement that conflicts with a federal requirement.

 - (2) *When a Conflict Arises.* When a federal requirement conflicts with a state, territorial, local, or tribal requirement:
 - (i) The Recipient must notify FTA immediately in writing if compliance with the federal requirement would violate a state, territorial, local, or tribal requirement, or require the Recipient to violate a state, territorial, local, or tribal requirement.

 - (ii) The Recipient must make appropriate arrangements with FTA to proceed with its responsibilities as set forth in the Underlying Agreement, or terminate the Underlying Agreement expeditiously, if necessary.

- (1) *No Federal Government Commitment or Liability to Third Parties.* Except as the Federal Government expressly consents in writing, the Recipient agrees that:
 - (1) The Federal Government does not and shall not have any commitment or liability related to the Underlying Agreement, to any Third Party Participant at any tier, or to any other person or entity that is not a party (FTA or the Recipient) to the Underlying Agreement; and
 - (2) Notwithstanding that the Federal Government may have concurred in or approved any Solicitation or Third Party Agreement at any tier that may affect the Underlying Agreement, the Federal Government does not and shall not have any commitment or liability to any Third Party Participant or other entity or person that is not a party (FTA or the Recipient) to the Underlying Agreement.

Section 4. Ethics, Political Activity, Disqualification, and Certain Criminal Activity.

- (a) *Standards of Conduct.* At a minimum, the Recipient agrees to, and assures that its Subrecipients will, establish and maintain written Standards of Conduct covering conflicts of interest that:
 - (1) Apply to the following individuals who have a present or potential financial interest, or other significant interest, such as a present or potential employment interest in the selection, award, or administration of a third party contract or subcontract:
 - (i) The Recipient or its Subrecipients' officers, employees, board members, or agents engaged in the selection, award, or administration of any third party agreement;
 - (ii) The immediate family members or partners of those listed above in section 4(a)(1)(i) of this Master Agreement; and
 - (iii) An entity or organization that employs or is about to employ any person that has a relationship with the Recipient or its Subrecipient listed above in sections 4(a)(1)(i) and (ii) of this Master Agreement;
 - (2) Prohibit those individuals listed above in section 4(a)(1) from:
 - (i) Engaging in any activities involving the Recipient's or any of its Subrecipients' present or potential Third Party Participants at any tier, including selection, award, or administration of a third party agreement in which the individual has a present or potential financial or other significant interest; and

- (ii) Accepting a gratuity, favor, or anything of monetary value from a present or potential Third Party Participant in the Recipient's Underlying Agreement, unless the gift is unsolicited and has an insubstantial financial or nominal intrinsic value; and
- (3) Establish penalties, sanctions, or other disciplinary actions for violations, as permitted by state or local law or regulations, that apply to those individuals listed above in section 4(a)(1) and the Recipient's or Subrecipient's Third Party Participants.
- (b) *Bonus or Commission.* The Recipient affirms that it has not paid, and agrees that it will not pay, any bonus or commission to obtain federal assistance for any Project or related activities supported under the Underlying Agreement.
- (c) *Lobbying Restrictions.* The Recipient agrees that neither it nor any Third Party Participant will use federal assistance to influence any officer or employee of a federal agency, member of Congress or an employee of a member of Congress, or officer or employee of Congress on matters that involve the Underlying Agreement, including any extension or modification, according to the following:
 - (1) *Laws, Regulations, Requirements, and Guidance.* This includes:
 - (i) The Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352, as amended;
 - (ii) U.S. DOT regulations, "New Restrictions on Lobbying," 49 CFR Part 20, to the extent consistent with 31 U.S.C. § 1352, as amended; and
 - (iii) Other applicable federal laws, regulations, requirements, and guidance prohibiting the use of federal assistance for any activity concerning legislation or appropriations designed to influence the U.S. Congress or a state legislature; and
 - (2) *Exception.* If permitted by applicable federal law, regulations, requirements, or guidance, such lobbying activities described above may be undertaken through the Recipient's or Subrecipient's proper official channels.
- (d) *Political Activity.* The Recipient agrees to comply with:
 - (1) The Hatch Act, 5 U.S.C. chapter 15, which limits the political activities of state and local government agencies supported in whole or in part with federal assistance, including the political activities of state and local government officers and employees whose principal governmental

employment activities are supported in whole or in part with federal assistance;

- (2) U.S. Office of Personnel Management regulations, “Political Activity of State or Local Officers or Employees,” 5 CFR Part 151; and
- (3) 49 U.S.C. § 5323(l)(2) and 23 U.S.C. § 142(g), which limits the applicability of the Hatch Act, as follows:
 - (i) The Hatch Act does not apply to nonsupervisory employees of a public transportation system, or any other agency or entity performing related functions, based upon the Award of federal assistance under 49 U.S.C. chapter 53 or 23 U.S.C. § 142(a)(2); but
 - (ii) Notwithstanding the preceding section 4(e)(3)(ii) of this Master Agreement, the Hatch Act does apply to a nonsupervisory employee if imposed for a reason other than the Award of federal assistance to its employer under 49 U.S.C. chapter 53 or 23 U.S.C. § 142(a)(2).

(e) *False or Fraudulent Statements or Claims.*

- (1) *Civil Fraud.* The Recipient acknowledges and agrees that:
 - (i) Federal laws, regulations, and requirements apply to itself and its Underlying Agreement, including the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801, et seq., and U.S. DOT regulations, “Program Fraud Civil Remedies,” 49 CFR Part 31.
 - (ii) By executing the Underlying Agreement, the Recipient certifies and affirms to the Federal Government the truthfulness and accuracy of any claim, statement, submission, certification, assurance, affirmation, or representation that the Recipient provides to the Federal Government.
 - (iii) The Federal Government may impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, and other applicable penalties if the Recipient presents, submits, or makes available any false, fictitious, or fraudulent information.
- (2) *Criminal Fraud.* The Recipient acknowledges that 49 U.S.C. § 5323(l)(1) authorizes the Federal Government to impose the penalties under 18 U.S.C. § 1001 if the Recipient provides a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation in

connection with a federal public transportation program under 49 U.S.C. chapter 53 or any other applicable federal law.

(f) *Trafficking in Persons.*

- (1) *Legal Authorities.* The Recipient agrees to comply and assures the compliance of each Subrecipient, with federal requirements and guidance, including:
 - (i) Section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended, 22 U.S.C. § 7104(g); and
 - (ii) The terms of this section 4(f), which have been derived from U.S. OMB regulatory guidance, “Award Term for Trafficking in Persons,” 2 CFR Part 175, per U.S. OMB’s direction.
- (2) *Definitions.* The Recipient agrees that for purposes of this section 4(f):
 - (i) *Employee* means either an individual who is employed by the Recipient or a Subrecipient, and is participating in a Project or related activities as set forth in the Underlying Agreement, or another person who is participating in a Project or related activities as set forth in the Underlying Agreement and is not compensated by the Recipient, including, but not limited to, a volunteer, or an individual whose services are contributed by the Recipient or Third Party Participant as an in-kind contribution toward the cost sharing requirements of the Recipient’s Underlying Agreement.
 - (ii) *Forced labor* means labor obtained by recruitment, harboring, transportation, provision, or other means of obtaining of a person for labor or services through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
 - (iii) *Private entity* means any entity other than a state, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR § 175.25, and includes a for-profit organization, or a nonprofit organization, including any nonprofit organization of higher education, hospital, or tribal organization other than one included in the definition of Indian Tribe at 2 CFR § 175.25(b).
 - (iv) *Severe forms of trafficking in persons* has the meaning given at section 103 of the TVPA, as amended, 22 U.S.C. § 7102.

- (v) *Commercial sex act* has the meaning given at section 103 of the TVPA, as amended, 22 U.S.C. § 7102.
 - (vi) *Coercion* has the meaning given at section 103 of the TVPA, as amended, 22 U.S.C. § 7102.
- (3) *Provisions Applicable to All Recipients.* The Recipient agrees to, and assures that its Subrecipients will:
- (i) *Provide Information.* Inform FTA immediately of any information it receives from any source alleging a violation of the prohibitions listed in section 4(f)(4) of this Master Agreement; and
 - (ii) *Subagreement Provision.* Include the following provision in any subagreement it enters into with a private entity as defined above in section 4(f)(2)(iii) of this Master Agreement:

XXX agrees that it and its employees that participate in the Recipient's Award, may not:

Engage in severe forms of trafficking in persons during the period of time that the Recipient's Award is in effect,

Procure a commercial sex act during the period of time that the Recipient's Award is in effect, or

Use forced labor in the performance of the Recipient's Award or subagreements thereunder.
- (4) *Provisions Applicable to a Private Entity Recipient.* If the Recipient is a private entity, it agrees that:
- (i) *Prohibitions.* It, its employees, its Subrecipients, and its Subrecipients' employees that participate in the Underlying Agreement will not:
 - (A) Engage in severe forms of trafficking in persons during the period of time that the Recipient's Underlying Agreement is in effect;
 - (B) Procure a commercial sex act during the period of time that the Recipient's Underlying Agreement is in effect; or
 - (C) Use forced labor in the performance of the Recipient's Underlying Agreement or subagreements.

- (ii) *Termination of Federal Assistance.* Section 106(g) of the TVPA, as amended, 22 U.S.C. § 7104(g), and U.S. OMB regulatory guidance, “Award Term for Trafficking in Persons,” 2 CFR Part 175, provide FTA the right to unilaterally terminate the Underlying Agreement for a violation of that Act without penalty to the Federal Government, if FTA determines that the private entity Recipient or its Subrecipient:
 - (A) Has violated a prohibition described above in section 4(g)(4)(i) of this Master Agreement; or
 - (B) Has an employee whose conduct is determined to have violated a prohibition described above in section 4(g)(4)(i) of this Master Agreement because that employee’s conduct is either:
 - a. Associated with the performance of the Recipient’s Underlying Agreement; or
 - b. Imputed to the Recipient or Subrecipient using the standards of due process for conduct of an individual to an organization provided in:
 - i. U.S. DOT regulations, “Nonprocurement Suspension and Debarment,” 2 CFR Part 1200; or
 - ii. U.S. OMB regulatory guidance, “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” 2 CFR Part 180.
- (5) *Provisions Applicable to a Recipient That is Not a Private Entity.* A Recipient that is not a private entity agrees that section 106(g) of the TVPA, as amended, 22 U.S.C. § 7104(g), and U.S. OMB regulatory guidance, “Award Term for Trafficking in Persons,” 2 CFR Part 175, provides FTA the right to unilaterally terminate the Underlying Agreement, without penalty to the Federal Government, for a violation of that Act if FTA determines that:
- (i) A private entity that is the Subrecipient of the Recipient is determined to have engaged in severe forms of trafficking in persons during the period of time that the Recipient’s Underlying Agreement is in effect; procured a commercial sex act during the period of time that the Recipient’s Underlying Agreement is in effect; or used forced labor in

the performance of the Recipient's Underlying Agreement or subagreements thereunder; or

- (ii) An employee of a private entity that is the Subrecipient has engaged in severe forms of trafficking in persons during the period of time that the Recipient's Underlying Agreement is in effect; procured a commercial sex act during the period of time that the Recipient's Underlying Agreement is in effect; or used forced labor in the performance of the Recipient's Underlying Agreement or subagreements thereunder, and whose conduct described above is associated with the performance of the Recipient's Underlying Agreement; or is imputed to the Subrecipient using the standards for due process to impute the conduct of an individual to an organization as provided in U.S. OMB regulatory guidance, "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 CFR Part 180, and U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 CFR Part 1200.

- (6) *Remedies Other Than Termination of Federal Assistance.* The Recipient agrees that FTA's right to terminate federal assistance as provided in the TVPA and in sections 4(f)(4)(ii) and 4(f)(5) are in addition to all other remedies for noncompliance available to the Federal Government under this Master Agreement.

- (g) *Federal Tax Liability and Recent Felony Convictions.*

- (1) *Transactions Prohibited.*

- (i) The Recipient agrees that, prior to entering into any Third Party Agreement with any private corporation, partnership, trust, joint-stock company, sole proprietorship, or other business association, the Recipient will obtain from the prospective Third Party Participant a certification that the Third Party Participant—
 - (A) Does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and
 - (B) Was not convicted of the felony criminal violation under any Federal law within the preceding 24 months.

- (ii) If the prospective Third Party Participant cannot so certify, the Recipient agrees to refer the matter to FTA and not to enter into any Third Party Agreement with the Third Party Participant without FTA's written approval.
- (2) *Flow-Down.* The Recipient agrees to require all Third Party Participants to flow this requirement down to participants at all lower tiers, without regard to the value of any subagreement.
- (h) *Debarment and Suspension.* The Recipient agrees to the following:
 - (1) It will comply with the following requirements of 2 CFR Part 180, subpart C, as adopted and supplemented by U.S. DOT regulations at 2 CFR Part 1200.
 - (2) It will not enter into any "covered transaction" (as that phrase is defined at 2 CFR §§ 180.220 and 1200.220) with any Third Party Participant that is, or whose principal is, suspended, debarred, or otherwise excluded from participating in covered transactions, except as authorized by—
 - (i) U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 CFR Part 1200;
 - (ii) U.S. OMB regulatory guidance, "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 CFR Part 180; and
 - (iii) Other applicable federal laws, regulations, or requirements regarding participation with debarred or suspended Recipients or Third Party Participants.
 - (3) It will review the U.S. GSA "System for Award Management – Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs," if required by U.S. DOT regulations, 2 CFR Part 1200.
 - (4) It will ensure that its Third Party Agreements contain provisions necessary to flow down these suspension and debarment provisions to all lower tier covered transactions.
 - (5) If the Recipient suspends, debar, or takes any similar action against a Third Party Participant or individual, the Recipient will provide immediate written notice to the:
 - (i) FTA Regional Counsel for the Region in which the Recipient is located or implements the Underlying Agreement;

- (ii) FTA Headquarters Manager that administers the Grant or Cooperative Agreement; or
- (iii) FTA Chief Counsel.

Section 5. Federal Assistance.

- (a) *Total Federal Assistance Awarded and Obligated.* The Recipient agrees that FTA’s responsibility to provide federal assistance for its Underlying Agreement is up to the amount shown in the Underlying Agreement, as modified by any Amendments thereto, which is equal to the smallest of: (1) the maximum amount permitted by federal law or regulation, or (2) the “Total FTA Amount Awarded and Obligated,” as stated in the Underlying Agreement. FTA’s responsibility to provide federal assistance is limited to the amounts listed in the most recent Award Budget identified in the Underlying Agreement and may not exceed the federal share of the actual eligible expenses incurred for participation in the Award.
- (b) *Basis of Federal Assistance.* The Recipient agrees that the “Total FTA Amount Awarded and Obligated” stated in the Underlying Agreement and modified by any Amendments thereto is calculated based on the Net Project Cost or on another basis as set forth below:
 - (1) “*Net Project Cost.*” The Recipient agrees that if federal law or regulation requires an Underlying Agreement to be financed based on its “Net Project Cost,” as defined in 49 U.S.C. § 5302:
 - (i) FTA will provide federal assistance for a percentage of the portion of the “Total Award Budget” that the Recipient cannot reasonably finance from its revenues, which is the “Net Project Cost;”
 - (ii) FTA will use the amount of the “Total Award Budget” stated on the Underlying Agreement to calculate the “Total FTA Amount Awarded and Obligated;” and
 - (iii) In TrAMS, the amount stated as the “Total Award Budget” on the Underlying Agreement is actually the “Net Project Cost,” as defined in 49 U.S.C. § 5302.
 - (2) *Other Basis for FTA Participation.* The Recipient agrees that if federal law or FTA permits an Underlying Agreement to be financed on a basis other than its “Net Project Cost,” as defined in 49 U.S.C. § 5302, or under previous authorizing legislation:

- (i) FTA will provide federal assistance for all or part of the cost of the Underlying Agreement that is eligible for federal assistance;
 - (ii) In some instances, FTA has discretion to determine the amount of federal assistance to provide for each specific Project or related activities; and
 - (iii) FTA will use the amount stated in the Underlying Agreement as the “Total Award Budget” to calculate the “Total FTA Amount Awarded and Obligated.”
- (c) *Award Budget.* The Recipient agrees to prepare an Award Budget that, after FTA has provided its approval, will be incorporated by reference and made part of the Underlying Agreement.
- (1) *Restrictions.* The Recipient agrees that it will not incur costs eligible for FTA participation under the Award or withdraw federal assistance for eligible costs incurred unless those costs are consistent with the Award Budget.
 - (2) *Amendments to the Award Budget.* To the extent specified in applicable FTA program management guidance, the Recipient agrees that it must obtain prior FTA approval in writing before amending its Award Budget or transferring federal assistance for the Award if the transfer is not expressly authorized by federal law, regulation, or guidance. An Award of additional federal assistance will require an amended Award Budget.
 - (3) *Revisions to the Award Budget.* To the extent specified in applicable FTA program management guidance, the Recipient may revise the Award Budget without prior FTA written approval. The Recipient agrees that all other Award Budget revisions will require prior FTA approval in writing.
 - (4) *Unexpended Federal Assistance.* The Recipient agrees to inform FTA promptly if it believes it will have unexpended federal assistance after the period of performance for the Award ends.

Section 6. Non-Federal Share.

- (a) *Amount.* The Recipient agrees to provide the amount of non-federal share specified in the Underlying Agreement. Except to the extent that FTA has provided its written consent permitting the Recipient to defer payment of the non-federal share required by the Underlying Agreement, the Recipient agrees to provide its proportionate amount of the non-federal share no later than the time it draws down the federal share to pay eligible costs.

- (b) *Duty to Obtain.* The Recipient agrees to complete all proceedings necessary to provide the non-federal share and to notify FTA of any changed circumstances adversely affecting its ability to pay the non-federal share, including a description of the actions it has taken or will take to ensure adequate resources to provide the non-federal share, and a re-affirmation of its commitment to provide the non-federal share.
- (c) *Permissible Sources.* The Recipient agrees that the following are permissible sources of the non-federal share for the Award:
 - (1) Undistributed cash surpluses;
 - (2) A replacement or depreciation cash fund or reserve; and
 - (3) New capital.
- (d) *Restricted Sources.* Because sources of non-federal share differ among FTA's public transportation assistance programs, FTA will specify in an FTA circular or otherwise whether the following sources may be used as the non-federal share for a specific Award under that program:
 - (1) Program income generated by a Project or related activities supported by a prior Grant or Cooperative Agreement, which is a form of undistributed cash surplus;
 - (2) Advertising revenues;
 - (3) Concession revenues;
 - (4) Revenues from a service agreement from a state or local social service agency or a private social service organization;
 - (5) Third party in-kind contributions;
 - (6) Proceeds from the issuance of revenue bonds pursuant 49 U.S.C. § 5323(e);
 - (7) Transportation development credits (formerly toll revenue credits) pursuant to 23 U.S.C. § 120(i);
 - (8) Revenue from Value Capture pursuant to 49 U.S.C. § 5323(s);
 - (9) Federal assistance made available for the Federal Lands Highway Program authorized under 23 U.S.C. § 204; or

- (10) Federal assistance derived from other federal programs whose enabling laws permit their funds to be used as the non-federal share.
- (e) *Prohibited Sources.* Except as permitted by federal laws, regulations, requirements, or guidance, or approved in writing by FTA, the Recipient agrees that it will not provide any non-federal share for the Underlying Agreement derived from:
 - (1) Farebox revenues from providing public transportation services using facilities and equipment acquired with federal assistance for the Award;
 - (2) Program income derived from the use of facilities or equipment acquired with federal assistance for the Award, except if expressly permitted by federal laws, regulations, requirements, or FTA guidance; or
 - (3) Other federal funds not authorized for use as non-federal share by federal law, regulation, requirements, or guidance.
- (f) *Reductions or Refunds.*
 - (1) *Reductions.* The Recipient agrees that if it reduces the non-federal share of eligible costs required for the Award, then at the same time it must reduce the proportionate amount of federal assistance for the Award.
 - (2) *Refunds.* The Recipient agrees that if it accepts a refund of the non-federal share of eligible costs provided through the Underlying Agreement, then at the same time it must provide the Federal Government an amount of that refund proportionate to the federal contribution.

Section 7. Payments to the Recipient.

- (a) *Conditions for Accessing Federal Assistance.* To seek or obtain federal assistance for the costs of implementing the Award, the Recipient agrees that:
 - (1) It must execute the Underlying Agreement and any Amendments thereto;
 - (2) It must receive and file a properly signed document seeking payment for the expense, such as a voucher or other appropriate record, and a properly detailed description of the relationship of the expense to the Award;
 - (3) It must identify all sources of federal assistance from which the payment is derived;
 - (4) It must provide FTA with all financial and progress reports required to date; and

- (5) If the Recipient must provide a non-federal share, unless FTA has stated otherwise in writing that the Recipient may defer the non-federal share:
 - (i) The Recipient will not request or obtain more federal assistance than justified by the eligible non-federal share it has provided;
 - (ii) The Recipient will not cause the proportion of federal assistance available for the Award at any time to exceed the percentage of federal assistance authorized and documented in the Underlying Agreement; and
 - (iii) When combined with federal payments, the Recipient will be able to demonstrate that the non-federal share will be adequate to cover all eligible costs incurred in support of the Award.

- (b) *Eligible Costs.* Except as the Federal Government determines otherwise in writing, the Recipient agrees, and will obtain the agreement of each Subrecipient, to seek and obtain federal assistance only for the eligible costs of the Award that are:
 - (1) Consistent with the Description of Each Project, the Award Budget, this Master Agreement, and the Underlying Agreement and any Amendments thereto;
 - (2) Necessary to carry out the Award;
 - (3) Reasonable for the property or services acquired for use in the Project;
 - (4) The actual net costs, which consist of the price paid minus reductions of the costs incurred, such as any refunds, rebates, or other items of value, but excluding program income;
 - (5) Incurred for work performed after the Effective Date of the:
 - (i) Award;
 - (ii) Pre-award authority that FTA has provided; or
 - (iii) Letter of No Prejudice;
 - (6) Satisfactorily documented;
 - (7) Consistent with federally approved accounting principles and procedures, including requirements for indirect costs, consistent with the applicable U.S. DOT Common Rules; and

- (8) Consistent with applicable U.S. DOT Common Rules and other applicable federal law, regulations, requirements, and guidance.
- (c) *Ineligible Costs.* The Recipient agrees that, except as the Federal Government determines otherwise in writing, FTA will exclude ineligible costs incurred in connection with the Award or otherwise, such as:
- (1) A cost the Recipient has incurred before the Effective Date of the Award as documented in the Underlying Agreement or any Amendments thereto that is not accompanied by FTA's written approval, including, but not limited to, pre-award authority or a Letter of No Prejudice, and permitted by applicable federal law, regulation, guidance, or the Underlying Agreement or any Amendments thereto;
 - (2) A cost not included in the most recent Award Budget;
 - (3) A cost for property or services received in connection with any third party agreement lacking any FTA approval or concurrence in writing that is required;
 - (4) An ordinary governmental or operating cost not applicable to the Award, as prohibited by 49 U.S.C. § 5323(h)(1);
 - (5) A profit or fee for services provided by the Recipient or any of its Subrecipients in implementing the Award; or
 - (6) A cost that is ineligible for FTA participation as provided in applicable federal law, regulation, requirement, or guidance.
- (d) *Bond Interest and Other Financing Costs – Limited Eligibility.* The Recipient agrees that bond interest and other financing costs are allowable costs to the extent permitted by applicable federal law, regulation, requirement, or guidance. FTA's share of interest and financing costs that implement the Award will be limited to an amount that does not exceed the most favorable financing terms reasonably available at the time of borrowing, except as the Federal Government determines otherwise in writing.
- (e) *Payment Procedures Based on the Type of Federal Assistance Awarded.* The Recipient agrees that:
- (1) All payments in connection with the Award will be made through electronic methods.
 - (2) Payment procedures for a Recipient differ based upon the type of federal assistance that is awarded.

- (3) FTA determines which electronic system it will use to make payments to the Recipient as follows:
- (i) For Grants and other types of federal assistance, FTA will use the Electronic Clearinghouse Operation Web System (ECHO-Web), Automated Clearing House (ACH) payment method, except as provided below in sections 7(e)(3)(ii) and (iii) of this Master Agreement;
 - (ii) For Cooperative Agreements, FTA will use the DELPHI eInvoicing System or DELPHI Mark View System if the Recipient is granted a waiver (see the following section 7(g) of this Master Agreement for more information about payments for cooperative agreements and section 7(g) of this Master Agreement for information about accessing and using the DELPHI eInvoicing System); and
 - (iii) For Grants requiring more detailed review of supporting documentation before receiving federal assistance and as determined by the FTA Manager for the Underlying Agreement, FTA will use the DELPHI eInvoicing System (see the following section 7(g) of this Master Agreement for more information about accessing and using the DELPHI eInvoicing System).
- (f) *Payment Procedures Using ECHO.* The Recipient agrees that if payment is made through ECHO-Web using an ECHO Control Number, it will comply with the “FTA ECHO-Web User Manual,” April 2016, and it will withdraw federal assistance only to pay the eligible costs of implementing the Award.
- (1) *Major Withdrawals.* When a single withdrawal will exceed \$50,000,000, the Recipient agrees to notify the appropriate FTA Regional or Program Office at least three (3) days before the withdrawal is anticipated.
 - (2) *Immediate Use.* The Recipient agrees that it will not withdraw federal assistance until needed for immediate payment of those expenses and will use that federal assistance to pay for expenses that implement the Award no later than three (3) days after receipt, except as an authorized official of the Federal Government permits otherwise in writing.
 - (3) *Limits.* The Recipient agrees that it will not withdraw more than the sum of federal assistance the Federal Government has awarded or the current available balance for its Award, the accompanying Underlying Agreement, and any Amendments thereto, whichever is less.

- (4) *Control.* The Recipient agrees to provide for the control and accountability of all federal assistance for its Award, the accompanying Underlying Agreement, and any Amendments thereto.
- (5) *Reporting.* Unless an authorized FTA official determines otherwise in writing, the Recipient agrees to report its cash payments and balances promptly.
- (6) *Penalties.* If the Recipient fails to comply with this section of this Master Agreement, it agrees that it may incur or be subjected to penalties, including, but not limited to, the following:
 - (i) *Access to ECHO-Web.* The Federal Government may revoke or suspend the Recipient's ECHO Control Number and access to the ECHO-Web if the Federal Government determines that:
 - (A) Fraud, waste, mismanagement, or abuse exists in the Recipient's use and application of federal assistance;
 - (B) The Recipient has failed to use federal assistance it withdrew to pay costs incurred that implement the Underlying Agreement within three (3) days of withdrawing that federal assistance;
 - (C) The Recipient has failed to return withdrawn but unspent federal assistance to the Federal Government within a reasonable time;
 - (D) The Recipient has failed to establish procedures to minimize the time between advances of federal assistance and payments of costs incurred that implement the Underlying Agreement;
 - (E) The Recipient has been awarded Federal assistance through a Cooperative Agreement with FTA and will use the eInvoicing or DELPHI Mark View System as its payment method instead of the ECHO-Web System (see section 7(g)); or
 - (F) For Grants requiring a more detailed review of supporting documentation before receiving federal assistance, and as determined by the FTA Manager for the Award, the Recipient will use eInvoicing (see section 7(g)).
 - (ii) *Interest.* The Recipient agrees to pay interest to the Federal Government on any federal assistance withdrawn prematurely,

irrespective of whether the federal assistance has been deposited in an interest-bearing account.

- (A) *A State or State Instrumentality.* If the Recipient is a state or state instrumentality, it agrees to pay interest calculated as provided in section 5(b) of the Cash Management Improvement Act of 1990, as amended, 31 U.S.C. § 6503(b), and U.S. Department of Treasury (U.S. Treasury) regulations, “Rules and Procedures for Efficient Federal-State Funds Transfers,” 31 CFR Part 205.
 - (B) *Other than a State or State Instrumentality.* If the Recipient is not a state or state instrumentality, it agrees to pay prejudgment common law interest determined by the Federal Government, as authorized by joint U.S. Treasury and U.S. Department of Justice (joint U.S. Treasury and U.S. DOJ) regulations, “Standards for the Administrative Collection of Claims,” 31 C.F.R. § 901.9(i). The Federal Government may determine the amount of interest due, based on the amount of interest the Recipient demonstrates it earned on its premature withdrawals of federal assistance, the amount of interest based on the “Treasury tax and loan account” rate prescribed under 31 U.S.C. § 3717 for debts owed to the United States, or an amount of interest as the Federal Government otherwise determines.
- (7) *ECHO System.* If the Recipient is authorized to receive payments provided through ECHO-Web, FTA does not generally review the drawdown when made; however, FTA may review the drawdown at a later time, and subject that drawdown to an audit under a financial oversight review, a triennial review, or another audit.
- (g) *Payment Procedures for a Cooperative Agreement.* A Recipient of federal assistance through a Cooperative Agreement must use the DELPHI eInvoicing System to obtain federal payments for costs incurred that implement the Underlying Agreement, unless a waiver is granted.
- (1) *Standard Procedures.* To make and receive payments through the DELPHI eInvoicing System, the procedures below must be followed:
 - (i) *Access to the DELPHI eInvoicing System.* To access the DELPHI eInvoicing System, the Recipient:

- (A) Must have internet access to register and submit payment requests through the DELPHI eInvoicing System;
 - (B) Should contact its FTA Manager for the Underlying Agreement to obtain the required DELPHI User access form and approval;
 - (C) Must complete the required form that the FAA, Enterprise Service Center's (ESC) Help Desk uses to verify the Recipient's identity, and present it to a Notary Public for verification;
 - (D) Return that form, completed and notarized, to:
DOT Enterprise Services Center
FAA Accounts Payable, AMZ-100
PO Box 25710
Oklahoma City, OK 73125;
and
 - (E) Should contact its FTA Manager for the Underlying Agreement with any changes to its system profile information.
- (ii) *Payment Requests.* The Recipient must submit each payment request electronically through the DELPHI eInvoicing System, unless a waiver is granted; use of the DELPHI eInvoicing System requires the FTA Manager for the Underlying Agreement to review all supporting documentation before authorizing payment.
 - (iii) *Additional Information.* The U.S. DOT DELPHI eInvoicing System website at <http://www.dot.gov/cfo/delphi-einvoicing-system.html> displays additional information, including the access form and training materials a Recipient may need.
 - (iv) *Federal Responsibilities.* When FTA so requests, the Federal Aviation Administration (FAA) will make payments to FTA Recipients electronically. On behalf of FTA, FAA/ESC must process payment requests to a Recipient of federal assistance documented in its Cooperative Agreement with FTA, and will deposit that federal assistance with the Recipient's financial institution (Note: FTA no longer issues paper checks).
- (2) *Waiver Requests.* On a case-by-case basis, U.S. DOT Financial Management officials may waive the requirement for a Recipient to register and use the DELPHI eInvoicing System.

(i) *The Recipient's Responsibilities.* If the Recipient seeks a waiver from the requirement to use the DELPHI eInvoicing System:

(A) It must notify U.S. DOT and FTA by downloading the waiver request form, which can be obtained on the U.S. DOT eInvoicing website at <http://www.dot.gov/cfo/delphi-einvoicing-system.html>, and notifying its FTA Manager for the Underlying Agreement that it has requested a waiver from using the DELPHI eInvoicing System;

(B) It must send its waiver request to the Director of the Office of Financial Management, U.S. Department of Transportation, Office of the Secretary (OST), Office of Financial Management, B-30, 1200 New Jersey Avenue SE, Washington DC 20590-0001
DOTElectronicInvoicing@dot.gov; and

(C) If it obtains a waiver from the use of the DELPHI eInvoicing System, then payment will be made using the DELPHI Mark View System, and the Recipient should submit all invoices and any supporting documentation directly to:

a. FTAINVOICES@FAA.GOV (Note: no more than 10 MB of data can be transmitted at one time. For invoices greater than 10MB, split into multiple emails and notate in the subject Email 1 of 4, 2 of 4, etc.); or

b. DOT/FAA (FTA Account)
6500 South MacArthur Blvd.
AMZ-150, HQ Room 272
PO Box 26904
Oklahoma City, OK 73125-69041

(ii) *Federal Responsibilities.* FTA and U.S. DOT have the following responsibilities:

(A) The Director, OST, Office of Financial Management, will confirm or deny the waiver request within approximately 30 days.

(B) If the request is granted, then payments will be made after receipt of the required FTA reporting forms, provided the Recipient has complied with the U.S. DOT Common Rules and this Master Agreement.

- (iii) *DELPHI eInvoicing System or DELPHI Mark View System.* If the Recipient receives payments provided through the DELPHI eInvoicing System or DELPHI Mark View System, the Recipient must submit a request for payment with adequate supporting documentation for FTA to determine that:
 - (A) It has complied and is complying with the Underlying Agreement;
 - (B) It has made and is making adequate progress toward completion of the Award; and
 - (C) It has satisfied FTA that the federal assistance requested is needed for the eligible purposes of the Award in that requisition period.
 - (iv) *Reimbursement.* After it has demonstrated satisfactory compliance with this section, FTA may reimburse the federal share of the Recipient's apparent allowable costs incurred or to be incurred in the requisition period if those apparent allowable costs are consistent with the Award Budget, and those apparent allowable costs do not exceed the maximum amount of federal assistance that may be paid through the federal fiscal year of that requisition.
- (h) *Safeguarding Federal Assistance.* The Recipient agrees to deposit all federal assistance it receives in a financial institution and in an insured account whenever possible, and understands that FTA encourages it to use financial institutions owned at least fifty (50) percent by minority group members.
- (i) *The Recipient's Duty to Pay Eligible Costs.* When accompanied by appropriate documentation, the Recipient agrees to pay the eligible costs incurred that implement the Award when due, using the available federal assistance provided for the Award and the non- federal share.
- (j) *Effect of Federal Payments.* The Recipient agrees that any federal payment made for a cost incurred that is supported by its Underlying Agreement does not constitute the Federal Government's final decision about the eligibility of the cost for payment with federal assistance provided through the Underlying Agreement, or a waiver of any violation of any federal law, regulation, requirement, guidance, the Underlying Agreement or this Master Agreement.
- (k) *Revocation of Federal Assistance.* The Federal Government may revoke the unexpended portion of federal assistance for the Award after the Award has been made and executed.

- (l) *Final Cost Determination.* The Recipient acknowledges that the Federal Government will not make a final determination about the eligibility of any cost until the audit of the Award and Underlying Agreement has been completed.
- (m) *Closeout.* The Recipient agrees that closeout of the Award will not alter:
 - (1) The Recipient's obligation to return any amounts it owes the Federal Government for later refunds, corrections, or other similar actions; and
 - (2) The Federal Government's right to disallow costs and recover federal assistance based on a later audit or other review.
- (n) *Notification.* If the Federal Government determines that the Recipient is not entitled to any portion of federal assistance paid, the Federal Government will notify the Recipient in writing.
- (o) *Recovery of Improper Payments.* Unless prohibited by federal law or regulation, the Federal Government may recover any federal assistance necessary to satisfy any outstanding monetary claims it may have against the Recipient.
- (p) *Program Income.* The Recipient agrees that it may use its program income derived from a Project receiving federal assistance through the Underlying Agreement as FTA permits. In determining the total amount of program income a Recipient has earned from its Project, those costs incident to earning program income that have not been charged to the Award may be deducted from the Recipient's gross income.
 - (1) *During the Period of Performance.* The Recipient may use program income earned during the period of performance of the Underlying Agreement as follows:
 - (i) The Recipient may retain the income for other capital or operating public transportation expenses. If the Recipient chooses not to use program income for current or future FTA Grants or Cooperative Agreements or for other purposes ineligible for federal participation, then the amount of program income used for purposes ineligible for federal participation will be deducted from the total allowable costs to determine the net allowable costs.
 - (ii) For each Public Transportation Innovation, Technical Assistance, Workforce Development Project or Enhanced Mobility of Seniors and Individuals with Disabilities project, or related activities, the Recipient may add program income to the Award.

- (iii) Depending on federal statutory or regulatory restrictions, the Recipient may use the program income for the non-federal share for a future public transportation Project that will receive federal assistance provided by FTA.
- (2) *After the Award Period.* Except as FTA determines otherwise in writing, the Recipient has no obligation to the Federal Government regarding the disposition of program income earned after the end of the period of performance of the Award (i.e., after the ending date of the final Federal Financial Report).
- (q) *Profits.* The Recipient and Subrecipient may earn or keep the profits it may derive as a result of an Award, but the Recipient agrees that any such profits must be used in a manner consistent with the provisions of this Master Agreement or applicable federal guidance.
- (r) *Excess Payments, Disallowed Costs, Refunds, Claims, Debts, Interest, Penalties, Administrative Charges, and Other Amounts Owed to the Federal Government.*
- (1) *The Recipient's Responsibility to Pay.* The Recipient agrees that after receiving notice of specific amounts due, it will pay the amount it owes the Federal Government for:
- (i) Excess federal payments for disallowed costs;
 - (ii) Refunds due and amounts recovered from third parties or other sources;
 - (iii) Federal claims or debts;
 - (iv) Interest assessed;
 - (v) Penalties;
 - (vi) Administrative charges; or
 - (vii) Other amounts it owes the Federal Government.
- (2) *Amount of Interest Due.* The amount of interest to be assessed depends on the procedures used to pursue payment:
- (i) *The Debt Collection Act.* When the Federal Government uses the procedures of the Debt Collection Act of 1982, as amended, 31 U.S.C. § 3701, et seq., to collect claims or debts owed by the Recipient for any reason authorized under that Act (including excess

payments and disallowed costs), the Recipient agrees that the amount of interest it will owe will be determined by the Joint U.S. Treasury and U.S. DOJ regulations, “Standards for the Administrative Collection of Claims,” 31 CFR Part 900, specifically 31 C.F.R. § 901.9(a) – (g), or common law interest authorized by 31 C.F.R. § 901.9(i), as the Federal Government determines.

- (ii) *Other Collection Processes.* When the Federal Government uses methods or procedures other than those described in 31 U.S.C. § 3701, et seq., to recover money(ies) the Recipient owes the Federal Government, the Recipient agrees that common law interest will be due as authorized by Joint U.S. Treasury and U.S. DOJ regulations, “Standards for the Administrative Collection of Claims,” 31 C.F.R. § 901.9(i), but interest for premature withdrawals of federal assistance by states or state instrumentalities will be calculated as required under Section 5(b) of the Cash Management Improvement Act of 1990, as amended, 31 U.S.C. § 6503(b), and U.S. Treasury regulations, “Rules and Procedures for Efficient Federal-State Funds Transfers,” 31 CFR Part 205.

- (s) *De-obligation of Federal Assistance.* The Recipient agrees that the Federal Government may de-obligate federal assistance the Recipient has not spent both before and after closeout of the Award.

Section 8. Records and Reports Related to the Award and the Underlying Agreement.

- (a) *Records.* The Recipient agrees to maintain satisfactory records of each Project and activities related in whole or in part to its Award, the accompanying Underlying Agreement, and any Amendments thereto to the extent FTA requires, including, but not limited to:
 - (1) *Financial Records.* Accurate financial records in its account for its Award, the accompanying Underlying Agreement, and any Amendments thereto, including, but not limited to, records of:
 - (i) *Assets Received that Implement the Award.* The amount of all assets it receives to implement its Award, the accompanying Underlying Agreement, and any Amendments thereto including, but not limited to all federal assistance or the value of any property the Federal Government provides that implement its Award, the accompanying Underlying Agreement, and any Amendments thereto, and all other funds and the value of any property or services it has received from sources other than the Federal Government provided for, accruing to,

or otherwise received on account of its Award, the accompanying Underlying Agreement, and any Amendments thereto.

- (ii) *Costs Incurred that Implement the Award.* Information about the costs incurred to implement its Award, the accompanying Underlying Agreement, and any Amendments thereto, including all costs incurred for the eligible property or services, detailed descriptions of the type of property or services acquired, including, but not limited, to properly executed payrolls, time records, invoices, contracts, vouchers, and other appropriate records, and detailed justifications for those costs.
 - (iii) *Program Income.* All program income derived from the use of Project property, except income FTA determines to be exempt from federal program income record requirements.
- (2) *Other Records Needed for Reports Related to the Award.* Sufficient records as needed to prepare adequate reports related to the Award that it must submit to the Federal Government.
 - (3) *Formats.* Formats for records must be satisfactory to FTA and include, but are not limited to, electronic records, including any emails related to the Award, records on paper, and records created in other formats.
 - (4) *Availability of Records Related to the Award.* Accessibility for review and separation from other records not related to the Award to the extent feasible must be maintained.
- (b) *Reports.* The Recipient agrees to provide to FTA, and others if FTA so directs, all reports related in whole or in part required by applicable federal laws, regulations, requirements, the Underlying Agreement, or at FTA's express direction in the number and format as FTA specifies.
 - (c) *National Transit Database.* For each fiscal year the Recipient receives or provides to any public transportation operator federal assistance appropriated or made available for 49 U.S.C. § 5307 (including the Passenger Ferry Grant Program) or any provision of 49 U.S.C. § 5311 (including the Tribal Transit Program):
 - (1) *Reporting Requirements.* The Recipient agrees to, and assures that it will require any person that receives benefits directly from its Award (including the public transportation operators participating in its Award), the accompanying Underlying Agreement, and any Amendments thereto:

- (i) To facilitate compliance with 49 U.S.C. § 5335(a), which authorizes the National Transit Database (NTD);
 - (ii) To conform to the NTD reporting system and the Uniform System of Accounts and Records;
 - (iii) To comply with FTA regulations, “Uniform System of Accounts and Records and Reporting System,” 49 CFR Part 630;
 - (iv) To report when required to the National Transit Database in accordance with FTA regulation 49 CFR Part 630, “National Transit Database,” and applicable FTA instructions—
 - (A) Any information relating to a transit asset inventory or condition assessment conducted by the Recipient;
 - (B) Any data on assaults on transit workers of the Recipient;
 - (C) Any data on fatalities that result from an impact with a bus; and
 - (D) Such other information as FTA may require; and
 - (v) To comply with any other applicable reporting regulations, and requirements, and
 - (vi) To follow FTA guidance.
- (2) *Voluntary Compliance.* FTA encourages any Recipient that is not required to provide information for the NTD, to provide that information voluntarily.
- (d) *U.S. OMB Special Reporting Requirements.*
- (1) *Authority.* U.S. OMB has issued regulatory guidance in 2 C.F.R. § 25.220 instructing federal agencies to include special “award terms” as authorized under federal laws, including:
 - (i) The Federal Funding Accountability and Transparency Act of 2006 (FFATA), Public Law No. 109-282, September 26, 2006;
 - (ii) Section 6202 of the Department of Defense Appropriations Act for Fiscal Year 2008, Public Law No. 110-252, June 30, 2008, which amended the FFATA; and

- (iii) Section 872 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009, Public Law No. 110-417, October 14, 2008, which further amended the FFATA.
- (2) *Universal Identifier and System for Award Management (SAM)*. The Recipient agrees to comply with the award terms in U.S. OMB regulatory guidance, “Universal Identifier and System for Award Management (SAM),” 2 CFR Part 25, appendix A, which FTA has included in this Master Agreement at the direction of U.S. OMB:
- (i) *Requirements for the System for Award Management (SAM)*. Unless exempted from SAM as provided in 2 C.F.R. § 25.110, the Recipient agrees to:
 - (A) Maintain the currency of its information in SAM until the later of the date it submits its final financial report required under this Master Agreement, or the date it receives its final federal payment for the Underlying Agreement; and
 - (B) Review and update its information in SAM at least annually after the initial registration, and more frequently if required by changes in its information, another provision of an applicable federal or federally assisted agreement, or an applicable federal law or regulation, or U.S. OMB regulatory guidance.
 - (ii) *Requirement for a Unique Entity Identifier [Currently, the Data Universal Numbering System (DUNS) Number for SAM]*. If the Award includes federal assistance intended to support subawards, the Recipient agrees to notify each potential Subrecipient and other entity participating in the Award that:
 - (A) The potential Subrecipient or entity must provide its unique entity identifier for SAM [currently, its DUNS number] to the Recipient;
 - (B) The Recipient may not make any subaward to any potential Subrecipient or entity unless that Subrecipient or entity has provided its unique entity identifier for SAM [currently, its DUNS number] to the Recipient; and
 - (C) No Subrecipient or entity, as described below in section 8(d)(4) of this Master Agreement, may receive a subaward provided through the Underlying Agreement, unless that

entity has provided its unique entity identifier for SAM [currently, its DUNS number] to the Recipient.

- (3) *Reporting Subawards and Executive Compensation.* The Recipient agrees to comply with the award terms in U.S. OMB regulatory guidance, “Reporting Subaward and Executive Compensation Information,” 2 CFR Part 170, appendix A, which FTA has included in this Master Agreement at the direction of U.S. OMB.
- (4) *Reporting of First-Tier Subawards.* The Recipient agrees that when it takes an action that obligates \$25,000 or more in federal assistance for a subaward, it must report each such action as provided below, but it need not report an obligation of \$25,000 or more in federal assistance, if the Recipient is exempt from U.S. OMB’s Special Reporting Requirements as provided below.
 - (i) *Where and when to report.* The Recipient agrees to report each obligating action described below to <http://www.fsrc.gov>, and the Recipient agrees to report subaward information no later than the end of the month after the month in which the obligation was made, (*for example, if the obligation was made on October 1, 2015, the obligation must be reported by no later than November 1, 2015*).
 - (ii) *What to report.* The Recipient agrees to report the requisite information about each obligating action required by the submission instructions posted at <http://www.usaspending.gov>.
 - (iii) *Reporting Total Compensation of the Recipient’s Executives.* The Recipient agrees to report the total compensation for each of its five highest compensated executives for the preceding completed fiscal year if:
 - (A) The total federal assistance authorized to date for the Underlying Agreement is \$25,000 or more; and
 - (B) In its preceding fiscal year, the Recipient:
 - a. Received 80 percent or more of its annual gross revenues from federal assistance subject to the Transparency Act, as defined in 2 C.F.R. § 170.320 (and subawards) and/or federal procurement contracts (and subcontracts);
 - b. Received \$25,000,000 or more in annual gross revenues from federal assistance subject to the

Transparency Act, as defined in 2 C.F.R. § 170.320 (and subawards) and/or federal procurement contracts (and subcontracts); and

- c. The public does not have access to information about the compensation of the Recipient's executives through periodic reports filed under Section 13(a) of the Securities Exchange Act of 1934, 15 U.S.C. § 78m(a), Section 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. § 78o(d), or Section 6104 of the Internal Revenue Code of 1986, 26 U.S.C. § 6104 (to determine if the public has access to the compensation information, see the U.S. Securities and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>).

(C) The Recipient agrees to report executive total compensation described above as part of Recipient's registration profile at <http://www.sam.gov>, and by the end of the month after the month in which the Underlying Agreement is executed and annually thereafter.

(D) Reporting of Total Compensation of the Subrecipient's Executives. Unless exempt as provided below, the Recipient agrees to report the names and total compensation of each of its first-tier Subrecipient's five highest compensated executives for the Subrecipient's preceding completed fiscal year if:

- a. It received 80 percent or more of its annual gross revenues from federal assistance subject to the Transparency Act, as defined in 2 C.F.R. § 170.320 (and subawards) and/or federal procurement contracts (and subcontracts); and
- b. It received \$25,000,000 or more in annual gross revenues from federal assistance subject to the Transparency Act as defined in 2 C.F.R. § 170.320 (and subawards) and/or federal procurement contracts (and subcontracts);
- c. The public does not have access to information about the compensation of the Subrecipient's executives through periodic reports filed under Section 13(a) of

the Securities Exchange Act of 1934, 15 U.S.C. § 78m(a), Section 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. § 78o(d), or Section 6104 of the Internal Revenue Code of 1986, 26 U.S.C. § 6104 (to determine if the public has access to the compensation information, see the U.S. Securities and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>).

- (E) The Recipient agrees to report the Subrecipient's executives' total compensation described above to FTA and elsewhere as may be determined by the Federal Government, and by the end of the month following the month during which the Recipient makes the subaward (for example, if a subaward is obligated on any date during the month of October of a given year, i.e., between October 1 and 31, the Recipient must report any required compensation information about the Subrecipient by November 30 of that year).
- (F) Any Recipient that had gross income under \$300,000 from all sources in the previous tax year is exempt from those federal requirements to report subawards, and the total compensation of the five highest compensated executives of any Subrecipient.

(5) *Recipient Integrity and Performance Matters.* U.S. OMB regulatory guidance, "Recipient Integrity and Performance Matters," 2 CFR Part 200, appendix XII, contains mandatory provisions that may affect the Recipient's reporting requirements.

(e) *Closeout.* The Recipient agrees that closeout of its Award does not alter the record-keeping and reporting requirements of this section of this Master Agreement.

Section 9. Record Retention and Access to Sites of Performance.

- (a) *Types of Records.* The Recipient agrees to retain, and will require its Third Party Participants to retain, complete and readily accessible records related in whole or in part to the Underlying Agreement, including, but not limited to, data, documents, reports, statistics, subagreements, leases, third party contracts, arrangements, other third party agreements of any type, and supporting materials related to those records.
- (b) *Retention Period.* The Recipient agrees to comply with the record retention requirements in the applicable U.S. DOT Common Rule. Records pertaining to its Award, the accompanying Underlying Agreement, and any Amendments thereto

must be retained from the day the Underlying Agreement was signed by the authorized FTA official through the course of the Award, the accompanying Underlying Agreement, and any Amendments thereto until three years after the Recipient has submitted its last or final expenditure report, and other pending matters are closed.

- (c) *Access to Recipient and Third Party Participant Records.* The Recipient agrees, and assures that each Subrecipient, if any, will agree to:
 - (1) Provide, and require its Third Party Participants at each tier to provide, sufficient access to inspect and audit records and information related to its Award, the accompanying Underlying Agreement, and any Amendments thereto to the U.S. Secretary of Transportation or the Secretary's duly authorized representatives, to the Comptroller General of the United States, and the Comptroller General's duly authorized representatives, and to the Recipient and each of its Subrecipients;
 - (2) Permit those individuals listed above to inspect all work and materials related to its Award, and to audit any information related to its Award under the control of the Recipient or Third Party Participant within books, records, accounts, or other locations; and
 - (3) Otherwise comply with 49 U.S.C. § 5325(g), and federal access to records requirements as set forth in the applicable U.S. DOT Common Rules.
- (d) *Access to the Sites of Performance.* The Recipient agrees to permit, and to require its Third Party Participants to permit, FTA to have access to the sites of performance of its Award, the accompanying Underlying Agreement, and any Amendments thereto, and to make site visits as needed in compliance with the U.S. DOT Common Rules.
- (e) *Closeout.* Closeout of the Award does not alter the record retention or access requirements of this section of this Master Agreement.

Section 10. Completion, Audit, Settlement, and Closeout.

- (a) *Completion.* Within one hundred twenty (120) calendar days after completion or termination of the Award, the Recipient agrees to submit; and within ninety (90) calendar days after completion or termination of the Award (or an earlier date as agreed upon by the pass-through entity and subrecipient), the subrecipient agrees to submit to the pass-through entity:
 - (1) Its final Federal Financial Report, either electronically or on Federal Financial Report Standard Form 425 (SF-425);

- (2) A certification of expenses incurred that implement its Award, the accompanying Underlying Agreement, and any Amendments thereto; and
 - (3) The necessary audit reports of its Award, the accompanying Underlying Agreement, and any Amendments thereto.
- (b) *Audit of the Recipient.* Except as the Federal Government determines otherwise in writing, the Recipient agrees that:
- (1) *Audits Required.* It must obtain the following audits:
 - (i) *Annual "Single Audit."* A financial and compliance audit consistent with the requirements of the Single Audit Act Amendments of 1996, 31 U.S.C. § 7501, et seq., and applicable U.S. DOT "Single Audit" requirements of 2 CFR Part 1201, which incorporate by reference 2 CFR Part 200, for each Award, the accompanying Underlying Agreement, and any Amendments to any Underlying Agreement; and
 - (ii) *Other Audits.* Other audits the Federal Government may require.
 - (2) *Auditing Standards.* It must comply with the "Audit Requirements" of 2 CFR Part 200, subpart F, and conform to U.S. Government Accountability Office (U.S. GAO) "Government Auditing Standards" in the conduct of audits of its Award, the accompanying Underlying Agreement, and any Amendments thereto.
 - (3) *Costs of Audits.* The audit costs for the administration and management of the Award, the accompanying Underlying Agreement, and any Amendments to any Underlying Agreement are allowable to the extent authorized by the cost principles of 49 CFR Part 1201, which incorporate by reference 2 CFR Part 200.
- (c) *Amounts Owed to the Federal Government.* The Recipient agrees to return to the Federal Government any excess federal payments it receives for disallowed costs, and the Federal Government's proportionate part of any amounts it recovers from third parties or other sources, including refunds due and amounts recovered from third parties or other sources, interest assessed, penalties, and administrative charges.
- (d) *Closeout.* The Recipient agrees that closeout of the Award occurs when FTA notifies the Recipient that the Award is closed, and approves the final federal payment, or acknowledges receipt of the proper refund. Closeout of the Award does not alter the Recipient's audit responsibilities and does not invalidate any continuing requirements of applicable federal law, regulations, or requirements, this Master Agreement or the Underlying Agreement.

Section 11. Right of the Federal Government to Terminate.

- (a) *Justification.* After providing written notice to the Recipient, the Recipient agrees that the Federal Government may suspend, suspend then terminate, or terminate all or any part of the federal assistance for the Award if:
- (1) The Recipient has failed to make reasonable progress implementing the Award;
 - (2) The Federal Government determines that continuing to provide federal assistance to support the Award does not adequately serve the purposes of the law authorizing the Award; or
 - (3) The Recipient has violated the terms of the Underlying Agreement, especially if that violation would endanger substantial performance of the Underlying Agreement.
- (b) *Financial Implications.* In general, termination of federal assistance for the Award will not invalidate obligations properly incurred before the termination date to the extent that those obligations cannot be canceled. The Federal Government may recover the federal assistance it has provided for the Award, including the federal assistance for obligations properly incurred before the termination date, if it determines that the Recipient has misused its federal assistance by failing to make adequate progress, failing to make appropriate use of the Project property, or failing to comply with the Underlying Agreement, and require the Recipient to refund the entire amount or a lesser amount, as the Federal Government may determine including obligations properly incurred before the termination date.
- (c) *Expiration of the Period of Performance.* Except for a Full Funding Grant Agreement, expiration of any period of performance established for the Award does not, by itself, constitute an expiration or termination of the Award; FTA may extend the period of performance to assure that each Formula Project or related activities and each Project or related activities funded with “no year” funds can receive FTA assistance to the extent FTA deems appropriate.
- (d) *Uniform Administrative Requirements.* These termination rights are in addition to and in no way limit the Federal Government’s rights to terminate described in 2 CFR § 200.340.

Section 12. Civil Rights.

- (a) *Civil Rights Requirements.* The Recipient agrees that it must comply with applicable federal civil rights laws, regulations, and requirements, and follow applicable federal guidance, except as the Federal Government determines otherwise in writing.

Therefore, unless a Recipient or a federal program, including the Indian Tribe Recipient or the Tribal Transit Program, is specifically exempted from a civil rights statute, FTA requires compliance with each civil rights statute, including compliance with equity in service requirements.

- (b) *Nondiscrimination in Federal Public Transportation Programs.* The Recipient agrees to, and assures that it and each Third Party Participant will:
- (1) Prohibit discrimination based on race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or age.
 - (2) Prohibit the:
 - (i) Exclusion from participation in employment or a business opportunity for reasons identified in 49 U.S.C. § 5332;
 - (ii) Denial of program benefits in employment or a business opportunity identified in 49 U.S.C. § 5332; or
 - (iii) Discrimination identified in 49 U.S.C. § 5332, including discrimination in employment or a business opportunity identified in 49 U.S.C. § 5332.
 - (3) Follow:
 - (i) The most recent edition of FTA Circular 4702.1, “Title VI Requirements and Guidelines for Federal Transit Administration Recipients,” to the extent consistent with applicable federal laws, regulations, requirements, and guidance; but
 - (ii) FTA does not require an Indian Tribe to comply with FTA program-specific guidelines for Title VI when administering its Underlying Agreement supported with federal assistance under the Tribal Transit Program.
- (c) *Nondiscrimination – Title VI of the Civil Rights Act.* The Recipient agrees to, and assures that each Third Party Participant will:
- (1) Prohibit discrimination based on race, color, or national origin,
 - (2) Comply with:
 - (i) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d, et seq.;

- (ii) U.S. DOT regulations, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964,” 49 CFR Part 21; and
 - (iii) Federal transit law, specifically 49 U.S.C. § 5332; and
- (3) Follow:
- (i) The most recent edition of FTA Circular 4702.1, “Title VI Requirements and Guidelines for Federal Transit Administration Recipients,” to the extent consistent with applicable federal laws, regulations, requirements, and guidance;
 - (ii) U.S. DOJ, “Guidelines for the enforcement of Title VI, Civil Rights Act of 1964,” 28 C.F.R. § 50.3; and
 - (iii) All other applicable federal guidance that may be issued.
- (d) *Equal Employment Opportunity.*
- (1) *Federal Requirements and Guidance.* The Recipient agrees to, and assures that each Third Party Participant will, prohibit discrimination based on race, color, religion, sex, sexual orientation, gender identity, or national origin, and:
- (i) Comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, et seq.;
 - (ii) Comply with Title I of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §§ 12101, et seq.;
 - (iii) Facilitate compliance with Executive Order No. 11246, “Equal Employment Opportunity” September 24, 1965 (42 U.S.C. § 2000e note), as amended by any later Executive Order that amends or supersedes it in part and is applicable to federal assistance programs;
 - (iv) Comply with federal transit law, specifically 49 U.S.C. § 5332, as provided in section 12 of this Master Agreement;
 - (v) FTA Circular 4704.1 “Equal Employment Opportunity (EEO) Requirements and Guidelines for Federal Transit Administration Recipients;” and
 - (vi) Follow other federal guidance pertaining to EEO laws, regulations, and requirements.

- (2) *Specifics.* The Recipient agrees to, and assures that each Third Party Participant will:
- (i) *Affirmative Action.* If required to do so by U.S. DOT regulations (49 CFR Part 21) or U.S. Department of Labor regulations (41 C.F.R. chapter 60), take affirmative action that includes, but is not limited to:
 - (A) Recruitment advertising, recruitment, and employment;
 - (B) Rates of pay and other forms of compensation;
 - (C) Selection for training, including apprenticeship, and upgrading; and
 - (D) Transfers, demotions, layoffs, and terminations; but
 - (ii) *Indian Tribe.* Recognize that Title VII of the Civil Rights Act of 1964, as amended, exempts Indian Tribes under the definition of “Employer;” and
- (3) *Equal Employment Opportunity Requirements for Construction Activities.* Comply, when undertaking “construction” as recognized by the U.S. Department of Labor (U.S. DOL), with:
- (i) U.S. DOL regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 C.F.R. chapter 60; and
 - (ii) Executive Order No. 11246, “Equal Employment Opportunity in Federal Employment,” September 24, 1965, 42 U.S.C. § 2000e note (30 Fed. Reg. 12319, 12935), as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note.
- (e) *Disadvantaged Business Enterprise.* To the extent authorized by applicable federal laws, regulations, or requirements, the Recipient agrees to facilitate, and assures that each Third Party Participant will facilitate, participation by small business concerns owned and controlled by socially and economically disadvantaged individuals, also referred to as “Disadvantaged Business Enterprises” (DBEs), in the Underlying Agreement as follows:
- (1) *Statutory and Regulatory Requirements.* The Recipient agrees to comply with:
 - (i) Section 11101(e) of IJA;

- (ii) U.S. DOT regulations, “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs,” 49 CFR Part 26; and
 - (iii) Federal transit law, specifically 49 U.S.C. § 5332, as provided in section 12 of this Master Agreement.
- (2) *DBE Program Requirements.* A Recipient that receives planning, capital and/or operating assistance and that will award prime third party contracts exceeding \$250,000 in a federal fiscal year must have a DBE program that is approved by FTA and meets the requirements of 49 CFR Part 26.
- (3) *Special Requirements for a Transit Vehicle Manufacturer (TVM).* The Recipient agrees that:
- (i) *TVM Certification.* Each TVM, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, must certify that it has complied with the requirements of 49 CFR Part 26; and
 - (ii) *Reporting TVM Awards.* Within 30 days of any third party contract award for a transit vehicle purchase, the Recipient must submit to FTA the name of the TVM contractor and the total dollar value of the third party contract using the Transit Vehicle Award Reporting Form on FTA’s website. The Recipient must also submit additional notifications if options are exercised in subsequent years to ensure that the TVM is still in good standing.
- (4) *Assurance.* As required by 49 C.F.R. § 26.13(a):
- (i) *Recipient Assurance.* The Recipient agrees and assures that:
 - (A) It must not discriminate based on race, color, national origin, or sex in the award and performance of any FTA or U.S. DOT-assisted contract, or in the administration of its DBE program or the requirements of 49 CFR Part 26;
 - (B) It must take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of U.S. DOT-assisted contracts;
 - (C) Its DBE program, as required under 49 CFR Part 26 and as approved by U.S. DOT, is incorporated by reference and made part of the Underlying Agreement; and

- (D) Implementation of its DBE program approved by U.S. DOT is a legal obligation and failure to carry out its terms shall be treated as a violation of this Master Agreement.
- (ii) *Subrecipient/Third Party Contractor/Third Party Subcontractor Assurance.* The Recipient agrees and assures that it will include the following assurance in each subagreement and third party contract it signs with a Subrecipient or Third Party Contractor and agrees to obtain the agreement of each of its Subrecipients, Third Party Contractors, and Third Party Subcontractors to include the following assurance in every subagreement and third party contract it signs:
 - (A) The Subrecipient, each Third Party Contractor, and each Third Party Subcontractor must not discriminate based on race, color, national origin, or sex in the award and performance of any FTA or U.S. DOT-assisted subagreement, third party contract, and third party subcontract, as applicable, and the administration of its DBE program or the requirements of 49 CFR Part 26;
 - (B) The Subrecipient, each Third Party Contractor, and each Third Party Subcontractor must take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of U.S. DOT-assisted subagreements, third party contracts, and third party subcontracts, as applicable;
 - (C) Failure by the Subrecipient and any of its Third Party Contractors or Third Party Subcontractors to carry out the requirements of this subparagraph 12.e(4)(ii) is a material breach of this subagreement, third party contract, or third party subcontract, as applicable; and
 - (D) The following remedies, or such other remedy as the Recipient deems appropriate, include, but are not limited to, withholding monthly progress payments, assessing sanctions, liquidated damages, and/or disqualifying the Subrecipient, Third Party Contractor, or Third Party Subcontractor from future bidding as non-responsible.
- (5) *Remedies.* Upon notification to the Recipient of its failure to carry out its approved program, FTA or U.S. DOT may impose sanctions as provided for under 49 CFR Part 26, and, in appropriate cases, refer the matter for

enforcement under either or both 18 U.S.C. § 1001, and/or the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. § 3801, et seq.

- (f) *Nondiscrimination on the Basis of Sex.* The Recipient agrees to comply with federal prohibitions against discrimination based on sex, including:
 - (1) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681, et seq.;
 - (2) U.S. DOT regulations, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” 49 CFR Part 25; and
 - (3) Federal transit law, specifically 49 U.S.C. § 5332.
- (g) *Nondiscrimination on the Basis of Age.* The Recipient agrees to comply with federal prohibitions against discrimination based on age, including:
 - (1) The Age Discrimination in Employment Act, 29 U.S.C. §§ 621 – 634, which prohibits discrimination based on age;
 - (2) U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, “Age Discrimination in Employment Act,” 29 CFR Part 1625;
 - (3) The Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101, et seq., which prohibits discrimination against individuals based on age in the administration of Programs, Projects, and related activities receiving federal assistance;
 - (4) U.S. Health and Human Services regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance,” 45 CFR Part 90; and
 - (5) Federal transit law, specifically 49 U.S.C. § 5332.
- (h) *Nondiscrimination on the Basis of Disability.* The Recipient agrees to comply with the following federal prohibitions against discrimination based on disability:
 - (1) Federal laws, including:
 - (i) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination based on disability in the administration of federally assisted Programs, Projects, or activities;

- (ii) The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101, et seq., which requires that accessible facilities and services be made available to individuals with disabilities:
 - (A) For FTA Recipients generally, Titles I, II, and III of the ADA apply; but
 - (B) For Indian Tribes, Titles II and III of the ADA apply, but Title I of the ADA does not apply because it exempts Indian Tribes from the definition of “employer;”
 - (iii) The Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151, et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities;
 - (iv) Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination; and
 - (v) Other applicable federal laws, regulations, and requirements pertaining to access for seniors or individuals with disabilities.
- (2) Federal regulations and guidance, including:
- (i) U.S. DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 CFR Part 37;
 - (ii) U.S. DOT regulations, “Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,” 49 CFR Part 27;
 - (iii) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S. DOT regulations, “Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 49 CFR Part 38;
 - (iv) U.S. DOT regulations, “Transportation for Individuals with Disabilities: Passenger Vessels,” 49 CFR Part 39;
 - (v) U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability in State and Local Government Services,” 28 CFR Part 35;
 - (vi) U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities,” 28 CFR Part 36;

- (vii) U.S. EEOC, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 CFR Part 1630;
 - (viii) U.S. Federal Communications Commission regulations, “Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities,” 47 CFR Part 64, subpart F;
 - (ix) U.S. ATBCB regulations, “Electronic and Information Technology Accessibility Standards,” 36 CFR Part 1194;
 - (x) FTA regulations, “Transportation for Elderly and Handicapped Persons,” 49 CFR Part 609;
 - (xi) FTA Circular 4710.1, “Americans with Disabilities Act: Guidance;” and
 - (xii) Other applicable federal civil rights and nondiscrimination regulations and guidance.
- (i) *Drug or Alcohol Abuse – Confidentiality and Other Civil Rights Protections.* The Recipient agrees to comply with the confidentiality and civil rights protections of:
- (1) The Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. § 1101, et seq.;
 - (2) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. § 4541, et seq.; and
 - (3) The Public Health Service Act, as amended, 42 U.S.C. §§ 290dd – 290dd-2.
- (j) *Access to Services for Persons with Limited English Proficiency.* The Recipient agrees to promote accessibility of public transportation services to persons with limited understanding of English by following:
- (1) Executive Order No. 13166, “Improving Access to Services for Persons with Limited English Proficiency,” August 11, 2000, 42 U.S.C. § 2000d-1 note, (65 Fed. Reg. 50121); and
 - (2) U.S. DOT Notice, “DOT Policy Guidance Concerning Recipients’ Responsibilities to Limited English Proficiency (LEP) Persons,” 70 Fed. Reg. 74087, December 14, 2005.
- (k) *Other Nondiscrimination Laws, Regulations, Requirements, and Guidance.* The Recipient agrees to comply with other applicable federal nondiscrimination laws,

regulations, and requirements, and follow federal guidance prohibiting discrimination.

- (l) *Remedies.* Remedies for failure to comply with applicable federal Civil Rights laws, regulations, and requirements, and failure to follow guidance may be enforced as provided in those federal laws, regulations, requirements, or guidance.
- (m) *Promoting Free Speech and Religious Liberty.* The recipient shall ensure that Federal funding is expended in full accordance with the U.S. Constitution, Federal Law, and statutory and public policy requirements: including, but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.

Section 13. Planning.

- (a) *Standard Planning Provisions.* The Recipient agrees to the following:
 - (1) *Planning Requirements and Guidance.* To assure that its Underlying Agreement is consistent with the Planning requirements that apply, the Recipient agrees to:
 - (i) Comply with the Metropolitan planning requirements of 49 U.S.C. § 5303, and joint FHWA and FTA regulations, “Planning and Assistance Standards” (for Metropolitan Transportation Planning and Programming), 23 CFR Part 450 and 49 CFR Part 613, to the extent those regulations are consistent with the metropolitan planning requirements of 49 U.S.C. § 5303;
 - (ii) Comply with the statewide and nonmetropolitan planning requirements of 49 U.S.C. § 5304, and joint FHWA and FTA regulations, “Planning and Assistance Standards” (for statewide transportation planning and programming), 23 CFR Part 450 and 49 CFR Part 613, to the extent those regulations are consistent with the state planning requirements of 49 U.S.C. § 5304; and
 - (iii) Follow any guidance FTA issues to implement requirements of 49 U.S.C. §§ 5303 and 5304.
 - (2) *Participation of State or Local Governmental and Private Nonprofit Providers of Nonemergency Transportation.* The Recipient agrees to comply with 49 U.S.C. § 5323(k) by assuring that it will, as feasible:
 - (i) Provide the opportunity to participate and coordinate with the Recipient in the design and the delivery of federally assisted

transportation services, and be included in planning for the Recipient's federally assisted transportation services; and

- (ii) Make that opportunity available to federally-assisted state or local governmental agencies and nonprofit organizations that receive federal assistance for nonemergency transportation, but do not receive federal assistance for nonemergency transportation from U.S. DOT.

(b) *Tribal Transit Program Planning Provisions.* The Indian Tribe agrees that:

(1) *Planning Requirements.* The federal assistance it receives for its Tribal Transit Program will be consistent with its documents, including any formal plan provided to FTA in support of the development and basis of its Award of federal assistance under the Tribal Transit Program, and are or will be coordinated with transportation service funded by other federal sources to the maximum extent feasible.

(2) *Participation of State or Local Governmental and Private Nonprofit Providers of Nonemergency Transportation.* The Recipient agrees to comply with 49 U.S.C. § 5323(k) by assuring that it will, as feasible:

- (i) Provide the opportunity to participate and coordinate with the Recipient in the design and the delivery of federally assisted transportation services, and be included in planning for the Recipient's federally assisted transportation services; and
- (ii) Make that opportunity available to federally-assisted state or local governmental agencies and nonprofit organizations that receive federal assistance for nonemergency transportation, but do not receive federal assistance for nonemergency transportation from U.S. DOT.

Section 14. Private Enterprise.

(a) *Protections.* The Recipient agrees to protect the interests of private enterprise affected by federal public transportation programs by:

- (1) Encouraging private enterprise to participate in the planning of public transportation and programs that provide public transportation, to the extent permitted under 49 U.S.C. § 5306; and
- (2) Providing just compensation for the Project property it acquires, including the franchises of private providers of public transportation, as required under 49 U.S.C. § 5323(a)(1)(C).

- (b) *Infrastructure Investment.* The Recipient agrees to follow the infrastructure investment recommendations of:
 - (1) Executive Order No. 12803, “Infrastructure Privatization,” April 30, 1992, 31 U.S.C. § 501 note (57 Fed. Reg. 19,036); and
 - (2) Executive Order No. 12893, “Principles for Federal Infrastructure Investments,” January 26, 1994, 31 U.S.C. § 501 note (59 Fed. Reg. 4233).
- (c) *Joint Development.* If joint development is involved, the Recipient agrees to follow the latest edition of FTA Circular 7050.1, “Federal Transit Administration Guidance on Joint Development.”

Section 15. Preference for United States Products and Services.

Except as the Federal Government determines otherwise in writing, the Recipient agrees to comply with FTA’s U.S. domestic preference requirements and follow federal guidance, including:

- (a) *Buy America.* The domestic preference procurement requirements of 49 U.S.C. § 5323(j), and FTA regulations, “Buy America Requirements,” 49 CFR Part 661, to the extent consistent with 49 U.S.C. § 5323(j);
- (b) *Cargo Preference–Use of United States-Flag Vessels.* The shipping requirements of 46 U.S.C. § 55305, and U.S. Maritime Administration regulations, “Cargo Preference – U.S.-Flag Vessels,” 46 CFR Part 381; and
- (c) *Fly America.* The air transportation requirements of Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. § 40118, and U.S. General Services Administration (U.S. GSA) regulations, “Use of United States Flag Air Carriers,” 41 C.F.R. §§ 301-10.131 – 301-10.143.
- (d) *Uniform Administrative Requirements.* Compliance with FTA’s Buy America requirements shall be deemed to satisfy 2 CFR § 200.322, “Domestic Preferences for Procurements.”
- (e) *Limitation on Certain Rolling Stock Procurements.* The Recipient will comply with the limitation on certain rolling stock procurements at 49 U.S.C. § 5323(u).

Section 16. Procurement.

- (a) *Federal Laws, Regulations, Requirements, and Guidance.* The Recipient agrees:

- (1) To comply with the requirements of 49 U.S.C. chapter 53 and other applicable federal laws, regulations, and requirements in effect now or later that affect its third party procurements;
 - (2) To comply with the applicable U.S. DOT Common Rules; and
 - (3) To follow the most recent edition and any revisions of FTA Circular 4220.1, “Third Party Contracting Guidance,” to the extent consistent with applicable federal laws, regulations, requirements, and guidance.
- (b) *Full and Open Competition.* The Recipient agrees to conduct all its third party procurements using full and open competition as provided in 49 U.S.C. § 5325(a), and as determined by FTA.
- (c) *Exclusionary or Discriminatory Specifications.* The Recipient agrees that it will not use any federal assistance under 49 U.S.C. chapter 53 for any procurement based on exclusionary or discriminatory specifications, as provided in 49 U.S.C. § 5325(h), unless authorized by other applicable federal laws, regulations, or requirements.
- (d) *Required Clauses in Third Party Contracts.* In addition to other applicable provisions of federal law, regulations, requirements, and guidance, all third party contracts made by the Recipient under the Federal award must contain provisions covering the following, as applicable:
- (1) *Simplified Acquisition Threshold.* Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. § 1908, or otherwise set by law, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. (Note that the simplified acquisition threshold determines the procurement procedures that must be employed pursuant to 2 C.F.R. §§ 200.317–200.327. The simplified acquisition threshold does not exempt a procurement from other eligibility or processes requirements that may apply. For example, Buy America’s eligibility and process requirements apply to any procurement in excess of \$150,000. 49 U.S.C. § 5323(j)(13).)
 - (2) *Termination.* All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-federal entity including the manner by which it will be effected and the basis for settlement.
 - (3) *Equal Employment Opportunity.* Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted

construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. § 60-1.4(b), in accordance with Executive Order No. 11246, “Equal Employment Opportunity,” 42 U.S.C. § 2000e note (30 Fed. Reg. 12319, 12935, 3 C.F.R. 1964–1965 Comp., p. 339), as amended by Executive Order No. 11375, “Amending Executive Order No. 11246 Relating to Equal Employment Opportunity,” (32 Fed. Reg. 14,303) and implementing regulations at 41 CFR Part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

- (4) *Davis-Bacon Act, as amended (40 U.S.C. §§ 3141 – 3148)*. When required by federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. §§ 3141 – 3144, and 3146 – 3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-federal entity must report all suspected or reported violations to the federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of a public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-federal entity must report all suspected or reported violations to the federal awarding agency.
- (5) *Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701 – 3708)*. Where applicable, all contracts awarded by the non-federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. § 3702 of the Act, each contractor must be required to compute the

wages of every mechanic and laborer based on a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

- (6) *Rights to Inventions Made Under a Contract or Agreement.* If the federal award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
- (7) *Clean Air Act (42 U.S.C. §§ 7401 – 7671q.) and the Federal Water Pollution Control Act (33 U.S.C. §§ 1251 – 1388), as amended.* Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401 – 7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251 – 1388). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- (8) *Debarment and Suspension (Executive Orders 12549 and 12689).* A covered transaction (see 2 C.F.R. §§ 180.220 and 1200.220) must not be entered into with any party listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. 180 that implement Executive Orders 12549 (31 U.S.C. § 6101 note, 51 Fed. Reg. 6370,) and 12689 (31 U.S.C. § 6101 note, 54 Fed. Reg. 34131), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. The Recipient agrees to include, and require each

Third Party Participant to include, a similar provision in each lower tier covered transaction, ensuring that each lower tier Third Party Participant:

- (i) Complies with federal debarment and suspension requirements; and
 - (ii) Reviews the SAM at <https://www.sam.gov>, if necessary to comply with U.S. DOT regulations, 2 CFR Part 1200.
- (9) *Restrictions on Lobbying (31 U.S.C. § 1352)*. Contractors that apply or bid for an award exceeding \$100,000 must file the certification required by 49 CFR Part 20. Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. § 1352. Each tier must also disclose any lobbying with non-federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-federal award.
- (10) *Solid Wastes*. A Recipient that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- (e) *Geographic Restrictions*. The Recipient agrees that it will not use any state or local geographic preference, except as permitted by federal law (for example, Section 25019 of the Infrastructure Investment and Jobs Act of 2021, Pub. L. 117-58), regulation, requirement, or guidance.
- (f) *In-State Bus Dealer Restrictions*. The Recipient agrees that any state law requiring buses to be purchased through in-state dealers will not apply to purchases of vehicles supported with federal assistance appropriated or made available for 49 U.S.C. chapter 53, as provided in 49 U.S.C. § 5325(i).

- (g) *Organizational Conflict of Interest.* The Recipient agrees that it will not enter into a procurement that involves a real or apparent organizational conflict of interest.
- (h) *Project Labor Agreements.* As a condition of a third party contract award, the Recipient may require the Third Party Contractor or Subcontractor to have an affiliation with a labor organization, such as a Project Labor Agreement, consistent with Executive Order No. 13502, “Use of Project Labor Agreements for Federal Construction Projects,” February 6, 2009 (74 Fed. Reg. 6985).
- (i) *Force Account.* The Recipient agrees that FTA may determine the extent to which Federal assistance may be used to participate in force account costs.
- (j) *FTA Technical Review.* The Recipient agrees that FTA may review and approve the Recipient’s technical specifications and requirements to the extent FTA believes necessary to ensure proper administration of the Underlying Agreement.
- (k) *Relationship of the Award to Third Party Contract Approval.* The Recipient agrees that the terms of the Underlying Agreement do not, by themselves, constitute approval of any non- competitive third party contract associated with the Award, unless FTA indicates otherwise in writing.
- (l) *National Intelligent Transportation Systems Architecture and Standards.* The Recipient agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture requirements of 23 U.S.C. § 517(d), unless it obtains an exemption from those requirements, and to follow FTA Notice, “FTA National ITS Architecture Policy on Transit Projects,” 66 Fed. Reg. 1455, January 8, 2001, and all other applicable federal guidance.
- (m) *Rolling Stock.* The Recipient agrees that any procurement for rolling stock will comply with 49 U.S.C. § 5325 (Contract Requirements), 49 U.S.C. § 5323(j) (Buy America Requirements), 49 U.S.C. § 5323(m) (Pre-Award and Post Delivery Requirements), and 49 U.S.C. § 5318(e) (Bus Testing Requirements), 49 U.S.C. § 5323(u) (limitation on certain rolling stock procurements), and their implementing regulations.
- (n) *Bonding.* The Recipient agrees to comply with the following bonding requirements and restrictions as provided in federal regulations and guidance:
 - (1) *Construction.* As provided in federal regulations and modified by FTA guidance, for each Project or related activities implementing the Underlying Agreement that involve construction, it will provide bid guarantee bonds, contract performance bonds, and payment bonds.

- (2) *Activities Not Involving Construction.* For each Project or related activities implementing the Underlying Agreement not involving construction, the Recipient will not impose excessive bonding and will follow FTA guidance.
- (o) *Architectural Engineering and Related Services.* When procuring architectural engineering or related services supported with federal assistance appropriated or made available for 49 U.S.C. chapter 53 or provided in any other law requiring the Award to be administered under 49 U.S.C. chapter 53, the Recipient agrees to comply and assures that each of its Subrecipients will comply with 49 U.S.C. § 5325(b).
- (p) *Design-Build Projects.* As provided in 49 U.S.C. § 5325(d), the Recipient may use a design-build procurement to carry out its Design-Build Project, provided that it complies with applicable federal laws, regulations, and requirements, and follows federal guidance.
- (q) *Award to Other than the Lowest Bidder.* As permitted under 49 U.S.C. § 5325(c), the Recipient may award a third party contract to other than the lowest bidder, if that award furthers an objective (for example, improved long-term operating efficiency and lower long-term costs) consistent with the purposes of 49 U.S.C. chapter 53 and any implementing federal regulations, requirements, or guidance that FTA may issue.
- (r) *Award to Responsible Third Party Contractors.* The Recipient agrees to award third party contracts only to contractors able to carry out the procurement successfully, as provided in 49 U.S.C. § 5325(j), and before awarding a third party contract, it will consider the proposed contractor's integrity, compliance with public policy, past performance, and financial and technical resources.
- (s) *Access to Third Party Contract Records.* The Recipient agrees to require, and assures that each of its Subrecipients will require, its Third Party Contractors at each tier to provide:
- (1) The U.S. Secretary of Transportation and the Comptroller General of the United States, the state, or their duly authorized representatives, access to all third party contract records (at any tier) as required under 49 U.S.C. § 5325(g); and
 - (2) Sufficient access to all third party contract records (at any tier) as needed for compliance with applicable federal laws, regulations, and requirements or to assure proper management of Underlying Agreement as determined by FTA.
- (t) *Electronic and Information Technology.* The Recipient agrees that reports or information it provides to or on behalf of the Federal Government will use electronic

or information technology that complies with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794d, and U.S. ATBCB regulations, “Electronic and Information Technology Accessibility Standards,” 36 CFR Part 1194.

- (u) *Veterans Preference.* As provided in 49 U.S.C. § 5325(k), to the extent practicable, the Recipient agrees and assures that each of its Subrecipients:
 - (1) Will give a hiring preference to veterans, as defined in 5 U.S.C. § 2108, who have the skills and abilities required to perform construction work required under a third party contract in connection with a Capital Project supported with federal assistance appropriated or made available for 49 U.S.C. chapter 53; and
 - (2) Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.
- (v) *Acquisition by Lease.* The Recipient agrees that if it intends to acquire Project property through a lease it will comply, as applicable, with 49 U.S.C. chapter 53 and section 3019 of the FAST Act.
- (w) *Bid Protests.* The Recipient agrees to provide FTA, as part of the annual or quarterly Milestone Progress Report, with a list of all bid protests and appeals for solicitations or contracts in excess of \$500,000. The Recipient also should be mindful of the requirement in Section 39, Disputes, that the Recipient must promptly notify the FTA Chief Counsel, or FTA Regional Counsel for the Region in which the Recipient is located, of significant current or prospective legal matters that may affect the Federal Government.

Section 17. Patent Rights.

- (a) *General.* The Recipient agrees that:
 - (1) Depending on the nature of the Underlying Agreement, the Federal Government may acquire patent rights when the Recipient or Third Party Participant produces a patented or patentable invention, improvement, or discovery;
 - (2) The Federal Government’s rights arise when the patent or patentable information is conceived or reduced to practice with federal assistance provided through the Underlying Agreement; or

- (3) When a patent is issued or patented information becomes available as described in the preceding section 17(a)(2) of this Master Agreement, the Recipient will notify FTA immediately and provide a detailed report satisfactory to FTA.
- (b) *Federal Rights.* The Recipient agrees that:
- (1) Its rights and responsibilities and each Third Party Participant's rights and responsibilities in that federally assisted invention, improvement, or discovery will be determined as provided in applicable federal laws, regulations, requirements, and guidance, including any waiver thereof; and
 - (2) Unless the Federal Government determines otherwise in writing, irrespective of its status or the status of any Third Party Participant as a large business, small business, state government, state instrumentality, local government, Indian tribe, nonprofit organization, institution of higher education, or individual, the Recipient will transmit the Federal Government's patent rights to FTA, as specified in 35 U.S.C. § 200, et seq., and U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR Part 401.
- (c) *License Fees and Royalties.* Consistent with the applicable U.S. DOT Common Rules, the Recipient agrees that license fees and royalties for patents, patent applications, and inventions produced with federal assistance provided through the Underlying Agreement are program income, and must be used in compliance with applicable federal requirements.

Section 18. Rights in Data and Copyrights.

- (a) *Definition of "Subject Data."* As used in this section, "subject data" means recorded information, whether or not copyrighted, that is delivered or specified to be delivered as required by the Underlying Agreement. Examples of subject data include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the Underlying Agreement.
- (b) *General Federal Restrictions.* The following restrictions apply to all subject data first produced in the performance of the Underlying Agreement:
- (1) *Prohibitions.* The Recipient may not publish or reproduce any subject data, in whole, in part, or in any manner or form, or permit others to do so.

- (2) *Exceptions.* The prohibitions do not apply to publications or reproductions for the Recipient's own internal use, an institution of higher learning, the portion of subject data that the Federal Government has previously released or approved for release to the public, or the portion of data that has the Federal Government's prior written consent for release.
- (c) *Federal Rights in Data and Copyrights.* The Recipient agrees that:
- (1) *General.* It must provide a license to its subject data to the Federal Government that is royalty-free, non-exclusive, and irrevocable. The Federal Government's license must permit the Federal Government to reproduce, publish, or otherwise use the subject data or permit other entities or individuals to use the subject data provided those actions are taken for Federal Government purposes; and
 - (2) *U.S. DOT Public Access Plan – Copyright License.* The Recipient grants to U.S. DOT a worldwide, non-exclusive, non-transferable, paid-up, royalty-free copyright license, including all rights under copyright, to any and all Publications and Digital Data Sets as such terms are defined in the U.S. DOT Public Access plan, resulting from scientific research funded either fully or partially by this funding agreement. The Recipient herein acknowledges that the above copyright license grant is first in time to any and all other grants of a copyright license to such Publications and/or Digital Data Sets, and that U.S. DOT shall have priority over any other claim of exclusive copyright to the same.
- (d) *Special Federal Rights in Data for Research, Development, Demonstration, Deployment, Technical Assistance, and Special Studies Programs.* In general, FTA's purpose in providing federal assistance for a research, development, demonstration, deployment, technical assistance, or special studies program is to increase transportation knowledge, rather than limit the benefits of the Award to the Recipient and its Third Party Participants. Therefore, the Recipient agrees that:
- (1) *Publicly Available Report.* When an Award providing federal assistance for any of the programs described above is completed, it must provide a report of the Underlying Agreement that FTA may publish or make available for publication on the Internet.
 - (2) *Other Reports.* It must provide other reports related to the Award that FTA may request.
 - (3) *Availability of Subject Data.* FTA may make available its copyright license to the subject data, and a copy of the subject data to any FTA Recipient or any

Third Party Participant at any tier, except as the Federal Government determines otherwise in writing.

- (4) *Identification of Information.* It must identify clearly any specific confidential, privileged, or proprietary information submitted to FTA.
- (5) *Incomplete.* If the Award is not completed for any reason whatsoever, all data developed with federal assistance for the Award becomes subject data and must be delivered as the Federal Government may direct.
- (6) *Exception.* This section does not apply to an adaptation of any automatic data processing equipment or program that is both for the Recipient's use, and acquired with FTA capital program assistance.
- (e) *License Fees and Royalties.* Consistent with the applicable U.S. DOT Common Rules, the Recipient agrees that license fees and royalties for patents, patent applications, and inventions produced with federal assistance provided through the Underlying Agreement are program income, and must be used in compliance with federal applicable requirements.
- (f) *Hold Harmless.* Upon request by the Federal Government, the Recipient agrees that if it intentionally violates any proprietary rights, copyrights, or right of privacy, and if its violation under the preceding section occurs from any of the publication, translation, reproduction, delivery, use or disposition of subject data, then it will indemnify, save, and hold harmless the Federal Government against any liability, including costs and expenses of the Federal Government's officers, employees, and agents acting within the scope of their official duties. The Recipient will not be required to indemnify the Federal Government for any liability described in the preceding sentence, if the violation is caused by the wrongful acts of federal officers, employees or agents, or if indemnification is prohibited or limited by applicable state law.
- (g) *Restrictions on Access to Patent Rights.* Nothing in this section of this Master Agreement pertaining to rights in data either implies a license to the Federal Government under any patent, or may be construed to affect the scope of any license or other right otherwise granted to the Federal Government under any patent.
- (h) *Data Developed Without Federal Assistance or Support.* The Recipient agrees that in certain circumstances it may need to provide to FTA data developed without any federal assistance or support. Nevertheless, this section generally does not apply to data developed without federal assistance, even though that data may have been used in connection with the Award. The Recipient agrees that the Federal Government will not be able to protect data developed without federal assistance from

unauthorized disclosure unless that data is clearly marked “Proprietary,” or “Confidential.”

- (i) *Requirements to Release Data.* The Recipient understands and agrees that the Federal Government may be required to release data and information that the Recipient submits to the Federal Government as required under:
 - (1) The Freedom of Information Act (FOIA), 5 U.S.C. § 552;
 - (2) The U.S. DOT Common Rules;
 - (3) The U.S. DOT Public Access Plan, which provides that the Recipient agrees to satisfy the reporting and compliance requirements as set forth in the U.S. DOT Public Access plan, including, but not limited to, the submission and approval of a Data Management Plan, the use of Open Researcher and Contributor ID (ORCID) numbers, the creation and maintenance of a Research Project record in the Transportation Research Board’s (TRB) Research in Progress (RiP) database, and the timely and complete submission of all required publications and associated digital data sets as such terms are defined in the DOT Public Access plan. Additional information about how to comply with the requirements can be found at <http://ntl.bts.gov/publicaccess/howto comply.html>; or
 - (4) Other federal laws, regulations, requirements, and guidance concerning access to records pertaining to the Award, the accompanying Underlying Agreement, and any Amendments thereto.

Section 19. Use of Real Property, Equipment, and Supplies.

- (a) *Federal Interest.* The Recipient agrees that the Federal Government retains a federal interest in all real property, equipment, and supplies acquired or improved for use in connection with a Project (Project property) until, and to the extent that, the Federal Government removes its federal interest.
- (b) *FTA Requirements and Guidance for Use of Project Property.* The Recipient agrees that:
 - (1) *Satisfactory Continuing Control.* It will maintain continuing control of the use of its Project property as satisfactory to FTA, which is defined as the legal assurance that Project property will remain available to be used for its originally authorized purpose throughout its useful life or until disposition.
 - (2) *Appropriate Use.* It will use its Project property for appropriate purposes (including joint development purposes as well as uses that provide program

income to support public transportation) for the duration of the useful life of its Project property, which may extend beyond the duration of the Award, and consistent with other requirements FTA may impose.

- (3) *Delay or Failure to Use Project Property.* The Federal Government may require it to return the entire amount of federal assistance spent on its Project property if, during the useful life of its Project property, it has unreasonably delayed using its Project property, or failed to use its Project property.
 - (4) *Notification.* It will notify FTA immediately when it uses any of its Project property in a manner substantially different from the representations in its Application or other documents submitted in support of the Award, or the requirements of the accompanying Underlying Agreement, or it withdraws any of its Project property from appropriate use.
 - (5) *FTA Guidance.* It will consult FTA guidance through its circulars or other written documents for ways in which FTA property requirements should be implemented. FTA guidance will apply unless FTA determines otherwise in writing.
- (c) *General Federal Requirements.* The Recipient agrees to comply with the applicable U.S. DOT property management provisions as provided in the U.S. DOT Common Rules and this Master Agreement. The Recipient also agrees to follow FTA's reimbursement provisions pertaining to premature dispositions of certain equipment, as provided in this Master Agreement and FTA guidance.
 - (d) *Maintenance.* As provided in federal laws, regulations, requirements, and guidance, the Recipient agrees to maintain its Project property in good operating order, and comply with FTA regulations, "Transit Asset Management" and "National Transit Database," 49 CFR Parts 625 and 630.
 - (e) *Property Records.* The Recipient agrees to keep satisfactory records of its use of its Project property, and, upon request, it will provide FTA the necessary information required to assure compliance with this Master Agreement.
 - (f) *Incidental Use.*
 - (1) The Recipient agrees that any incidental use of Project property will not exceed what is permitted under applicable federal requirements and federal guidance.
 - (2) As provided in 49 U.S.C. § 5323(p), it may permit nontransit public entities and private entities to have incidental use of its federally assisted alternative fueling facilities and equipment, only if:

- (i) The incidental use does not interfere with public transportation operations or violate the provisions of the Underlying Agreement and any Amendments thereto;
 - (ii) It fully recaptures all the costs related to the incidental use from any nontransit public entity or private entity that uses the alternative fueling facilities or equipment;
 - (iii) It uses revenues it receives from the incidental use in excess of costs for planning, capital, and operating expenses that are incurred in providing public transportation; and
 - (iv) Private entities pay all applicable excise taxes on fuel.
- (g) *Reasonable Access for Private Intercity or Charter Transportation Operators.* The Recipient agrees to comply with 49 U.S.C. § 5323(r), and may not deny reasonable access for a private intercity or charter transportation operator to federally funded public transportation facilities, including intermodal facilities, park and ride lots, and bus-only highway lanes. In determining reasonable access, capacity requirements of the Recipient and the extent to which access would be detrimental to existing public transportation services must be considered.
- (h) *Encumbrance of Project Property.* Absent the express consent of the Federal Government in writing, the Recipient agrees to preserve the federal interest in its Project property, and to maintain satisfactory continuing control of its Project property as follows:
- (1) *Written Transactions.* The Recipient agrees that it will not execute any documents that would either adversely affect the federal interest in or impair its continuing control of the use of its Project property including, but not limited to, lease, transfer of title, lien, pledge, mortgage, encumbrance, third party contract, subagreement, grant anticipation note, alienation, innovative finance arrangements, such as a cross-border or leveraged lease, or other types of innovative financing arrangements, or any restriction, constraint, or commitment that may apply to the Project property. Upon request, the Recipient will provide a copy of any document described above to FTA.
 - (2) *Oral Transactions.* The Recipient agrees it will not obligate itself in any way through an oral statement to any third party with respect to its Project property that would either adversely affect the federal interest in or impair its continuing control of the use of its Project property.

- (3) *Other Actions.* The Recipient agrees that it will not take any other action that would either adversely affect the federal interest in or impair its continuing control of the use of its Project property.
- (i) *Useful Life of Project Property.* The Recipient agrees that:
 - (1) *Determining the Useful Life.* FTA may establish the useful life of Project property;
 - (2) *Required Use.* It will use its Project property continuously and appropriately throughout the useful life of that property;
 - (3) *Expired Useful Life.* When the useful life of its Project property has expired, it will comply with FTA's disposition requirements; and
 - (4) *Premature Withdrawal.* The Federal Government retains a federal interest in the fair market value of Project property or remaining useful life in Project property calculated based on straight line depreciation (including Project equipment acquired by a state). Therefore, if the Recipient withdraws that property from public transportation use prematurely, it will notify FTA immediately when any of its Project property is prematurely withdrawn from appropriate use, whether by planned withdrawal, misuse, or casualty loss.
 - (i) *Amount of Federal Interest.* The federal interest in the Recipient's or any of its Subrecipients' Project property will be determined based on the ratio of the federal assistance provided for that property to the actual cost of that property.
 - (ii) *Financial Commitments to the Federal Government.* Except as otherwise approved in writing by the Federal Government, the Recipient agrees that if its Project property is prematurely withdrawn from appropriate use:
 - (A) It will return an amount equal to the remaining federal interest in the withdrawn property to the Federal Government; or
 - (B) With FTA approval, it will invest an amount equal to the remaining federal interest in the withdrawn property in other transit property eligible for federal assistance provided through the Underlying Agreement.
- (j) *Calculating the Value of Prematurely Withdrawn Project Property.* The Recipient agrees that the fair market value of Project property prematurely withdrawn from use

in support of the Award (including the fair market value of project equipment acquired or improved by a state) will be calculated as follows:

- (1) *Equipment and Supplies.* The fair market value of project equipment or supplies will be calculated by straight-line depreciation, based on the useful life of that equipment or supplies as established or approved by FTA. The fair market value of the Project equipment and supplies withdrawn from proper use will be based on the value of that property immediately before it was withdrawn from appropriate use irrespective of whether the Project property was withdrawn from use due to fire, casualty, or natural disaster, and irrespective of the extent of insurance coverage.
 - (2) *Real Property.* The Recipient agrees that the fair market value of Project real property shall be determined by:
 - (i) Competent appraisal based on an appropriate date as approved by FTA, consistent with U.S. DOT regulations, “Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs,” 49 CFR Part 24;
 - (ii) Straight line depreciation of improvements to the Project real property coupled with the value of the land determined by FTA based on appraisal; or
 - (iii) Other applicable federal laws, regulations, and requirements.
 - (3) *Exceptional Circumstances.* The Recipient agrees that the Federal Government may require another method of valuation to be used to determine the fair market value of Project real property withdrawn from service. In unusual circumstances, the Recipient may request permission to use another reasonable valuation method including, but not limited to accelerated depreciation, comparable sales, or established market values.
- (k) *Insurance Proceeds.* The Recipient agrees to use any insurance proceeds it receives for Project property that has been damaged or destroyed (including insurance proceeds for Project equipment acquired or improved by a state) as follows:
- (1) *Replacement.* It may apply those insurance proceeds to the cost of replacing that damaged or destroyed property;
 - (2) *Another Purpose.* It may use those insurance proceeds for another authorized purpose, provided that it has obtained FTA’s consent in writing; or

- (3) *Return to the Federal Government.* It may return to the Federal Government an amount equal to the amount of the remaining federal interest in that property that has been damaged or destroyed.
- (l) *Misused or Damaged Project Property.* If any damage to Project property results from abuse or misuse occurring with the Recipient’s knowledge and consent, the Recipient agrees to restore the Project property that has been damaged to its original condition, or refund the value of the federal interest in its Project property (including the remaining federal interest in Project equipment acquired by a state), as the Federal Government may require.
- (m) *Disposition of Project Property.* The Recipient agrees that disposition of its Project property may be made as provided in FTA’s enabling legislation, 49 U.S.C. § 5334(h), U.S. DOT Common Rules, and the most recent edition of FTA Circular 5010.1, to the extent consistent with applicable federal laws, regulations, requirements, and guidance. The Recipient understands and agrees that under certain circumstances, the Recipient must obtain disposition instructions from FTA before disposing of Project property, including real property, equipment including rolling stock, and supplies. Disposition performed under any authority is subject to 49 U.S.C. § 5334(h)(4)(B) (“Reimbursement”).
- (n) *Responsibilities After Closeout.* The Recipient agrees that closeout of the Award will not change the Recipient’s property management responsibilities for its Project property as provided in federal laws, regulations, requirements, and guidance effective now or at a later date, and this section of this Master Agreement.

Section 20. Transit Asset Management.

- (a) *Transit Asset Management Plan.* The Recipient agrees to develop a Transit Asset Management Plan that complies with federal transit laws, specifically 49 U.S.C. § 5326, FTA regulations, “Transit Asset Management,” 49 CFR Part 625, and “National Transit Database,” 49 CFR Part 630, and other applicable federal laws, regulations, and requirements.
- (b) *When Compliance is Required.* The Recipient agrees to, and assures that each Third Party Participant will, comply with FTA regulations, “Transit Asset Management; National Transit Database,” 49 CFR Parts 625 and 630, and follow applicable federal guidance.

Section 21. Insurance.

- (a) *Flood Insurance.* The Recipient agrees and assures that its Third Party Participants will agree to comply with flood insurance laws and guidance as follows:

- (1) It will have flood insurance as required by the Flood Disaster Protection Act of 1973, 42 U.S.C. § 4012a(a), for any building located in a special flood hazard area (100-year flood zone), before accessing federal assistance to acquire, construct, reconstruct, repair, or improve that building.
 - (2) Each such building and its contents will be covered by flood insurance in an amount at least equal to the federal investment (less estimated land cost) or to the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968, 42 U.S.C. § 4001, et seq., whichever is less.
 - (3) It will follow FTA guidance, except to the extent FTA determines otherwise in writing.
- (b) *Other Insurance Requirements.* It will comply with the insurance requirements normally imposed by its state and local laws, regulations, and ordinances.

Section 22. Relocation and Real Property.

- (a) *Relocation Protections.* Irrespective of whether federal assistance is used to pay relocation costs required under federal laws, regulations, or requirements, the Recipient agrees to:
 - (1) Provide fair and equitable treatment to displaced individuals and businesses that must be relocated as a result of any Project for which the FTA has provided federal assistance; and
 - (2) Comply with federal transit laws, specifically 49 U.S.C. § 5323(b), which requires compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. § 4601, et seq., and U.S. DOT regulations, “Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs,” 49 CFR Part 24.
- (b) *Nondiscrimination in Housing.* The Recipient agrees that when it must provide housing for individuals as a result of relocation, it will comply with Title VIII of the Civil Rights Act of 1968, as amended (Fair Housing Act), 42 U.S.C. § 3601, et seq., and facilitate and follow Executive Order No. 12892, “Leadership and Coordination of Fair Housing in Federal Programs: Affirmatively Furthering Fair Housing,” January 17, 1994, 42 U.S.C. § 3608 note, (59 Fed. Reg. 2939), except as the Federal Government determines otherwise in writing.
- (c) *Prohibition Against the Use of Lead-Based Paint.* The Recipient agrees that if it constructs or rehabilitates residential structures on behalf of individuals displaced by

its any Project, it will not use lead-based paint, and it will comply with Section 401(b) of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. § 4831(b), and U.S. Housing and Urban Development regulations, “Lead-based Paint Poisoning Prevention in Certain Residential Structures,” 24 CFR Part 35.

- (d) *Real Property Acquisition Protections.* Irrespective of whether federal assistance is used to pay real property acquisition costs required to implement the Award, the Recipient agrees to provide fair and equitable treatment to owners of real property or interests in real property that must be acquired as a result of any Project, and comply with federal transit laws, specifically 49 U.S.C. § 5323(b), which requires compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. § 4601, et seq., and U.S. DOT regulations, “Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs,” 49 CFR Part 24.
- (e) *Covenant Against Discrimination.* The Recipient agrees to include a covenant in the title of the real property acquired for use in any Project that assures nondiscrimination during the useful life of that real property.
- (f) *Recording the Title to Real Property.* The Recipient agrees to record the federal interest in the title to real property used in connection with any Project if FTA so requires.
- (g) *FTA Approval of Changes in Real Property Ownership.* Unless it receives permission or instructions from FTA, the Recipient agrees that it will not dispose of, modify the use of, or change the title to real property used in any Project, or any other interests in the site and facilities used in any Project.

Section 23. Construction.

- (a) *Construction Plans and Specifications.* The Recipient agrees to comply with all applicable statutes, regulations, and requirements, and follow FTA guidance in the development and implementation of construction plans and specifications, including drafting, review, and approval, for the Award.
- (b) *Seismic Safety.* The Recipient agrees to comply with the Earthquake Hazards Reduction Act of 1977, as amended, 42 U.S.C. § 7701, et seq., and U.S. DOT regulations, “Seismic Safety,” 49 CFR Part 41, specifically, 49 C.F.R. § 41.117.
- (c) *Supervision of Construction.* The Recipient agrees to maintain competent and adequate engineering supervision at the construction site of any Project to ensure that the completed work conforms to the approved plans and specifications.

- (d) *Construction Reports.* For any Project or related activities involving construction, the Recipient agrees to provide progress reports and other relevant information or data, as required by FTA or the state in which construction takes place.
- (e) *Major Capital Investment Projects.* If the Recipient’s Project involves a Major Federal Project, it agrees to comply with all applicable federal regulations, including FTA regulations, “Major Capital Investment Projects,” 49 CFR Part 611, and “Project Management Oversight,” 49 CFR Part 633, to the extent that they are consistent with applicable federal legislation, regulations, and requirements, and follow all applicable federal guidance.

Section 24. Employee Protections.

- (a) *Awards Involving Construction.* The Recipient agrees to comply and assures that each Third Party Participant will comply with all federal laws, regulations, and requirements providing protections for construction employees involved in each Project or related activities with federal assistance provided through the Underlying Agreement, including the:
 - (1) Prevailing Wage Requirements of:
 - (i) Federal transit laws, specifically 49 U.S.C. § 5333(a), (FTA’s “Davis-Bacon Related Act”);
 - (ii) The Davis-Bacon Act, 40 U.S.C. §§ 3141 – 3144, 3146, and 3147; and
 - (iii) U.S. DOL regulations, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 CFR Part 5.
 - (2) Wage and Hour Requirements of:
 - (i) Section 102 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. § 3702, and other relevant parts of that Act, 40 U.S.C. § 3701, et seq.; and
 - (ii) U.S. DOL regulations, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 CFR Part 5.

- (3) “Anti-Kickback” Prohibitions of:
 - (i) Section 1 of the Copeland “Anti-Kickback” Act, as amended, 18 U.S.C. § 874;
 - (ii) Section 2 of the Copeland “Anti-Kickback” Act, as amended, 40 U.S.C. § 3145; and
 - (iii) U.S. DOL regulations, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States,” 29 CFR Part 3.

- (4) Construction Site Safety of:
 - (i) Section 107 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. § 3704, and other relevant parts of that Act, 40 U.S.C. § 3701, et seq.; and
 - (ii) U.S. DOL regulations, “Recording and Reporting Occupational Injuries and Illnesses,” 29 CFR Part 1904; “Occupational Safety and Health Standards,” 29 CFR Part 1910; and “Safety and Health Regulations for Construction,” 29 CFR Part 1926.

- (b) *Awards Not Involving Construction.* The Recipient agrees to comply and assures that each Third Party Participant will comply with all federal laws, regulations, and requirements providing wage and hour protections for nonconstruction employees, including Section 102 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. § 3702, and other relevant parts of that Act, 40 U.S.C. § 3701, et seq., and U.S. DOL regulations, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 CFR Part 5.

- (c) *Awards Involving Commerce.* The Recipient agrees to comply and assures that each Third Party Participant will comply with the Fair Labor Standards Act (FLSA), 29 U.S.C. § 201, et seq. to the extent that the FLSA applies to employees performing work with federal assistance provided through the Underlying Agreement involving commerce, and as the Federal Government otherwise determines applicable.

- (d) *Public Transportation Employee Protective Arrangements.* As a condition of award of federal assistance appropriated or made available for FTA programs involving public transportation operations, the Recipient agrees to comply and assures that each Third Party Participant will comply with the following employee protective arrangements of 49 U.S.C. § 5333(b):

- (1) *U.S. DOL Certification.* When its Award, the accompanying Underlying Agreement, or any Amendments thereto involve public transportation operations and are supported with federal assistance appropriated or made available for 49 U.S.C. §§ 5307 – 5312, 5316, 5318, 5323(a)(1), 5323(b), 5323(d), 5328, 5337, 5338(b), or 5339, or former 49 U.S.C. §§ 5308, 5309, 5312, or other provisions of law as required by the Federal Government, U.S. DOL must provide a certification of employee protective arrangements before FTA may provide federal assistance for that Award. The Recipient agrees that the certification issued by U.S. DOL is a condition of the Underlying Agreement and that the Recipient must comply with its terms and conditions.
- (2) *Special Warranty.* When its Underlying Agreement involves public transportation operations and is supported with federal assistance appropriated or made available for 49 U.S.C. § 5311, U.S. DOL will provide a Special Warranty for its Award, including its Award of federal assistance under the Tribal Transit Program. The Recipient agrees that its U.S. DOL Special Warranty is a condition of the Underlying Agreement and the Recipient must comply with its terms and conditions.
- (3) *Special Arrangements for Underlying Agreements for Federal Assistance Authorized under 49 U.S.C. § 5310.* The Recipient agrees, and assures that any Third Party Participant providing public transportation operations will agree, that although pursuant to 49 U.S.C. § 5310, and former 49 U.S.C. §§ 5310 or 5317, FTA has determined that it was not “necessary or appropriate” to apply the conditions of 49 U.S.C. § 5333(b) to any Subrecipient participating in the program to provide public transportation for seniors (elderly individuals) and individuals with disabilities, FTA reserves the right to make case-by-case determinations of the applicability of 49 U.S.C. § 5333(b) for all transfers of funding authorized under title 23, United States Code (flex funds), and make other exceptions as it deems appropriate.

Section 25. Early Systems Work Agreement.

- (a) *Statutory Requirements.* If FTA enters into an Early System Work Agreement (ESWA) with the Recipient to advance the implementation of the Recipient’s Capital Project, the Recipient agrees that the provisions of 49 U.S.C. § 5309(k)(3) will apply to that ESWA, the Recipient, and FTA.
- (b) *ESWA Provisions.* Except to the extent that the Federal Government determines otherwise in writing, the Recipient understands and agrees that the following

provisions apply to its ESWA, unless the ESWA contains specific requirements to the contrary:

- (1) *Recipient Representations.* In view of the standards and commitments imposed on the Recipient by 49 U.S.C. § 5309(k)(3), the Recipient has provided sufficient representations and information to FTA so that FTA has reason to believe the following:
 - (i) FTA and the Recipient will enter into a Full Funding Grant Agreement for the Project; and
 - (ii) The terms of the ESWA will promote the ultimate completion of the Project more rapidly and at less cost.
- (2) *FTA Commitments.* By entering into an ESWA with the Recipient, FTA has agreed to provide for reimbursement of the preliminary costs of carrying out the Project, including:
 - (i) Land acquisition;
 - (ii) Timely procurement of system elements for which the specifications are decided; and
 - (iii) Other activities that FTA decides are appropriate to make efficient, long-term Project management easier.
- (3) *Time Period of the ESWA.* FTA reserves the right to determine the period of time in which the ESWA will remain in effect, even if that period extends beyond the time of the authorization of federal funding that will support the Project costs covered by the ESWA.
- (4) *Interest and Other Financing Costs.* Interest and other financing costs of carrying out the ESWA efficiently and within a reasonable time are eligible ESWA costs, provided that:
 - (i) The interest and financing costs claimed do not exceed the cost of the most favorable financing terms reasonably available for the Project at the time of borrowing;
 - (ii) The Recipient has certified that it will show reasonable diligence in seeking the most favorable financing terms; and
 - (iii) The Recipient is able to show reasonable diligence in seeking the most favorable financing terms to support this ESWA.

- (5) *Contingent Commitment.* In providing funding for the ESWA:
- (i) In its discretion, FTA may include a commitment, contingent on amounts made available under a later-enacted law, to obligate an additional amount from future available budget authority to support the costs of the Recipient's ESWA; and
 - (ii) If FTA does make a commitment to provide funding contingent on future amounts to be specified in law, that commitment is not an obligation of the Federal Government.
- (6) *Failure to Carry Out the Project.* If, for reasons within its control, the Recipient does not carry out the Project for which its ESWA was made available by FTA, the Recipient must:
- (i) Repay all Federal Grant funds awarded under the ESWA from all Federal funding sources for all Project activities, facilities, and equipment; and
 - (ii) Pay reasonable interest and penalty charges:
 - (A) As established by FTA before or after FTA provided funding for the ESWA; or
 - (B) Allowable under law.

Section 26. Environmental Protections.

- (a) *General.* The Recipient agrees to, and assures that its Third Party Participants will, comply with all applicable environmental and resource use laws, regulations, and requirements, and follow applicable guidance, now in effect or that may become effective in the future, including state and local laws, ordinances, regulations, and requirements and follow applicable guidance.
- (b) *National Environmental Policy Act.* An Award of federal assistance requires the full compliance with applicable environmental laws, regulations, and requirements. Accordingly, the Recipient agrees to, and assures that its Third Party Participants will:
- (1) Comply and facilitate compliance with federal laws, regulations, and requirements, including, but not limited to:
 - (i) Federal transit laws, such as 49 U.S.C. § 5323(c)(2), and 23 U.S.C. § 139;

- (ii) The National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. §§ 4321, et seq., as limited by 42 U.S.C. § 5159, and CEQ’s implementing regulations 40 CFR Part 1500 – 1508;
 - (iii) Joint FHWA and FTA regulations, “Environmental Impact and Related Procedures,” 23 CFR Part 771 and 49 CFR Part 622;
 - (iv) Executive Order No. 11514, as amended, “Protection and Enhancement of Environmental Quality,” March 5, 1970, 42 U.S.C. § 4321 note (35 Fed. Reg. 4247); and
 - (v) Other federal environmental protection laws, regulations, and requirements applicable to the Recipient or the Award, the accompanying Underlying Agreement, and any Amendments thereto.
- (2) Follow the federal guidance identified herein to the extent that the guidance is consistent with applicable authorizing legislation:
- (i) Joint FHWA and FTA final guidance, “Interim Guidance on MAP-21 Section 1319, Accelerated Decisionmaking in Environmental Reviews,” January 14, 2013;
 - (ii) Joint FHWA and FTA final guidance, “SAFETEA-LU Environmental Review Process (Public Law 109-59),” 71 Fed. Reg. 66576, November 15, 2006; and
 - (iii) Other federal environmental guidance applicable to the Recipient or the Award, the accompanying Underlying Agreement, and any Amendments thereto.
- (c) *Environmental Justice*. The Recipient agrees to, and assures that its Third Party Participants will, promote environmental justice by following:
- (1) Executive Order No. 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,” February 11, 1994, 42 U.S.C. § 4321 note, (59 Fed. Reg. 7629, 3 C.F.R. 1994 Comp., p. 859) as well as facilitating compliance with that Executive Order;
 - (2) U.S. DOT Order 5610.2(a), “Department of Transportation Updated Environmental Justice Order,” 77 Fed. Reg. 27534, May 10, 2012; and
 - (3) The most recent edition of FTA Circular 4703.1, “Environmental Justice Policy Guidance for Federal Transit Administration Recipients,” August 15, 2012, to the extent consistent with applicable federal laws, regulations, requirements, and guidance.

- (d) *Other Environmental Federal Laws.* The Recipient agrees to comply or facilitate compliance, and assures that its Third Party Participants will comply or facilitate compliance, with all applicable federal laws, regulations, and requirements, and will follow applicable guidance, including, but not limited to, the Clean Air Act, Clean Water Act, Wild and Scenic Rivers Act of 1968, Coastal Zone Management Act of 1972, the Endangered Species Act of 1973, Magnuson Stevens Fishery Conservation and Management Act, Resource Conservation and Recovery Act, Comprehensive Environmental Response, Compensation, and Liability Act, Executive Order No. 11990 relating to “Protection of Wetlands,” and Executive Order No. 11988, as amended, “Floodplain Management.”
- (e) *Corridor Preservation.* The Recipient agrees that:
- (1) It will not develop any right-of-way acquired under 49 U.S.C. § 5323(q) in anticipation of implementing its Award until all required environmental reviews for each Project or related activities have been completed; and
 - (2) It will follow FTA Final Guidance on the Application of 49 U.S.C § 5323(q) to Corridor Preservation for a Transit Project, October 27, 2014.
- (f) *Use of Certain Public Lands.* The Recipient agrees to comply, and assures that its Third Party Participants will comply, with U.S. DOT laws, specifically 49 U.S.C. § 303 (often referred to as “section 4(f)”), and joint FHWA and FTA regulations, “Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites,” 23 CFR Part 774, and referenced in 49 CFR Part 622.
- (g) *Historic Preservation.* The Recipient agrees to, and assures that its Third Party Participants will:
- (1) Comply with U.S. DOT laws, including 49 U.S.C. § 303 (often referred to as “section 4(f)”), which requires certain findings be made before an Award may be undertaken if it involves the use of any land from a historic site that is on or eligible for inclusion on the National Register of Historic Places.
 - (2) Encourage compliance with the federal historic and archaeological preservation requirements of section 106 of the National Historic Preservation Act, as amended, 54 U.S.C. § 306108.
 - (3) Comply with the Archeological and Historic Preservation Act of 1974, as amended, 54 U.S.C. § 312501, et seq.
 - (4) Comply with U.S. Advisory Council on Historic Preservation regulations, “Protection of Historic Properties,” 36 CFR Part 800.

- (5) Comply with federal requirements and follow federal guidance to avoid or mitigate adverse effects on historic properties.
- (h) *Indian Sacred Sites.* The Recipient agrees to, and assures that its Third Party Participants will, facilitate compliance with federal efforts to promote the preservation of places and objects of religious importance to American Indians, Eskimos, Aleuts, and Native Hawaiians, and facilitate compliance with the American Indian Religious Freedom Act, 42 U.S.C. § 1996, and Executive Order No. 13007, “Indian Sacred Sites,” May 24, 1996, 42 U.S.C. § 3161 note (61 Fed. Reg. 26771).
- (i) *Mitigation of Adverse Environmental Effects.*
- (1) The Recipient agrees to comply with all environmental mitigation measures that may be identified as conditions that the Federal Government might impose in its finding of no significant impact or record of decision or commitments in the environmental documents that apply to the Award, such as environmental assessments, environmental impact statements, categorical exclusions, memoranda of agreement, documents required under 49 U.S.C. § 303, and other environmental documents.
- (2) The Recipient agrees that:
- (i) Any mitigation measures agreed on will be incorporated by reference and made part of the Underlying Agreement and any Amendments thereto;
- (ii) Any deferred mitigation measures will be incorporated by reference and made part of the Underlying Agreement and any Amendments thereto as soon as agreement with the Federal Government is reached; and
- (iii) Any mitigation measures agreed on will not be modified or withdrawn without the written approval of the Federal Government.
- (j) *Energy Conservation.* The Recipient agrees to, and assures that its Subrecipients will, comply with the mandatory energy standards and policies of its state energy conservation plans under the Energy Policy and Conservation Act, as amended, 42 U.S.C. § 6321, et seq., and perform an energy assessment for any building constructed, reconstructed, or modified with federal assistance required under FTA regulations, “Requirements for Energy Assessments,” 49 CFR Part 622, subpart C.

Section 27. State Management and Monitoring Systems.

The Recipient agrees to comply with joint FHWA and FTA regulations, “Management and Monitoring Systems,” 23 CFR Part 500, and FTA regulations, “Transportation Infrastructure Management,” 49 CFR Part 614.

Section 28. Charter Service.

- (a) *Prohibitions.* The Recipient agrees that neither it nor any Third Party Participant involved in the Award will engage in charter service, except as permitted under federal transit laws, specifically 49 U.S.C. § 5323(d), (g), and (r), FTA regulations, “Charter Service,” 49 CFR Part 604, any other federal Charter Service regulations, federal requirements, or federal guidance.
- (b) *Exceptions.* Apart from exceptions to the Charter Service restrictions in FTA’s Charter Service regulations, FTA has established the following additional exceptions to those restrictions:
 - (1) FTA’s Charter Service restrictions do not apply to equipment or facilities supported with federal assistance appropriated or made available for 49 U.S.C. § 5307 to support a Job Access and Reverse Commute (JARC)-type Project or related activities that would have been eligible for assistance under repealed 49 U.S.C. § 5316 in effect in Fiscal Year 2012 or a previous fiscal year, provided that the Recipient uses that federal assistance for FTA program purposes only; and
 - (2) FTA’s Charter Service restrictions do not apply to equipment or facilities supported with the federal assistance appropriated or made available for 49 U.S.C. § 5310 to support a New Freedom-type Project or related activities that would have been eligible for federal assistance under repealed 49 U.S.C. § 5317 in effect in Fiscal Year 2012 or a previous fiscal year, provided the Recipient uses that federal assistance for FTA program purposes only.
- (c) *Violations.* If it or any Third Party Participant engages in a pattern of violations of FTA’s Charter Service regulations, FTA may require corrective measures and remedies, including withholding an amount of federal assistance as provided in FTA’s Charter Service regulations, 49 CFR Part 604, appendix D, or barring it or the Third Party Participant from receiving federal assistance provided in 49 U.S.C. chapter 53, 23 U.S.C. § 133, or 23 U.S.C. § 142.

Section 29. School Bus Operations.

- (a) *Prohibitions.* The Recipient agrees that neither it nor any Third Party Participant that is participating in its Award will engage in school bus operations exclusively for the

transportation of students or school personnel in competition with private school bus operators, except as permitted by federal transit laws, 49 U.S.C. § 5323(f) or (g), FTA regulations, “School Bus Operations,” 49 CFR Part 605, and any other applicable federal “School Bus Operations” laws, regulations, requirements, or applicable federal guidance.

- (b) *Violations.* If a Recipient or any Third Party Participant has operated school bus service in violation of FTA’s School Bus laws, regulations, or requirements, FTA may require the Recipient or Third Party Participant to take such remedial measures as FTA considers appropriate, or bar the Recipient or Third Party Participant from receiving federal transit assistance.

Section 30. Geographic Information and Related Spatial Data.

The Recipient agrees that each Project or related activity that implements the Award will conform to the Federal Geographic Data Committee’s National Spatial Data Infrastructure if the Project or related activity directly or indirectly involves spatial data, or geographic information systems, and it will follow U.S. OMB Circular A-16, “Coordination of Geographic Information and Related Spatial Data Activities,” August 19, 2002, and U.S. OMB Circular A-16 Supplemental Guidance, “Geospatial Line of Business,” November 10, 2010.

Section 31. Federal “\$1 Coin” Requirements.

The Recipient agrees to comply with section 104 of the Presidential \$1 Coin Act of 2005, 31 U.S.C. § 5112(p), its equipment and facilities will be fully capable of accepting and dispensing \$1 coins when coins or currency are required to use that equipment or those facilities, and it will display signs and notices of the \$1 coin capability of its equipment and facilities on its premises, including vending machines, where coins or currency are used.

Section 32. Public Transportation Safety.

The Recipient agrees to comply with applicable federal laws, regulations, and requirements and follow applicable guidance that implement the Public Transportation Safety Program provisions of 49 U.S.C. § 5329.

Section 33. Motor Carrier Safety.

- (a) *Financial Responsibility.* The Recipient agrees to comply and assures that its Third Party Participants will comply with the economic and insurance registration requirements of the:
 - (1) U.S. Federal Motor Carrier Safety Administration (U.S. FMCSA) regulations, “Minimum Levels of Financial Responsibility for Motor Carriers,” 49 CFR Part 387, if it is engaged in operations requiring

compliance with 49 CFR Part 387, it is engaged in interstate commerce, and it is not within a defined commercial zone; and

- (2) The provisions of 49 U.S.C. § 31138(e)(4), which supersede inconsistent provisions of 49 CFR Part 387, and reduce the amount of insurance the Recipient must obtain to the highest amount required by any state in which the public transportation provider operates, if it operates within a public transportation service area located in more than one state, and receives federal assistance under 49 U.S.C. §§ 5307, 5310, and 5311.
- (b) *U.S. FMCSA Requirements.* The Recipient agrees to comply and assures that its Third Party Participants will comply with:
- (1) The safety requirements of U.S. FMCSA regulations, “Federal Motor Carrier Safety Regulations,” 49 CFR Parts 390 – 397, to the extent applicable; and
 - (2) The driver’s license requirements of U.S. FMCSA regulations, “Commercial Driver’s License Standards, Requirements, and Penalties,” 49 CFR Part 383, and “State Compliance with Commercial Driver’s License,” 49 CFR Part 384, to the extent applicable, with the substance abuse requirements and guidance of U.S. FMCSA’s regulations, “Controlled Substances and Alcohol Use and Testing,” 49 CFR Part 382, and implementing federal guidance, to the extent applicable.

Section 34. Safe Operation of Motor Vehicles.

- (a) *Seat Belt Use.* The Recipient agrees to implement Executive Order No. 13043, “Increasing Seat Belt Use in the United States,” April 16, 1997, 23 U.S.C. § 402 note, (62 Fed. Reg. 19217), by:
- (1) Adopting and promoting on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles; and
 - (2) Including a “Seat Belt Use” provision in each third party agreement related to the Award.
- (b) *Distracted Driving, Including Text Messaging While Driving.* The Recipient agrees to comply with:
- (1) Executive Order No. 13513, “Federal Leadership on Reducing Text Messaging While Driving,” October 1, 2009, 23 U.S.C. § 402 note, (74 Fed. Reg. 51225);

- (2) U.S. DOT Order 3902.10, “Text Messaging While Driving,” December 30, 2009; and
- (3) The following U.S. DOT Special Provision pertaining to Distracted Driving:
 - (i) *Safety*. The Recipient agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Recipient owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the Award, or when performing any work for or on behalf of the Award;
 - (ii) *Recipient Size*. The Recipient agrees to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing new rules and programs to prohibit text messaging while driving, re-evaluating the existing programs to prohibit text messaging while driving, and providing education, awareness, and other outreach to employees about the safety risks associated with texting while driving; and
 - (iii) *Extension of Provision*. The Recipient agrees to include the preceding Special Provision of section 34(b)(3)(i) – (ii) of this Master Agreement in its third party agreements, and encourage its Third Party Participants to comply with this Special Provision, and include this Special Provision in each third party subagreement at each tier supported with federal assistance.

Section 35. Substance Abuse.

- (a) *Drug-Free Workplace*. The Recipient agrees to:
 - (1) Comply with the Drug-Free Workplace Act of 1988, as amended, 41 U.S.C. § 8103, et seq.;
 - (2) Comply with U.S. DOT regulations, “Governmentwide Requirements for Drug-Free Workplace (Financial Assistance),” 49 CFR Part 32; and
 - (3) Follow and facilitate compliance with U.S. OMB regulatory guidance, “Governmentwide Requirements for Drug-Free Workplace (Financial Assistance),” 2 CFR Part 182, particularly where the U.S. OMB regulatory guidance supersedes comparable provisions of 49 CFR Part 32.
- (b) *Alcohol Misuse and Prohibited Drug Use*.

- (1) *Requirements.* The Recipient agrees to comply and assures that its Third Party Participants will comply with:
 - (i) Federal transit laws, specifically 49 U.S.C. § 5331;
 - (ii) FTA regulations, “Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations,” 49 CFR Part 655; and
 - (iii) Applicable provisions of U.S. DOT regulations, “Procedures for Transportation Workplace Drug and Alcohol Testing Programs,” 49 CFR Part 40.

- (2) *Remedies for Non-Compliance.* The Recipient agrees that if FTA determines that the Recipient or a Third Party Participant receiving federal assistance under 49 U.S.C. chapter 53 is not in compliance with 49 CFR Part 655, the Federal Transit Administrator may bar that Recipient or Third Party Participant from receiving all or a portion of the federal transit assistance for public transportation it would otherwise receive.

Section 36. Protection of Sensitive Security and Other Sensitive Information.

The Recipient agrees to comply with the following requirements for the protection of sensitive security information:

- (a) The Homeland Security Act, as amended, specifically 49 U.S.C. § 40119(b), and U.S. DOT regulations, “Protection of Sensitive Security Information,” 49 CFR Part 15;
- (b) The Aviation and Transportation Security Act, as amended, 49 U.S.C. § 114(r), and U.S. Department of Homeland Security, Transportation Security Administration regulations, “Protection of Sensitive Security Information,” 49 CFR Part 1520;
- (c) U.S. DOT Common Rules, which require the Recipient to implement, and to require its Subrecipients, if any, to implement reasonable measures to safeguard protected personally identifiable information as well as any information that the FTA or pass-through entity designates as sensitive; and
- (d) National Archives and Records Administration regulations, “Controlled Unclassified Information,” 32 CFR Part 2002.

Section 37. Special Notification Requirements for States.

- (a) *Types of Information.* To the extent required under federal law, the State, as the Recipient, agrees to provide the following information about federal assistance awarded for its State Program, Project, or related activities:

- (1) The Identification of FTA as the federal agency providing the federal assistance for a State Program or Project;
 - (2) The Catalog of Federal Domestic Assistance Number of the program from which the federal assistance for a State Program or Project is authorized; and
 - (3) The amount of federal assistance FTA has provided for a State Program or Project.
- (b) *Documents.* The State agrees to provide the information required under this provision in the following documents: (1) applications for federal assistance, (2) requests for proposals or solicitations, (3) forms, (4) notifications, (5) press releases, and (6) other publications.

Section 38. Freedom of Information.

- (a) *Applicability.* The Recipient agrees that the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as amended, applies to most information submitted to FTA and U.S. DOT, whether electronically or in typewritten hard copy.
- (b) *Records.* The Recipient agrees that all applications and materials it submits to FTA that are related to its Award have or will become federal agency records, and are or will be subject to FOIA and to public release through individual FOIA requests, unless FTA determines that a valid exemption under FOIA or another statute applies.
- (c) *Confidentiality.* President Obama’s “Memorandum for the Heads of Executive Departments and Agencies on the Freedom of Information Act,” dated January 21, 2009, directs federal agencies to adopt a presumption that information should generally be disclosed when requested, and therefore the Recipient agrees that:
- (1) Unless a federal law or regulation requires that a document or other information be withheld, FTA does not consent to withhold information, irrespective of its format, merely because it is accompanied by a “routine” confidentiality statement that may appear on:
 - (i) Information about the Award, the accompanying Underlying Agreement, and any Amendments thereto;
 - (ii) Information accompanying or supplementing the Award, the accompanying Underlying Agreement, and any Amendments thereto; or
 - (iii) Any other information FTA may obtain.

- (2) As provided in federal laws, regulations, requirements, and guidance, FTA will review the information and documents that are the subject of each FOIA request to determine the extent to which FTA must or should exercise its discretion to withhold that information or those documents.
- (3) Any genuinely confidential, privileged, or sensitive security information will be marked clearly and specifically as confidential or privileged, and justified as confidential or privileged under FOIA standards. The Recipient will mark all sensitive security information (SSI), as defined by 49 C.F.R. § 15.5, as set forth in 49 C.F.R. § 1520.13. The Recipient will not mark non-SSI material as SSI. Also refer to Section 36 of this Agreement, regarding the protection of SSI and other sensitive information.

Section 39. Disputes, Breaches, Defaults, and Litigation.

- (a) *FTA Interest.* FTA has a vested interest in the settlement of any violation of federal law, regulation, or requirement, or any disagreement involving the Award, the accompanying Underlying Agreement, and any Amendments thereto including, but not limited to, a default, breach, major dispute, or litigation, and FTA reserves the right to concur in any settlement or compromise.
- (b) *Notification to FTA; Flow Down Requirement.* If a current or prospective legal matter that may affect the Federal Government emerges, the Recipient must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the Recipient is located. The Recipient must include a similar notification requirement in its Third Party Agreements and must require each Third Party Participant to include an equivalent provision in its subagreements at every tier, for any agreement that is a “covered transaction” according to 2 C.F.R. §§ 180.220 and 1200.220.
 - (1) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.
 - (2) Matters that may affect the Federal Government include, but are not limited to, the Federal Government’s interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government’s administration or enforcement of federal laws, regulations, and requirements.
 - (3) *Additional Notice to U.S. DOT Inspector General.* The Recipient must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Recipient is

located, if the Recipient has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the Recipient and FTA, or an agreement involving a principal, officer, employee, agent, or Third Party Participant of the Recipient. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient. In this paragraph, “promptly” means to refer information without delay and without change. This notification provision applies to all divisions of the Recipient, including divisions tasked with law enforcement or investigatory functions.

- (c) *Federal Interest in Recovery.* The Federal Government retains the right to a proportionate share of any proceeds recovered from any third party, based on the percentage of the federal share for the Underlying Agreement. Notwithstanding the preceding sentence, the Recipient may return all liquidated damages it receives to its Award Budget for its Underlying Agreement rather than return the federal share of those liquidated damages to the Federal Government, provided that the Recipient receives FTA’s prior written concurrence.
- (d) *Enforcement.* The Recipient must pursue its legal rights and remedies available under any third party agreement or any federal, state, or local law or regulation.

Section 40. Amendments to the Underlying Agreement.

- (a) *When Required.* An Amendment to the Underlying Agreement is required under the following circumstances:
 - (1) A change in the scope of work or an addition of federal assistance to an existing Award (regardless of whether the source of assistance is the same or different);
 - (2) A change to the scope of work that necessitates a change in the distribution of federal assistance across scope codes or activities; or

- (3) The Award includes multiple sources of financial assistance and the action requires the addition of a new Scope to a Project.
- (b) *Process.* An amendment to the Underlying Agreement must be submitted and approved in TrAMS, and must meet the same application requirements as would apply to a request for a new Award.

Section 41. FTA’s Transit Award Management System (TrAMS).

The Recipient agrees to submit its application for an Award, reports, documents, or other information required by federal law, regulations, or requirements, through FTA’s Transit Award Management System (TrAMS). To submit its application, reports, documents, or information required to FTA, any signature submitted for use in TrAMS must comply with the requirements of the Electronic Signatures in Global and National Commerce Act (E-Sign Act), 15 U.S.C. §§ 7001, et seq.

Section 42. Information Obtained through Internet Links.

Although this Master Agreement may include electronic links to federal laws, regulations, requirements, and guidance, FTA does not guarantee the accuracy of the information that may be accessed through such links. Accordingly, the Recipient understands and agrees that any information obtained through any electronic link within this Master Agreement does not represent an official version of a federal law, regulation, or requirement, and might be inaccurate. Therefore, any information that is obtained through such links is neither incorporated by reference nor made part of this Master Agreement. The Federal Register and the Code of Federal Regulations are the official sources for regulatory information pertaining to the Federal Government.

Section 43. Severability.

The Recipient agrees that if any provision of the Underlying Agreement or any Amendment thereto is determined to be invalid, then the remaining provisions thereof that conform to federal laws, regulations, requirements, and guidance will continue in effect.

SPECIAL PROVISIONS FOR SPECIFIC PROGRAMS

Section 44. Special Provisions for All Public Transportation Innovation, Technical Assistance or Workforce Development Programs.

- (a) *Applicability.* The Recipient understands and agrees that this section of the Master Agreement applies to the following programs to which FTA provides federal assistance, including the following programs:
- (1) Programs authorized under 49 U.S.C. § 5312, irrespective of the fiscal year for which the appropriations that supported the Underlying Agreement were authorized;
 - (2) Programs authorized under former 49 U.S.C. § 5313, irrespective of the fiscal year for which the appropriations that supported the Underlying Agreement were authorized;
 - (3) Programs authorized under 49 U.S.C. § 5314, irrespective of the fiscal year for which the appropriations that supported the Underlying Agreement were authorized;
 - (4) Programs authorized by the repealed section 3045 of SAFETEA-LU;
 - (5) Programs authorized by the repealed section 3046 of SAFETEA-LU; and
 - (6) Other similar Programs for which FTA awards federal assistance under 49 U.S.C. §§ 5312 or 5314, as amended, or other similar research-type or technical assistance authorizing legislation.
- (b) *Provisions for Underlying Agreements for Public Transportation Innovation or Technical Assistance and Workforce Development Awards.* The Recipient agrees that the following provisions will apply to the Underlying Agreement for a Public Transportation Innovation or Technical Assistance and Workforce Development Project or related activities:
- (1) *Report.* The Recipient agrees that in addition to any other Report FTA may require, the Recipient will prepare and submit to FTA a Report of each Project and related activities that describes the subject (or subjects) investigated, the methods used, the results, and the conclusions reached, is satisfactory, sufficiently organized, well-written, and comprehensive.
 - (2) *Disclaimer.* The Report must contain the following disclaimer: “This document is disseminated under the sponsorship of the United States Department of Transportation, Federal Transit Administration, in the interest

of information exchange. The United States government assumes no liability for the contents or use thereof. The United States government does not endorse products or manufacturers. Trade or manufacturers' names appear herein solely because they are considered essential to the contents of the report.”

- (3) *Format.* The Report must comply with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794d, and U.S. ATBCB regulations, “Electronic and Information Technology Accessibility Standards,” 36 CFR Part 1194, and the specific publication elements and report style guide at http://www.fta.dot.gov/research/program_requirements. The Report must identify clearly and precisely any specific information or data that is confidential, privileged, or proprietary and is contained within any report or document.
- (4) *Publication.* Except for confidential, privileged, or proprietary information in the Report, FTA may publish the Report, and make it available for publication on the Internet or in any other venue.
- (5) *Identification of Federal Assistance.* The Recipient agrees that:
 - (i) It will display information on any product developed with federal assistance for 49 U.S.C. § 5312 for which the U.S. Department of Transportation, Federal Transit Administration provided federal assistance to support the development of the product that is tangible and is produced from, or is a result of, a Project, is a deliverable, and visible to the public, or is or will be made available to other research organizations, or public transportation providers, and consists of equipment, a prototype, hardware, construction, reports, data, software, internet pages, or any similar item.
 - (ii) The information required will be given using an appropriate sign, designation, or notice.
- (c) *Special Disposition Provision.* In addition to other disposition provisions, FTA may vest title in tangible personal property used in the conduct of basic or applied scientific research in a nonprofit institution of higher education or in a nonprofit organization whose primary purpose is conducting scientific research, provided the requirements of 31 U.S.C. § 6306 are met.
- (d) *Protection of Human Subjects.* The Recipient agrees to comply with the protections for human subjects involved in a Project or related activities supported with federal assistance through the Underlying Agreement, as required by the National Research

Act, as amended, 42 U.S.C. § 289, et seq., and U.S. DOT regulations, “Protection of Human Subjects,” 49 CFR Part 11.

- (e) *Protection of Animals.* The Recipient agrees to comply with the protections for animals involved in a Project or related activities, as required by the Animal Welfare Act, as amended, 7 U.S.C. § 2131, et seq., and U.S. Department of Agriculture regulations, “Animal Welfare,” 9 CFR Parts 1, 2, 3, and 4.
- (f) *Export Control.* The Recipient understands and agrees that before exporting any information that is subject to federal export requirements, it must first obtain the necessary federal license(s), and comply with the federal export control regulations of the U.S. Department of Commerce, Bureau of Industry and Security, “Export Administration Regulations,” specifically, 15 CFR Parts 730, et seq., U.S. Department of State, U.S. Department of the Treasury, and U.S. Department of Defense.

Section 45. Special Provisions for the State Safety Oversight Grant Program.

In administering any State Safety Oversight Grant Program Award under 49 U.S.C. § 5329(e)(6), the Recipient agrees to comply with 49 U.S.C. § 5329(e)(6).

Section 46. Special Provisions for the State Infrastructure Bank (SIB) Program.

- (a) *Federal Laws, Regulations, Requirements, and Guidance.* The State, as the Recipient, agrees to administer its Underlying Agreement to support its SIB consistent with federal laws, regulations, requirements, and guidance, including, but not limited to:
 - (1) Title 23, U.S.C. (Highways), specifically 23 U.S.C. § 610, to the extent required under the FAST Act, and other applicable federal legislation;
 - (2) Federal transit laws, specifically 49 U.S.C. § 5323(o), which requires compliance with 49 U.S.C. §§ 5307, 5309, and 5337 for Underlying Agreements to which MAP-21 and the FAST Act apply;
 - (3) Section 350 of the National Highway System Designation Act of 1995, as amended, (NHS Act), 23 U.S.C. § 101 note, to the extent this section has not been superseded by 23 U.S.C. § 610;
 - (4) Any federal law enacted or federal regulation or requirements promulgated at a later date applicable to the Underlying Agreement;
 - (5) All other applicable federal guidance that may be issued;

- (6) The terms and conditions of any U.S. DOL certification(s) of employee protective arrangements;
 - (7) The SIB Cooperative Agreement establishing the SIB in the state, signed by the Executive Director of the Build America Bureau, the Federal Transit Administrator, authorized state official(s) or their authorized designees, and if applicable, the administrator (or designee) for any other federal modal agency that the State wishes to include in its SIB; and
 - (8) The FTA Grant Agreement providing federal assistance for the Underlying Agreement in support of its SIB, except that any provision of this Master Agreement that would otherwise apply to a SIB Project does not apply to the Underlying Agreement if it conflicts with any other federal law or regulation applicable to a SIB, federal SIB Guidelines, the SIB Cooperative Agreement, or the Underlying Agreement, but the conflicting provision of this Master Agreement will prevail, however, if FTA expressly determines so in writing.
- (b) *Limitations on Accessing Federal Assistance in the Transit Account.* The Recipient understands that the total amount of federal assistance awarded under the Grant Agreement to be supported with SIB deposits may not be available for immediate withdrawal. The State and the Recipient agree to restrict the amount of federal assistance it withdraws from its SIB to an amount not exceeding the limits specified in its Grant Agreement in support of the SIB or the Award Budget for that Grant Agreement.

Section 47. Special Provisions for the TIFIA and RRIF Programs.

- (a) *Federal Laws, Regulations, Requirements, and Guidance.* The Recipient agrees to administer any Underlying Agreement for TIFIA or RRIF credit assistance as required by and in accordance with the terms of the Underlying Agreement.
- (b) *Default.* The Recipient agrees that FTA may declare the Recipient in violation of this Master Agreement if there has been an Event of Default according to an Underlying Agreement for TIFIA or RRIF assistance, and that Event of Default is not cured within 90 days.
- (c) *Order of Precedence.* Any provision of this Master Agreement that is applicable to the Recipient's Underlying Agreement for TIFIA or RRIF assistance but that conflicts with the laws, regulations, and requirements applicable to the Recipient's Underlying Agreement for TIFIA or RRIF assistance, will not apply to the Recipient's TIFIA or RRIF Loan, Loan Guarantee, Line of Credit, or Master Credit Agreement, unless FTA determines otherwise in writing.

Section 48. Special Provisions for the Joint FTA–FRA Program.

- (a) *General Legal Requirements.* When both FTA and the U.S. Federal Railroad Administration (FRA) make federal assistance available for the same Underlying Agreement, the Recipient understands and agrees to administer the Underlying Agreement to achieve maximum compliance with FTA’s statutory and regulatory requirements, FRA’s statutory and regulatory requirements, and other federal statutory requirements.
- (b) *Disadvantaged Business Enterprises.*
 - (1) The Recipient acknowledges and understands that the statutory and regulatory provisions relating to disadvantaged business enterprises (DBE) differ significantly between FTA and FRA, including Section 1101(b) of the FAST Act (23 U.S.C. § 101 note) and U.S. DOT regulations, “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs,” 49 CFR Part 26, both of which apply to FTA, but not to FRA.
 - (2) FRA is not authorized to use FTA’s DBE regulations, and consequently the Recipient agrees to comply with the statutory and regulatory DBE provisions that apply to federal assistance provided by FTA when using that federal assistance for purchases.
 - (3) The Recipient agrees to use the “contracting with small and minority firms, women’s business enterprise” provisions of the applicable U.S. DOT Common Rules.
- (c) *Buy America.* The Recipient agrees that statutory and regulatory Buy America provisions that apply to federal assistance authorized for FTA differ from those that apply to federal assistance authorized for FRA. Therefore, the Recipient agrees that:
 - (1) It must comply with FTA’s statutory and regulatory Buy America provisions to the extent that the purchases are for a Project or related activities that implement the Underlying Agreement;
 - (2) It must comply with FRA’s statutory and regulatory Buy America provisions, section 301(a) of the Passenger Rail Investment and Improvement Act of 2008 (PRIIA), Pub L. 110-432, October 16, 2008, and 49 U.S.C. § 24405(a), to the extent that the purchases are required to comply with FRA Buy America requirements; and

- (3) If it uses federal assistance authorized for FTA and for FRA to finance a purchase, the Recipient agrees to comply with both FTA's and FRA's requirements.
- (d) *Force Account – Procurement.* The Recipient agrees that FTA deems section 16(j) of this Master Agreement to be satisfied for work that is performed by the railroad's force account employees if a Project or related activities are being conducted on the property of a railroad, and under the railroad's collective bargaining agreements with its employees, certain work to be performed for the Recipient must be performed by force account employees.
- (e) *Procurement of Rolling Stock.* The Recipient agrees that if FRA requires the Recipient to acquire any rolling stock for the Underlying Agreement from the Next Generation Corridor Equipment Pool Committee that has been established under section 305 of PRIIA, FTA deems section 15 of this Master Agreement to be satisfied.
- (f) *Use of Real Property, Equipment, and Supplies.* The Recipient agrees that application of section 19 of this Master Agreement is reserved.
- (g) *Davis-Bacon.* The Recipient agrees that, as provided in 49 U.S.C. § 24312, wages paid to railroad employees at rates provided in a collective bargaining agreement negotiated under the Railway Labor Act, 45 U.S.C. § 151, et seq., are deemed to comply with the requirements of the Davis-Bacon Act, 40 U.S.C. § 3141, et seq., and satisfy section 24 of this Master Agreement.
- (h) *Employee Protective Arrangements.* The Recipient agrees to pass down to a railroad employee subject to the Railway Labor Act, 45 U.S.C. § 151, et seq., protective arrangements as provided in a special Attachment to FTA's Grant Agreement or Cooperative Agreement with the Recipient, and not pass down employee protective arrangements as provided in section 24 of this Master Agreement.
- (i) *Motor Carrier Safety.* The Recipient agrees that railroad signal employees and their employers must comply with the hours of service requirements of 49 U.S.C. § 21104, see 49 U.S.C. § 21104(e), and FRA's hours of service regulation, specifically 49 CFR Part 228, and that section 33 of this Master Agreement does not apply to railroad signal employees concerning hours of service.
- (j) *Railroad Safety.* The Recipient agrees that a railroad subject to FRA's safety jurisdiction must comply with the federal railroad safety laws.

SPECIAL PROVISION FOR PROMOTING COVID-19 SAFETY

Section 49. Centers for Disease Control and Prevention Order on Requirements for Persons to Wear Masks While on Conveyances and at Transportation Hubs.

- (a) *Compliance with CDC Mask Order.* The Centers for Disease Control and Prevention (“CDC”) Order of January 29, 2021, titled Requirement for Persons to Wear Masks While on Conveyances and at Transportation Hubs (“CDC Mask Order”), is within the meaning of “Federal Requirement” as that term is defined in this Master Agreement. One of the objectives of the CDC Mask Order is “[m]aintaining a safe and operating transportation system.” The Recipient agrees that it will comply, and will require all Third-Party Participants to comply, with the CDC Mask Order.
- (b) *Enforcement for non-compliance.* The Recipient agrees that FTA may take enforcement action for non-compliance with the CDC Mask Order, including:
 - (1) Enforcement actions authorized by 49 U.S.C. § 5329(g);
 - (2) Referring the Recipient to the CDC or other Federal authority for enforcement action;
 - (3) Enforcement actions authorized by 2 CFR §§ 200.339 – .340; and
 - (4) Any other enforcement action authorized by Federal law or regulation.

APPENDIX A
TRIBAL TRANSIT PROGRAM—APPLICABLE PROVISIONS

FTA recognizes that several provisions of this Master Agreement generally applicable to other programs do not apply to the Tribal Transit Programs or the Indian Tribes that are the Direct Recipients of federal assistance under those Programs. The following sections of this Master Agreement are not applicable to the Tribal Transit Programs:

Section 14(a)(1) and 14(b) – Private Enterprise

Section 22(e) – Relocation and Real Property

Section 27 – State Management and Monitoring Systems

Section 30 – Geographic Information and Related Spatial Data

Section 37 – Special Notification Requirement for States

However, this list is not intended to be comprehensive and FTA may determine that other provisions are not applicable depending upon the Underlying Agreement for the Tribal Transit.



Utah Transit Authority

MEETING MEMO

669 West 200 South
Salt Lake City, UT 84101

Board of Trustees

Date: 10/12/2022

TO: Board of Trustees
THROUGH: Jay Fox, Executive Director
FROM: Mary DeLoretto, Chief Service Development Officer
PRESENTER(S): David Osborn, Project Manager

TITLE:

Contract: Master Electric Service and Facilities Improvement Agreement (Rocky Mountain Power)

AGENDA ITEM TYPE:

Non-Procurement Agreement

RECOMMENDATION:

Approve and authorize the Executive Director to execute a contract and associated disbursements with Rocky Mountain Power for electrical service for the Depot District.

BACKGROUND:

UTA has been working with Rocky Mountain Power on a permanent power connection for the Depot District. UTA is installing conduits and vaults directly connected to the Depot District project site for Rocky Mountain Power's use. This agreement is for Rocky Mountain Power to connect to the building and canopies and for power service.

DISCUSSION:

The master electric service agreement with Rocky Mountain power is the agreement between UTA and Rocky Mountain Power for electrical service for the Depot District. This agreement also discusses the improvements that Rocky Mountain Power will need to make at the Depot District Site to provide power along with the estimated costs. The costs for the improvements at the Depot site are covered by an allowance based on the estimated future power use and electric bills for the site. The agreement also outlines the estimated power usage and billing for the new Depot District building, bus canopies and battery electric bus charging. The contract amount listed is an estimation of annual power bills for the next 15 years.

CONTRACT SUMMARY:

Contractor Name: Rocky Mountain Power
Contract Number: 22-P00186
Base Contract Effective Dates: October 12, 2022 - 2037
Extended Contract Dates: N/A
Existing Contract Value: N/A
Amendment Amount: N/A
New/Total Contract Value: \$811,991 per year in future estimated electrical utility costs, but will be based on actual utility usage; zero dollars due at this time.
Procurement Method: N/A
Budget Authority: No additional funding required, future utility costs will be included in the annual agency operating budget

ALTERNATIVES:

If this contract is not approved, Rocky Mountain Power will not be able to provide power for the new facility.

FISCAL IMPACT:

Annual power bills

ATTACHMENTS:

Master Electric Service and Facilities Improvement Contract with Rocky Mountain Power

Service ID#:901672202.006
CC:10958

Request #:8033383

**MASTER ELECTRIC SERVICE
and
FACILITIES IMPROVEMENTS AGREEMENT
between
ROCKY MOUNTAIN POWER,
and
UTAH TRANSIT AUTHORITY**

This MASTER ELECTRIC SERVICE AND FACILITIES IMPROVEMENTS AGREEMENT (this “Agreement” or “MESA”), is entered into between Rocky Mountain Power, an unincorporated division of PacifiCorp, an Oregon corporation (“Rocky Mountain Power” or the “Company”), and Utah Transit Authority, a Utah public transit district (“Customer”), each sometimes referred to herein as “Party” or collectively as “Parties.”

WHEREAS, Rocky Mountain Power is a provider of retail electric energy and power to retail electric customers, and

WHEREAS, Customer desires to purchase all Firm Power and Energy requirements for the Facility, as defined below, under this Agreement, and

WHEREAS, in order for Customer to obtain power and energy to the Facility, Customer desires to utilize, and Rocky Mountain Power agrees to construct, those improvements described in Exhibit A, and

WHEREAS, Rocky Mountain Power will incur certain costs in constructing these improvements; and

WHEREAS, Rocky Mountain Power Electric Service Regulation No. 12, shall govern Customer’s general obligations and responsibility for these costs; and

WHEREAS, the Parties intend that this MESA more specifically address their responsibilities to one another in this regard.

THEREFORE, the Parties agree as follows:

Article I. DEFINITIONS:

The following terms, when used herein with initial capitalization, whether in the singular or in the plural, shall have the meanings specified in this Article I:

“Actual Cost” means Rocky Mountain Power’s actual cost of constructing the Improvements, including all reasonable costs, charges, and expenses incurred by Rocky Mountain Power in the design, construction, installation, modification, testing, regulatory approval, and inspection of

and site-preparation for the Improvements, including without limitation: reasonable attorney fees, appraisal costs, and all other direct costs; internal costs, including overheads, expenses, and supplies, all as conclusively determined by Rocky Mountain Power's SAP accounting system; and reasonable costs for the use of its capital and real property interests.

"Agreement" means this Master Electric Service and Facilities Improvements Agreement and any renewals thereof or amendments thereto.

"Allowance" shall have the same meaning as Extension Allowance in Electric Service Regulation No. 12. For the purposes of this Agreement, the estimated annual usage of and charge for electric power and energy to the Facility is \$811,990.96, and the estimated Allowance is \$584,558.48.

"Billing Demand" or "Power" is as defined in Rocky Mountain Power's applicable Electric Service Schedules.

"Billing Period" means the period of approximately thirty (30) days intervening between regular successive meter readings.

"Commission" means the Utah Public Service Commission.

"Commencement Date" means the date upon which Rocky Mountain Power has fulfilled the obligations described in the Scope of Work, Exhibit A, and is ready to provide initial delivery of electric power and energy to the Facility.

"Contract Demand" means the specified Demand in kilowatts at a 100% Power Factor that Customer requires to meet its load requirements and that Rocky Mountain Power agrees to supply and have available for delivery to Customer.

"Contract Minimum Billing" means the minimum amount Customer shall pay to Rocky Mountain Power each Billing Period, as defined in Section 7.02.

"Demand" means the rate in kilowatts at which electric energy is generated, transferred, or used. Demand measurements are calculated based on integrated average usage over consecutive fifteen-minute periods of time, unless specified otherwise in the applicable Electric Service Schedule or Electric Service Regulations.

"Effective Date" means the date in which this Agreement is signed by both Parties and any required prepayment has been received by Rocky Mountain Power.

"Electric Service Regulations" means Rocky Mountain Power's currently effective electric service regulations, on file with and approved by the Commission, as they may be amended or superseded from time to time with the approval of the Commission.

“Electric Service Schedule” means Rocky Mountain Power’s currently effective Electric Service Schedule No. 8, Large General Service, 1,000 kW and Over and such other applicable and available electric service schedules on file with and approved by the Commission and selected by or made applicable to the Customer pursuant to the Electric Service Regulations and the terms of the Electric Service Schedules. Any request for a change in Electric Service Schedule made by Customer shall be submitted in writing.

“Facility” means the facility to which Rocky Mountain Power shall provide electric power and energy, which is located at 669 W 200 S, Salt Lake City, Utah, and consists of a building and DC fast chargers.

“Facilities Charges” means the facilities charges permitted to be charged under Electric Service Schedule 300 as on file with and approved by the Commission. The monthly Facilities Charges are estimated to be \$7,306.98. The actual Facilities Charges shall be determined upon completion of the Improvements.

“Firm Power and Energy” means electric power expressed in kilowatts and associated energy expressed in kilowatt-hours intended to have assured availability, as provided in Electric Service Regulation No. 4, entitled “Continuity of Service,” to meet any agreed-upon portion of Customer’s load requirements.

“Improvements” means the items to be constructed as described on Exhibit A attached hereto, of which the Customer’s responsibility for cost is estimated to be \$584,588.48.

“Point of Delivery” means Rocky Mountain Power’s point of metering used for billing of all Firm Power and Energy delivered to the Facility.

“Power Factor” means the percentage determined by dividing Customer’s power use in kW (real power) by the kilovolt-ampere power load (apparent power) as defined and determined in the Electric Service Regulations and/or Electric Service Schedule.

Article II. TERM AND TERMINATION; EARLY TERMINATION CHARGE

Section 2.01 Term

This Agreement shall be effective on the Effective Date, and shall remain in full force and effect for a period of fifteen (15) years following the Commencement Date and Rocky Mountain Power’s initiation of billing the Contract Minimum Billing. This Agreement shall automatically be renewed from year to year subject to the same terms and conditions, unless either Party submits written termination notice to the other Party not less than thirty (30) nor more than sixty (60) days prior to expiration of the initial period or any renewal period; provided, however, this Agreement shall remain effective so long as Customer is receiving electric service from Rocky Mountain Power.

Section 2.02 Early Termination by Rocky Mountain Power

If Customer has not authorized construction and has not diligently pursued the completion of its

obligations under Article IV, for any reason, within six (6) months after the Effective Date, Rocky Mountain Power may elect to terminate its obligations under Article III. In such event, Customer shall pay Rocky Mountain Power within 45 days of written demand, without deduction, offset, or Allowance, for any costs and obligations Rocky Mountain Power has incurred in connection with the Improvements (a) prior to the stoppage of work, and (b) reasonably incurs in winding up work, including, without limitation, the costs incurred in connection with the cancellation of third-party contracts, and including all costs that may have been eligible for an Allowance had the Improvements been completed. If Customer has paid for any portion of the Improvements, Rocky Mountain Power shall refund the prepayment without interest or penalties, less any of the foregoing costs and obligations incurred by Rocky Mountain Power or other amounts due to Rocky Mountain Power, within thirty (30) days of termination.

Section 2.03 Early Termination by Customer

Customer reserves the right, upon seven (7) days advance written notice to Rocky Mountain Power, to require Rocky Mountain Power at any time to stop all work by Rocky Mountain Power pursuant to this Agreement, provided that such request is the result of suspension or termination of construction or expansion of the Facility. Issuance of such stop-work order shall terminate this Agreement. Upon issuance of such stop-work order Customer shall pay Rocky Mountain Power upon demand, without deduction, offset, or Allowance, for any costs and obligations Rocky Mountain Power has incurred in connection with the Improvements (a) associated with the delay of work, (b) prior to ceasing work, and (c) reasonably incurs in winding up work, including, without limitation, the costs incurred in connection with the cancellation of third-party contracts, and including all costs that may have been eligible for an Allowance had the Improvements been completed. If Customer has paid for any portion of the Improvements, Rocky Mountain Power shall refund the prepayment without interest or penalties, less any of the foregoing costs and obligations incurred by Rocky Mountain Power or other amounts due to Rocky Mountain Power, within thirty (30) days of termination.

Section 2.04 Early Termination Charges

In the event that within the first ten (10) years following the Commencement Date: (i) Customer terminates service at the Facility, or (ii) Customer defaults (resulting in termination of service), or (iii) this Agreement terminates for any reason; Customer shall then pay at once upon such termination a termination charge equal to the Allowance less 1/10th of the Allowance for each year service was taken, and any other charges due under the applicable Electric Service Regulations or Electric Service Schedules.

Section 2.05 Facilities Removal upon Termination

Upon termination of service, Rocky Mountain Power may require removal of any or all Improvements in accordance with its Electric Service Regulations regarding the availability of facilities. Within ninety (90) days of termination, Rocky Mountain Power shall notify Customer and provide an estimate of removal costs. Customer shall pay the estimated cost within thirty (30) days of the notice, unless the Parties mutually agree in writing to other payment terms.

Article III. ROCKY MOUNTAIN POWER'S OBLIGATIONS REGARDING ROCKY MOUNTAIN POWER FACILITIES

Section 3.01 Design, Construction, and Ownership

Rocky Mountain Power shall design, construct, install, and operate the Improvements for the Customer in accordance with Rocky Mountain Power standards. Rocky Mountain Power shall own the Improvements, together with Rocky Mountain Power's existing electric facilities used to serve Customer, and neither Customer nor any other person shall have the right to operate or maintain Rocky Mountain Power's electric facilities or the Improvements.

Section 3.02 Allowance

Rocky Mountain Power shall grant the Allowance as specified in Article I, based upon Customer's good faith estimate of the Facility's usage of electric power and energy.

Section 3.03 Completion of Improvements

Provided that Customer executes this MESA on or before July 21, 2022, Rocky Mountain Power shall use commercially reasonable efforts to complete the Improvements by a Commencement Date of on or before (180) days after the Effective Date.

Section 3.04 Estimated Total Project Costs

Rocky Mountain Power estimates that the total cost of the project is \$1,041,884.66.

Section 3.05 Estimated Costs (Customer Responsibility)

Customer is responsible for \$584,558.48 of the Estimated Total Project Costs of \$1,041,884.66. An Allowance of \$584,558.48 leaves customer with no out-of-pocket costs for the Scope of Work.

Section 3.06 Additional Work

If Rocky Mountain Power determines additional work is necessary, Rocky Mountain Power shall request written approval from Customer to proceed. If Customer requests additional work, Customer shall provide written authorization to proceed with additional work. Rocky Mountain Power may decline to perform additional work requested by Customer based on staffing and workload constraints if such work could be performed by Customer or its agents. Customer shall be responsible for the cost of such additional work authorized and performed along with any associated delay in the time for completion. Rocky Mountain Power may require additional prepayment to cover the cost of such additional work.

Article IV. CUSTOMER'S OBLIGATIONS REGARDING FACILITIES

Section 4.01 Rights of Way

Rocky Mountain Power shall select the right of way for all necessary lines with the cooperation of Customer. Customer shall prepare in a form satisfactory to Rocky Mountain Power and shall tender to Rocky Mountain Power all instruments, documents, and writings necessary or useful in routing and constructing the lines, including but not limited to all necessary rights-of-way, licenses and easements. At Customer's option and upon written approval from Rocky Mountain

Power, pursuant to Section 3.05, Rocky Mountain Power will procure such rights of way, licenses and easements at the Customer's expense.

Section 4.02 Site Preparation

If any site preparation is necessary, Customer shall prepare and clear any sites for the Improvements to Rocky Mountain Power's satisfaction, including the provision of all conduits, pull ropes, transformer pads, and vaults, or Rocky Mountain Power may elect to do so at the Customer's expense. Additional details of Customer's obligations for site preparation are shown on Exhibit A.

Section 4.03 Compliance with Rocky Mountain Power Requirements

Customer shall comply with all of Rocky Mountain Power's tariffs, procedures, specifications, and requirements.

Section 4.04 Access to Rocky Mountain Power Facilities

Customer shall not have physical access to Rocky Mountain Power's electric facilities or the Improvements and shall engage in no activities on or related to Rocky Mountain Power's electric facilities or the Improvements.

Section 4.05 Payment for Improvements

N/A – The Allowance covers the cost of the Improvements.

Section 4.06 Payment of Actual Costs

Customer shall pay Rocky Mountain Power for the Actual Cost of the Improvements of Section 4.05. Following completion of the Improvements, the project costs shall be trued up and the Post Construction Actual Cost Summary shall be updated and provided to Customer. The summary shall reflect any Customer payment due or refund required. If an amount is due an invoice shall be issued to Customer and payment made within 30 days of receipt of the invoice. If a refund is due, the refund shall be issued within 30 days of receipt of the Summary. The summary shall include the Facilities Charges trued up to Actual Costs. These trued-up Facilities Charges will be applied in the calculation of the Contract Minimum Billing of Section 7.02 and will be effective within 60 days of the Summary.

Article V. WARRANTIES; LIMITATIONS OF LIABILITY

Section 5.01 Rocky Mountain Power

The Company warrants that its work in constructing and maintaining the Improvements shall be consistent with prudent utility practices. **THE COMPANY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTY OF MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE, AND SIMILAR WARRANTIES.** The Company's liability for breach of warranty, defects in the Improvements, or installation of the Improvements shall be limited to repair or replacement of any non-operating or defective portion of the Improvements or the Company's electric facilities. Under no circumstances shall the Company be liable for economic losses, including but not limited to consequential damages. The Company shall not be subject to any liability or

damages for inability to provide service to the extent that such failure shall be due to causes beyond the reasonable control of the Company.

Section 5.02 Customer

Customer warrants that it has estimated, in good faith, the Facility's usage of electric power and energy which was used to calculate the Allowance and the Contract Minimum Billing.

Article VI. DELIVERY OF FIRM POWER AND ENERGY

Section 6.01 Initial Contract Demand

Rocky Mountain Power shall deliver such amounts of Firm Power and Energy to the Point of Delivery as Customer requires meeting its load requirements up to, but not in excess of, Contract Demand which shall be 2,221 kW. Contract Demand may be increased or decreased, in accordance with the terms of this Agreement. Deliveries shall be subject to the operational constraints of Article IX.

Section 6.02 Request for Additional Contract Demand

Upon Rocky Mountain Power's receipt of Customer's written request for power and energy above the Contract Demand, Rocky Mountain Power shall use commercially reasonable efforts to attempt to supply such additional power under terms and conditions acceptable to both Parties. Within fifteen (15) days of the request Rocky Mountain Power shall advise Customer in writing whether the additional power and energy is or can be made available and the terms on which it can be made available. If Rocky Mountain Power and Customer agree in writing that Rocky Mountain Power shall provide Customer with Firm Power and Energy in excess of the Contract Demand commitments, the amount of agreed deliveries shall become the new Contract Demand amending and superseding the Contract Demand specified in this Agreement.

Section 6.03 Reduction of Contract Demand

After thirty-six (36) months of deliveries at the initial Contract Demand or thirty-six (36) months after any increase in Contract Demand, Rocky Mountain Power may reduce Contract Demand to largest actual demand measured over the previous thirty-six months. The reduction in Contract Demand shall become effective thirty (30) days after Rocky Mountain Power provides notice.

Section 6.04 Commencement of Deliveries

Rocky Mountain Power shall commence delivery as soon as practicable after the completion of the Improvements.

Section 6.05 Delivery Voltage

Rocky Mountain Power shall deliver Firm Power and Energy at the Point of Delivery in the form of three-phase, alternating current at a nominal frequency of 60 Hertz, and at a nominal voltage of 277/480 volts. For additional information on the delivery voltage, see the section "Voltage Level and Range" in the Rocky Mountain Power Engineering Handbook.

Section 6.06 Resale of Power

Customer shall not resell any electric power and energy delivered under this Agreement to any other person or entity.

Article VII. BILLING, PRICES AND PAYMENT FOR POWER AND ENERGY

Section 7.01 Monthly Billing for Power and Energy

All billing statements for service under this Agreement shall show the amount due for the type and quantity of power and energy purchased or delivered and the associated charges in accordance with the applicable Electric Service Schedule and any charges permitted or required under the applicable Electric Service Regulations, the sum of which shall establish the total amount due from Customer for the Billing Period. Provided, if the sum of such charges would be less than the Contract Minimum Billing described below, the total amount due from Customer for the Billing Period under this Agreement shall be the Contract Minimum Billing, subject to the conditions of Section 7.02.

Section 7.02 Contract Minimum Billing

Monthly bills for electric service shall be rendered and paid in accordance with the rates and terms of Rocky Mountain Power's filed and approved Electric Service Schedules; provided, that in order to compensate Rocky Mountain Power for its installation of the Improvements to serve Customer, Customer shall pay not less than the Contract Minimum Billing, which shall be the greater of (1) charges for service during the Billing Period under the provisions of the applicable Electric Service Schedules, or (2) 80% of Customer's charges for service during the Billing Period, plus the Facilities Charges, even if the amount of electrical energy actually consumed would have resulted in a lesser charge under the applicable Electric Service Schedules. The Customer must pay a Contract Minimum Billing for as long as service is taken, but in no case more than 15 years.

Section 7.03 Payments

All bills shall be paid by the date specified on the bill, and late charges shall be imposed upon any delinquent amounts. Unless otherwise required, Customer may make payments by check, EDI or wire transfer to an account designated by Rocky Mountain Power. The Customer account number must be included with each payment. If Customer disputes any portion of Customer's bill, Customer shall pay the total bill and shall designate the disputed portion. Rocky Mountain Power shall respond to the dispute within sixty (60) days after Customer's notice of dispute. Any refund Rocky Mountain Power determines Customer is due shall bear interest at the rate then specified by the Commission or, if no rate is specified, the then effective prime rate as quoted in The Wall Street Journal.

Section 7.04 Deposits

Rocky Mountain Power may request deposits to the extent permitted under the Electric Service Regulations and the Electric Service Schedules. In the event of a default by Customer in any of its obligations under this Agreement, the applicable Electric Service Regulations, or the applicable Electric Service Schedule, Rocky Mountain Power may exercise any or all of its rights and remedies under this Agreement, the Electric Service Regulations, or the Electric Service Schedule and under any applicable laws, rules and regulations with respect to any such deposits.

Article VIII. METERING

Section 8.01 Metering Equipment

Rocky Mountain Power shall provide, maintain and test meters and metering equipment required for billing purposes. The Parties shall specify the locations for Rocky Mountain Power's installation of metering equipment at the Customer's premises, and Customer shall allow Rocky Mountain Power access to such locations without charge during reasonable business hours.

Section 8.02 Telecommunications Facilities

At sites where there is cell phone coverage Rocky Mountain Power shall provide an external cell phone or Ethernet connection for remote data acquisition located at the meter. For sites where there is no cell coverage or Rocky Mountain Power owned fiber the customer shall provide a dedicated telephone line or other Rocky Mountain Power approved dedicated data access for meter interrogation. Customer shall provide the dedicated access without charge to Rocky Mountain Power.

Section 8.03 Secondary Metering

If the Point of Delivery is on the primary side of Customer's transformers, Rocky Mountain Power may elect to install its meter on the secondary side of the transformers, whereupon transformer and other losses occurring between the Point of Delivery and the meter shall be computed and added to the meter readings to determine the demand and energy consumption.

Section 8.04 Transformer Loss Curves

If Customer takes service at primary voltage and if secondary metering is used, Customer shall, prior to commencement of service, provide Rocky Mountain Power with transformer loss curves and test data to allow Rocky Mountain Power to calculate transformer losses for billing purposes.

Article IX. OPERATIONAL CONSTRAINTS

Section 9.01 Notification

Customer shall notify Rocky Mountain Power prior to increasing its consumption of electric power and energy in a manner that would exceed the Contract Demand and Customer shall provide sufficient time for Rocky Mountain Power to accommodate such loads. Customer shall also notify Rocky Mountain Power prior to any significant change in load characteristics or installation of devices (such as power factor correction capacitors, dynamic brakes, adjustable speed drives, etc.) that could impact the operation of Rocky Mountain Power's electric system or Customer's interaction with Rocky Mountain Power's electric system.

Section 9.02 Operating Limits

The Rocky Mountain Power Engineering Handbook Power Quality Section provides detailed information, guidelines, and requirements pertaining to operational constraints and power quality. Additionally, Customer shall comply with Rocky Mountain Power's Utah Electric Service Requirements. Customer accepts Rocky Mountain Power's operating limits as given in the applicable Rocky Mountain Power Engineering Handbook section, including without

limitation the sections entitled “Voltage Level and Range,” “Planning Standards for Transmission Voltage,” and “Reliability Criteria for System Planning.” All measurements of currents and voltages under this Article IX shall be taken at the Point of Delivery.

Section 9.03 Reactive Requirements

Customer shall control and limit the flow of reactive power between Rocky Mountain Power’s and Customer’s system so as to maintain a Power Factor in accordance with the Electric Service Schedule. Rocky Mountain Power’s Billing Demand shall be increased in accordance with the Electric Service Schedule for excessive reactive flow. Rocky Mountain Power may require the Customer to install additional system Improvements at the Customers expense to correct the power factor to a minimum level of 90%.

Section 9.04 Voltage Fluctuation and Light Flicker

In order to receive electric service from Rocky Mountain Power, Customer shall continuously comply with Rocky Mountain Power’s “Voltage Fluctuation and Light Flicker” guidelines and with the operating criteria set forth in the Power Quality section of Rocky Mountain Power’s Engineering Handbook. If operation outside of these limits is desired, Customer must contact Rocky Mountain Power for engineering studies to be done prior to changing operations to ensure that operation remains within these limits.

Section 9.05 Harmonic Distortion

Customer shall operate the Facility in such a manner so that harmonic distortion and notching falls within Rocky Mountain Power’s adopted guidelines and standards as described in the Rocky Mountain Power Engineering Handbook, Harmonic Distortion Section.

Section 9.06 Current Imbalance

Customer shall operate the Facility in a manner such that Facility steady-state load currents are reasonably balanced between each phase.

Section 9.07 Transmission Voltage Increases for Customer-Owned Substations (Only for Customers who own substations)

This section applies if, as a result of growth in the area served by transmission facilities also serving a Customer-owned substation, Rocky Mountain Power must raise transmission system voltage to increase system capacity. Customer-owned substations connected to the transmission system can lead to a constraint on converting the area voltage due to the necessity to continue providing service at the current voltage. To avoid such a constraint, Customer shall either a) Convert its substation, without cost to Rocky Mountain Power, upon three hundred sixty five (365) days written notice from Rocky Mountain Power; or b) Install substation facilities which can accept both the existing and planned new incoming voltage, such as with a dual high side voltage rating of Customer side transformer and substation bus work.

Section 9.08 Remediation

In the event that the Customer’s operations fall outside of the technical requirements of this Agreement, or the Commission’s requirements, or adversely affects the operations of Rocky Mountain Power’s transmission or distribution system, or other Rocky Mountain Power

customers, Rocky Mountain Power shall give written notice of the corrective actions required, and Customer shall have the opportunity for a period of fourteen (14) days to discuss Rocky Mountain Power's requirements. After such fourteen-day period, Rocky Mountain Power shall give Customer its final determination of Rocky Mountain Power's required corrective action. Although Rocky Mountain Power shall discuss the corrective action with Customer, final determination of the corrective action required shall be made by Rocky Mountain Power, based on compliance with Rocky Mountain Power's Engineering Handbook guidelines and standards.

Should Customer fail to begin to take corrective action required by Rocky Mountain Power within thirty (30) days after written notice from Rocky Mountain Power or fail to pursue completion of such corrective action with diligence, Rocky Mountain Power may perform such services or supply and install such equipment as it deems necessary to provide corrective action, whereupon Customer shall compensate Rocky Mountain Power for all sums expended, all materials utilized, and all services contracted or performed, by paying a sum equal to 110% of all costs, expenses, material, and labor charges incurred by Rocky Mountain Power, including Rocky Mountain Power's internal material and labor charges and standard overhead costs. Customer shall pay such sums within fifteen (15) days after Rocky Mountain Power has mailed an itemized statement of its charges therefore. If Customer desires to operate outside of these limits, Customer shall pay for studies done by Rocky Mountain Power to determine the impact on other Rocky Mountain Power Customers and whether the proposed operation is acceptable to Rocky Mountain Power.

Provided, should Rocky Mountain Power at any time reasonably determine that Customer's operations pose a threat to the safety of Rocky Mountain Power's employees or the public, pose an imminent threat to the integrity of Rocky Mountain Power's electric system, or may materially interfere with the performance of Rocky Mountain Power's service obligations, Rocky Mountain Power shall attempt to provide notice to Customer that Customer must change its operations. If Customer fails to take corrective action on a timely basis, or if notice cannot be provided by Rocky Mountain Power to Customer, prior to the time when corrective action must occur, then Rocky Mountain Power may perform such work and/or take such corrective action that is necessary, including disconnection, without additional notice to Customer and without subjecting itself to any liability provided Rocky Mountain Power has acted reasonably. If Rocky Mountain Power has performed the work and/or corrective action, as soon as practicable thereafter, Rocky Mountain Power shall advise Customer in writing of the work performed or the action taken and shall endeavor to arrange for the accommodation of Customer's operations, subject to the terms of this Agreement, the Electric Services Regulations, the guidelines and standards contained in the Rocky Mountain Power Engineering Handbook, Rocky Mountain Power's Utah Electric Service Requirements, and all other applicable rules or regulations. Customer shall be responsible for paying Rocky Mountain Power, upon demand, for all reasonable costs incurred by Rocky Mountain Power for all work, action, and accommodation performed by Rocky Mountain Power that is consistent with the terms of this paragraph.

Article X. INTEGRATION; AMENDMENT

This Agreement contains the entire agreement of the Parties with respect to the subject matter, and replaces and supersedes in the entirety all prior agreements between the Parties related to the same subject matter. Except pursuant to Article XI and Section 14.02 below, this Agreement may be modified only by a subsequent written amendment or agreement executed by both Parties.

Article XI. JURISDICTION OF REGULATORY AUTHORITIES

Rocky Mountain Power's currently applicable, effective Electric Service Schedule, and Electric Service Regulations, are incorporated herein and by reference made a part hereof. Customer acknowledges that it is familiar with the Electric Service Schedule and Electric Service Regulations and agrees to abide by them and all amendments and changes thereto so approved by the Commission. In the event that the Commission or any other state, federal, or municipal authority determines that any provision of this Agreement conflicts with or is in violation of the Electric Service Schedule or the Electric Service Regulations, amends or supersedes the Electric Service Schedule or the Electric Service Regulations, or issues any rules, regulations, or orders which require Rocky Mountain Power to alter or amend any of the provisions of this Agreement or to terminate or curtail the delivery of Firm Power and Energy to Customer, this Agreement automatically shall be amended to comply with such determination, amendment, rule, regulation or order, and Rocky Mountain Power shall not be liable to Customer for damages or losses of any kind whatsoever which Customer may sustain as a result of such determination, amendment, rule, regulation, or order, including consequential damages.

Article XII. FORCE MAJEURE

Neither party shall be subject to any liability or damages for delay or failure to perform its respective obligations under this Agreement to the extent that such failure was due to causes beyond the reasonable control of the Party relying thereon as justification for such delay or failure, including, but not limited to the following: (a) the operation and effect of any rules, regulations and orders promulgated by any Commission, municipality, or governmental agency of the United States, or subdivision thereof (so long as the claiming Party has not applied for or assisted in the application for, and has opposed where and to the extent reasonable, such government action); (b) restraining order, injunction or similar decree of any court; (c) war; (d) flood; (e) earthquake; (f) act of God; (g) civil disturbance, sabotage, or terrorism; (h) strikes or boycotts; or (i) failure, breakdown of, or damage to Rocky Mountain Power or third party electric facilities. Should any of the foregoing occur, and (1) Customer claims Force Majeure, then Customer shall have no liability for service until Customer is able to resume service, except for any minimum monthly payments or termination charges designed to cover special facilities extension costs, or (2) Rocky Mountain Power claims Force Majeure, then Customer shall have no liability for service until Rocky Mountain Power is able to resume service. However, the Party claiming Force Majeure shall make every reasonable attempt to diligently remedy the cause thereof. Time periods for performance obligations of Parties herein shall be extended for the period during which Force Majeure was in effect. In the event that a Force Majeure event

occurs, and Customer does not resume service at pre-event levels within six (6) months of the beginning of the event, the Agreement shall be treated as terminated by Customer pursuant to Section 2.02 above. Notwithstanding this Article XII, Rocky Mountain Power's obligations to provide electric service under this Agreement shall be governed by the section of Electric Service Regulation No. 4, entitled "Continuity of Service."

Article XIII. ASSIGNMENT

Customer's rights and obligations under this Agreement may not be assigned without Rocky Mountain Power's consent except in connection with a sale, assignment, lease or transfer of Customer's interest in its Facility, or real or personal property related thereto subject to (1) such successor's qualification as a customer under Rocky Mountain Power's policies, the Electric Service Regulations, and the Electric Service Schedule, and (2) the written agreement of such successor to be bound by this Agreement, the Electric Service Regulations, and the Electric Service Schedule, and to assume the obligation of Customer from the date of assignment. Rocky Mountain Power may condition such assignment upon the posting of a deposit as permitted under the Electric Service Regulations and the Electric Service Schedule. If Rocky Mountain Power consents to any such assignment Customer shall remain liable for any liabilities and obligation under this Agreement, the Electric Service Regulations and the Electric Service Schedule through the date of assignment.

Company may at any time assign its rights and delegate its obligations under this Contract, in whole or in part, including, without limitation, transferring its rights and obligations under this Contract to any: (i) affiliate; (ii) successor in interest, or (iii) corporation or any other business entity in conjunction with a merger, consolidation or other business reorganization to which Company is a party.

Article XIV. INFORMATION

Section 14.01 Furnishing Information

Upon Rocky Mountain Power's request, Customer shall submit its year-end financial statements to Rocky Mountain Power, certified to be true and correct and in accordance with GAAP.

Customer shall submit such additional information as Rocky Mountain Power may reasonably request from time to time in furtherance of the purposes of this Agreement. Rocky Mountain Power shall keep such information confidential.

Section 14.02 Accuracy of Information

Customer represents that all information it has furnished or shall furnish to Rocky Mountain Power in connection with this Agreement shall be accurate and complete in all material respects. Customer also represents that Customer has not knowingly omitted and shall not knowingly omit any fact in connection with the information to be furnished under this Agreement, which materially and adversely affects the business, operations, property or condition of the Facility or the obligations of Rocky Mountain Power under this Agreement. Should Rocky Mountain Power base its willingness to enter into any portion of this Agreement or any decision with respect to credit, deposits or any other material matter, on inaccurate information furnished by

Customer, Rocky Mountain Power shall have the right to revoke its decision with respect to such matter and modify this Agreement and/or its decision, to reflect the determination which Rocky Mountain Power would have made had Rocky Mountain Power received accurate information.

Article XV. REMEDIES; WAIVER

Either Party may exercise any or all of its rights and remedies under this Agreement, the applicable Electric Service Regulations and under any applicable laws, rules and regulations. Rocky Mountain Power's liability for any action arising out of its activities relating to this Agreement or Rocky Mountain Power's electric utility service shall be limited to repair or replacement of any non-operating or defective portion of Rocky Mountain Power's electric utility facilities. Under no circumstances shall either party be liable for any economic losses, costs or damages, including but not limited to special, indirect, incidental, consequential, punitive, or exemplary damages. No provision of this Agreement or the Electric Service Regulations shall be deemed to have been waived unless such waiver is in writing signed by the waiving Party. No failure by any Party to insist upon the strict performance of any provision of this Agreement, the Electric Service Regulations or to exercise any right or remedy consequent upon a breach thereof, shall constitute a waiver of any such breach of such provision or of any other provision. No waiver of any provision of this Agreement or the Electric Service Regulations shall be deemed a waiver of any other provision of this Agreement, the Electric Service Regulations or a waiver of such provision with respect to any subsequent breach, unless expressly provided in writing.

Article XVI. ATTORNEY'S FEES

In any suit or action, arising out of or related to this Agreement, the Electric Service Regulations, or the applicable Electric Service Schedule, involving a claim, counterclaim or cross-claim made by either Party against the other Party, the substantially prevailing Party shall be entitled to recover the costs and fees (including, without limitation, reasonable attorneys' fees, the fees and costs of experts and consultants, copying, courier and telecommunication costs, and deposition costs and all other costs of discovery) incurred by such substantially prevailing Party in such suit or action, including, without limitation, any post-trial or appellate proceeding, or in the collection or enforcement of any judgment or award entered or made in such suit or action.

Article XVII. SET-OFF

If Customer defaults under any of its obligations under this Agreement, Rocky Mountain Power may at its option, without notice to Customer, set-off amounts due and owing to Rocky Mountain Power by Customer or any of its affiliates under any present or future agreement between Rocky Mountain Power or any of its affiliates and Customer or any of its affiliates against amounts owed to Customer or any of its affiliates, under any present or future agreement between Customer or any of its affiliates and Rocky Mountain Power or any of its affiliates.

Article XVIII. GOVERNING LAW; JURISDICTION; VENUE

All provisions of this Agreement and the rights and obligations of the Parties hereto shall in all cases be governed by and construed in accordance with the laws of the State of Utah applicable to contracts executed in and to be wholly performed in Utah by persons domiciled in the State of Utah. Each Party hereto agrees that any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement, the Electric Service Schedule, the Electric Service Regulations or the transactions contemplated hereby or thereby, may only be brought before the Commission, the Federal courts located within the State of Utah, or state courts of the State of Utah, and each Party hereby consents to the exclusive jurisdiction of such forums (and of the appellate courts therefrom) in any such suit, action or proceeding. Furthermore, each Party hereto waives, to the extent permitted by law, any objection which it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such forum or that any such suit, action or proceeding which is brought in any such forum has been brought in any inconvenient forum. If for any reason, service of process cannot be found in the state of Utah, process in any such suit, action or proceeding may be served on a Party anywhere in the world, whether within or without the jurisdiction of any such forum.

Article XIX. WAIVER OF JURY TRIAL

To the fullest extent permitted by law, each of the parties hereto waives any right it may have to a trial by jury in respect of litigation directly or indirectly arising out of, under or in connection with this agreement. Each party further waives any right to consolidate any action in which a jury trial has been waived with any other action in which a jury trial cannot be or has not been waived.

Article XX. HEADINGS

The descriptive headings contained in this Agreement are included for reference only and shall not affect in any way the meaning or interpretation of this Agreement.

Article XXI. COMMUNICATIONS AND NOTICE

Customer's point of contact at Rocky Mountain Power for all matters is:

Travis Jones
Regional Business Manager
Rocky Mountain Power
1569 West North Temple
Salt Lake City, UT 84116
Phone: 801-220-7230

Any legal notice required to be given hereunder by one Party to the other Party shall be sent by hand-delivery, by courier service, or by registered or certified mail, return receipt requested, to the other Party hereto at its address hereafter set forth.

If to Rocky Mountain Power:

Rocky Mountain Power
Attn: Eric Holje
C&I Account Management
635 N 1200 W
Layton, UT 84041

If to Customer:

Utah Transit Authority
Attn: Hal Johnson
669 West 200 South
Salt Lake City, UT 84101

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by persons duly authorized as of the dates set forth below.

UTAH TRANSIT AUTHORITY

{{_es_signer2_signatureblock}}

ROCKY MOUNTAIN POWER

{{_es_signer3_signatureblock}}

Approved as to Form

DocuSigned by:
Mike Bell
361F16F838704A9...

EXHIBIT A
Scope of Work - Improvements

Rocky Mountain Power will conduct the following work:

INSTALL:

9,800' 3#1000AL PRIMARY

775' 3#1/0AL PRIMARY

525' 3PH 477 OH CONDUCTOR

55' SELF SUPPORTING STEEL POLE

3 PME9 SWITCHGEARS

1 PME11 SWITCHGEAR

1000KVA TRANSFORMER

2500KVA TRANSFORMER

2 CT METERS

600' 1000QX SERVICE WIRE

300' 500QX SERVICE

EXHIBIT B
Post Construction Actual Cost Summary
For
UTAH TRANSIT AUTHORITY

This summary is issued by Rocky Mountain Power upon conclusion of the project to summarize overall project cost, final settlement (funds due to Rocky Mountain Power or refund to Customer), and updated Facilities Charges.

		Estimated Costs		Actual Costs
1	Direct Assigned	\$ 327,524.66	\$	-
2	Adjusted Network Upgrade cost	\$ 694,686.00	\$	-
3	Customer Share of Network Upgrade (2x12)	\$ 257,033.82	\$	-
4	Other Customer Costs*	-	\$	-
4a	NU betterment	\$ 19,674.00	\$	-
5	Total Project Cost (1 + 2 + 4 + 4a)	\$ 1,041,884.66	\$	-
6	Total Customer Responsibility (1 + 3 + 4)	\$ 584,558.48	\$	-
7	Project Costs included in FC calculation (1 + 3)	\$ 584,558.48	\$	-
8	Customer Allowance	\$ 584,558.48	\$	-
9	Customer Allowance (applied) (8 ≤ 1 + 3)	\$ 584,558.48	\$	-
10	Customer Funds included in FC calculation (1 + 3 - 9)	-	\$	-
11	TOTAL Advance (4 + 10)	-	\$	-
12	Customer Network Upgrade Percentage	0.37		
*not elig. for Allowance: ROW, civil work, vaults, accommodations, etc.				
Funds Previously Received from Customer			\$	-
Settlement Payment Due to Rocky Mountain Power:			\$	-
Settlement Refund to Customer:			\$	-
Facilities Charges, Actual Cost ("FC")		\$	%	
FC on Advance (Installed at Customer's expense):		\$ -	0.25%	\$ -
FC on Allowance (Installed at Company's expense):		\$ -	1.25%	\$ -
Total Facilities Charges**				\$ -
** Facilities Charges as defined by Electric Service Regulation No. 12 and Schedule 300				



Utah Transit Authority

MEETING MEMO

669 West 200 South
Salt Lake City, UT 84101

Board of Trustees

Date: 10/12/2022

TO: Board of Trustees
THROUGH: Jay Fox, Executive Director
FROM: Dave Hancock, Director of Capital Development
PRESENTER(S): David Osborn, Project Manager

TITLE:

Change Order: Depot District Clean Fuels Technology Center Contract Change Order No. 29 - Additional Canopy Grading (Big D Construction)

AGENDA ITEM TYPE:

Procurement Contract/Change Order

RECOMMENDATION:

Approve and authorize the Executive Director to execute change order #29 and associated disbursements with Big D construction in the amount of \$215,705

BACKGROUND:

In June 2018, UTA released a Request for Proposals (RFP) for the construction of the Depot District Clean Fuels Technology Center. This facility will replace the existing aging and undersized Central bus facility and will house up to 150 alternative and standard fuel buses with the ability to expand to 250 buses in the future. A change order is necessary to provide proper cover on the canopy foundations.

DISCUSSION:

This change order is to perform some additional grading under the canopies at the Depot District. Supply chain and cost escalation issues related to the pandemic necessitated ordering the canopy steel as soon as the change order for the canopies was signed. There were three addendums to the plans that occurred after the steel was ordered. One of these plan revisions lowered the footings to accommodate utility placement. Upon reviewing the plan change it was determined that lowering the footings would necessitate purchasing new longer steel columns. It was decided not to reorder longer steel columns in order to maintain schedule and avoid additional costs and cost escalations related to volatile steel pricing. The issue will be resolved by importing additional fill material and grading on the site to use the steel as ordered. A Direction or Authorization to Proceed (DAP) has been issued in the amount of \$182,000 to start the work in order to

maintain schedule while the change order was negotiated.

CONTRACT SUMMARY:

Contractor Name:	Big D Construction
Contract Number:	18-2741TP-3 (change order 29)
Base Contract Effective Dates:	August 24, 2018 (Phase 1 contract) June 24, 2019 (Phase 2 contract)
Extended Contract Dates:	March 10, 2023
Existing Contract Value:	\$74,056,450
Amendment Amount:	\$215,705
New/Total Contract Value:	\$74,272,155
Procurement Method:	N/A
Budget Authority:	Included in approved capital budget and 5-year plan

ALTERNATIVES:

If this change order is not approved, the foundations for the canopies along with drainpipes and electrical conduits near the foundations will not be sufficiently below grade.

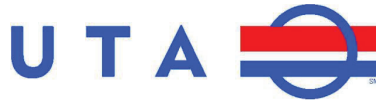
FISCAL IMPACT:

The budget is included in the Depot District project which is included in the 5-year Capital Plan.

ATTACHMENTS:

Change order with Big D Construction

Utah Transit Authority
 669 West 200 South
 Salt Lake City, Utah 84101
 Phone: (801) 741-8885
 Fax: (801) 741-8892



CHANGE ORDER
 No. 29

TITLE: Depot District Canopy Additional Grading
 PROJECT/CODE: MSP102 - Depot District
 TO: Big-D Construction
 ATTN: Jim Allison

DATE: 9/16/2022
 This is a change order to
 CONTRACT No: 18-2741TP

DESCRIPTION OF CHANGE: Brief scope, references to scope defining documents such as RFIs, submittals, specified drawings, exhibits, etc.

This change order is to perform some additional grading under the canopies at the Depot District. Supply chain and cost escalation issues related to the pandemic necessitated ordering the canopy steel as soon as the change order for the canopies was signed. There were a couple of addendums to the plans that occurred after the steel was ordered and it was determined during construction that the main columns would be too short based on these drawing revisions. It was decided that to maintain schedule and avoid cost escalations related to volatile steel pricing that the steel columns would not be reordered at the new length and that the site would be regraded to accommodate the steel as ordered. DAP issued for \$182,000 on 7/5/2022.

Direction or Authorization to Proceed (DAP) previously executed: YES NO

It is mutually agreed upon, there is a schedule impact due to this Change order: YES NO

The amount of any adjustment to time for Substantial Completion and/or Guaranteed Completion or Contract Price includes all known and stated impacts or amounts, direct, indirect and consequential, (as of the date of this Change Order) which may be incurred as a result of the event or matter giving rise to this Change Order. Should conditions arise subsequent to this Change Order that impact the Work under the Contract, including this Change Order, and justify a Change Order under the Contract, or should subsequent Change Orders impact the Work under this Change Order, UTA or the Contractor may initiate a Change Order per the General Provisions, to address such impacts as may arise.

Current Change Order		Contract		Schedule	
Lump Sum:	\$215,705	Original Contract Sum:	\$149,530	Final Completion Date Prior to This Change:	3/10/2023
Unit Cost:	-	Net Change by Previously Authorized Changes:	\$73,906,920	Contract Time Change This Change Order (Calendar Days):	0
Cost Plus:	-	Previous Project Total:	\$74,056,450	Final Completion Date as of This Change Order:	3/10/2013
T&M NTE:	-	Net Change This Change Order:	\$215,705		
Total:	\$215,705	Current Project Total:	\$74,272,155		

ACCEPTED: DocuSigned by:
 By: Jim Allison
34E18D6D115A421
 Date: 9/16/2022

Jim Allison
 Big-D Construction

By: _____
 Date: _____
 David Osborn
 Project Manager <\$25,000

By: _____
 Date: _____
 Jared Scarbrough
 Dir. of Capital Construction <\$75,000

By: _____
 Date: _____
 Mary DeLoretto
 Chief Service Dev Officer <\$200,000

By: _____
 Date: _____
 Brian Motes
 Procurement

DocuSigned by:
 By: Mike Bell
361F16F838704A3
 Date: 9/16/2022
 Mike Bell
 Attorney General >\$10,000

By: _____
 Date: _____
 Jay Fox
 Executive Director >\$200,000



Change Order Summary Worksheet
Previously Authorized Changes

Contract 18-2741TP BIG

Change Order No	Date	Amount of CO	Running Contract Total	Subject
Original Contract			\$149,530	
1	7/19/2019	\$2,068,783	\$2,218,313	Phase 2/GMP 1 - Demolition and Abatement Construction Services
2	8/12/2019	\$241,637	\$2,459,950	Depot District Clean Fuel Technology Center- Locomotive Bldg. Demolition & Hazardous Waste Abatement- GMP-1A
3	10/18/2019	\$8,092,803	\$10,552,753	Phase 2/GMP 2
4	12/20/2019	\$159,623	\$10,712,376	Phase 2/GMP 1 - Unforeseen Site Conditions
5	3/2/2020	\$41,234	\$10,753,610	Salvage Brick and Timbers
6	3/20/2020	\$54,571	\$10,808,181	Export Material Screening
7	4/17/2020	\$10,348	\$10,818,529	Design Work for Rammed Aggregate Piers
8	5/15/2020	\$81,812	\$10,900,341	Various Scope Modifications for PCOs 08, 09, 10, 12, 13, 16, 18, 20, 21 and 22
9	5/15/2020	\$25,799	\$10,926,140	40ft additional waterline tie-in
10	5/15/2020	\$35,252	\$10,961,392	Waterline Loops Around Storm Drain and Fire Waterline Revisions
11	5/15/2020	\$116,671	\$11,078,063	Permit Changes for Wash, Parking and Fueling
12	5/15/2020	\$80,314	\$11,158,377	Various Scope Modifications for PCOs 21, 22, 25 and 28
13	5/15/2020	\$26,049	\$11,184,426	PCO-042 - Wash Bay 2 - Polyurea Walls and Sherwin Williams Epoxy Paint
14	7/17/2020	\$59,156	\$11,243,582	Scope Modifications for PCOs 27-28
15	8/21/2020	\$50,351,311	\$61,594,893	GMP 3 - Construction of Bus Maintenance, Operations and Administration Building
16	7/17/2020	\$61,693	\$61,656,586	Various Scope Modifications for PCOs 23-26 and PCO 29 and 30
17	8/14/2020	\$188,449	\$61,845,035	Various Scope Modifications for PCOs 32-33
18	8/21/2020	\$88,159	\$61,933,194	Various Scope Modifications for PCOs 34-41
19	9/18/2020	\$19,441	\$61,952,635	Various Scope Modifications for PCOs 42-50
20	10/16/2020	\$32,706	\$61,985,341	Upgrade Low Voltage Wiring to Cat 6A
21	10/16/2020	\$20,314	\$62,005,655	Various Scope Modifications for PCOs 51 - 55, 57 - 59
22	11/20/2020	\$6,570	\$62,012,225	Various Scope Modifications for PCOs 60-61
23	12/18/2020	\$15,728	\$62,027,953	Various Scope Modifications for PCOs 62-66
24	1/15/2021	\$16,697	\$62,044,650	Various Scope Modifications for PCOs 67-69
25	2/19/2021	\$105,714	\$62,150,364	Various Scope Modifications for PCO-070-076
26	4/16/2021	\$20,726	\$62,171,090	Integrate Emergency Stops Between CNG and Diesel Together
27	9/22/2021	\$11,166,017	\$73,337,107	GMP 4 - Construction of bus canopies and battery electric bus charging infrastructure
28	7/15/2022	\$719,343	\$74,056,450	GMP #5 - Onsite power conduits and vaults
Total to Date		\$ 73,906,920		

**PCCO #200**

BIG-D CONSTRUCTION CORP.
404 W 400 S
SALT LAKE CITY, Utah 84101
Phone: (801) 415-6000
Fax: (801) 415-6900

Project: 119111 - UTA DDTC
716 W. 300 S.
Salt Lake City, Utah 84104
Phone: 801-415-6000

Prime Contract Change Order #200: UTA DDTC BIG-D \$215,705.38 PCO-327 CE-586 Bus Canopies, ASI-34 Site Grading Elevation Revisions

TO:	UTAH TRANSIT AUTHORITY 669 W 200 S SALT LAKE CITY, Utah 84101	FROM:	BIG-D CONSTRUCTION CORP 404 W 400 S SALT LAKE CITY, Utah 84101
DATE CREATED:	9/02/2022	CREATED BY:	Spencer Ahlstrom (BIG-D CONSTRUCTION CORP)
CONTRACT STATUS:	Pending - In Review	REVISION:	0
DESIGNATED REVIEWER:	David Osborn (UTAH TRANSIT AUTHORITY)	REVIEWED BY:	
DUE DATE:	09/06/2022	REVIEW DATE:	
INVOICED DATE:	09/02/2022	PAID DATE:	
SCHEDULE IMPACT:	0 days	EXECUTED:	No
CONTRACT FOR:	1:UTA DDTC Prime Contract	TOTAL AMOUNT:	\$215,705.38

DESCRIPTION:
UTA DDTC BIG-D \$215,705.38 PCO-327 CE-586 Bus Canopies, ASI-34 Site Grading Elevation Revisions

ATTACHMENTS:

[UTA DDTC BIG-D \\$215,705.38 PCO-327 CE-586 Bus Canopies, ASI-34 Site Grading Elevation Revisions.pdf](#)

POTENTIAL CHANGE ORDERS IN THIS CHANGE ORDER:

PCO #	Title	Schedule Impact	Amount
327	CE #586 - Bus Canopies, ASI-34 Site Grading Elevation Revisions	0 days	\$215,705.38
Total:			\$215,705.38

CHANGE ORDER LINE ITEMS:**PCO # 327 : CE #586 - Bus Canopies, ASI-34 Site Grading Elevation Revisions**

#	Cost Code	Description	Type	Amount
1	31-310000-004 - EARTHWORK	CE-586 Bus Canopies, ASI-34 Site Grading Elevation Revisions	Subcontract	\$164,858.50
2	03-032133-004 - FOOTINGS HANDSET FORMWORK	CE-586 Bus Canopies, ASI-34 Site Grading Elevation Revisions	Labor	\$33,027.00
3	99-999998 - INDIRECT COSTS	Big-D Construction Indirect Costs 6.48%	Miscellaneous	\$12,697.13
4	98-989998.002 - CONTRACTOR CONTINGENCY	Big-D Construction Risk & Contingency 1.5%	Miscellaneous	\$2,939.15
5	99-999999 - OVERHEAD & PROFIT	Big-D Construction Contract Fixed Fee 1.95%	Miscellaneous	\$4,125.80
6	31-310000-004 - EARTHWORK	CE-586 Bus Canopies, ASI-34 Site Grading Elevation Revisions	Subcontract	(\$1,942.20)
Subtotal:				\$215,705.38
Grand Total:				\$215,705.38

The original (Contract Sum)	\$149,530.00
Net change by previously authorized Change Orders	\$73,906,919.57
The contract sum prior to this Change Order was	\$74,056,449.57
The contract sum would be changed by this Change Order in the amount of	\$215,705.38
The new contract sum including this Change Order will be	\$74,272,154.95
The contract time will not be changed by this Change Order by 0 days.	



PCCO #200

UTAH TRANSIT AUTHORITY

669 W 200 S
SALT LAKE CITY, Utah 84101

UTAH TRANSIT AUTHORITY

669 W 200 S
SALT LAKE CITY, Utah 84101

BIG-D CONSTRUCTION CORP

404 W 400 S
SALT LAKE CITY, Utah 84101

SIGNATURE DATE

BIG-D CONSTRUCTION CORP.

SIGNATURE DATE

SIGNATURE DATE

CE-586 Bus Canopies, ASI-34 Site Grading Elevation Revisions	Total
Cazier	\$ 162,916.30
Big-D Concrete	\$ 33,027.00
Change Event Total (Direct Costs)	\$ 195,943.30
Big-D Construction Indirect Costs 6.48%	\$ 12,697.13
Big-D Construction Risk & Contingency 1.5%	\$ 2,939.15
Subtotal (direct, indirect & risk)	\$ 211,579.58
Big-D Construction Contract Fixed Fee 1.95%	\$ 4,125.80
Total (direct, indirect, risk & contract fixed fee)	\$ 215,705.38



EXCAVATING, INC

Digging In Your Business Is Our Business

132 West 13490 South Draper, UT 84020
Office 801-571-5671 Fax 801-571-5863

Change Proposal #37

June 28, 2022

Big-D Construction
Layne Kochel

UTA DDTC

ASI#034

Canopy site grading adjustments

	Unit	Quantity	Unit price	Total
1- Place and compact road base	cy	4316	5.43	\$23,435.88
2- Import road base	cy	4316	28.07	\$121,150.12
3- Deduct 8" pipe	lf	-60	24.46	(\$1,467.60)
4- Additional 4" pipe for roof drains	lf	360	10.79	\$3,884.40
5- Raise catch basins 1' to new grade	ea	4	288.5	\$1,154.00
6- Raise catch basins 6" to new grade	ea	4	222.95	\$891.80
7- Raise catch basins 4" to new grade	ea	4	205.7	\$822.80
8- Markup	ls	1	10%	\$14,987.10

Total \$164,858.50

Thank you,
Kurt Madsen
Executive Vice President
Mobile 801-673-0003



EXCAVATING, INC

Digging In Your Business Is Our Business

132 West 13490 South Draper, UT 84020

Office 801-571-5671 Fax 801-571-5863

Change Proposal #50 RFI 587

July 12, 2022

**Big-D Construction
Layne Kochel**

UTA DDTC

Leave canopy drains in planed location BC 1&2 altered by ASI 034

	Unit	Quantity	Unit price	Total
1- Credit 4" sdr-35 pipe	If	200	-10.79	(\$2,158.00)
2- Markup	Is	1	10%	\$215.80
			Total	(\$1,942.20)

**Thank you,
Kurt Madsen
Executive Vice President
Mobile 801-673-0003**



Tekla	Cost
0010 - Concrete Staffing	\$15,357
0020 - Concrete Equipment	\$2,525
0040 - Site Requirements	\$800
1000 - CIP Walls	\$1,227
1600 - Piers	\$14,430
1705 - Column Wraps	(\$4,314)
Subtotal Direct	\$30,025
Indirect Costs	
Subtotal Indirects	\$3,002
Project Total	\$33,027

**DETAILED ESTIMATE: 0010 - Concrete Staffing**

DESCRIPTION	QTY	UOM	UNIT PRICE	TOTAL COST
031000 - CONCRETE STAFFING				\$15,357
Concrete Superintendent (0-1mil)	0.75	MO	\$19,200.00	\$14,400
Trade Engineer	0.25	MO	\$2,946.95	\$737
Concrete Estimator	2.00	HR	\$110.00	\$220

TOTAL 0010 - Concrete Staffing \$15,357

DETAILED ESTIMATE: 0020 - Concrete Equipment

DESCRIPTION	QTY	UOM	UNIT PRICE	TOTAL COST
031500 - CONCRETE EQUIPMENT				\$2,525
Fuel/Oil/Grease	0.25	MO	\$2,500.00	\$625
Small Generators	1.00	MO	\$600.00	\$600
Conex Storage Box	1.00	MO	\$300.00	\$300
Small Tools	1.00	MO	\$1,000.00	\$1,000

TOTAL 0020 - Concrete Equipment \$2,525

DETAILED ESTIMATE: 0040 - Site Requirements

DESCRIPTION	QTY	UOM	UNIT PRICE	TOTAL COST
030000 - CONCRETE				\$800
Silica Dust Equipment	1.00	MO	\$800.00	\$800

TOTAL 0040 - Site Requirements \$800

DETAILED ESTIMATE: 1000 - CIP Walls

DESCRIPTION	QTY	UOM	UNIT PRICE	TOTAL COST
033120 - WALLS				\$1,227
Wall Formwork Makeup	67.00	SF	\$0.60	\$40
Wall Forming - 0-4'	67.00	SF	\$11.60	\$777
Wall Formwork Removal	67.00	SF	\$1.92	\$129
4500 psi Concrete	1.00	CY	\$156.50	\$157
Plasticizers (MRWR)	1.00	CY	\$5.00	\$5
Place Concrete In Walls w/ Pump	1.00	CY	\$32.00	\$32
Pump Concrete In Walls	1.00	CY	\$35.00	\$35
Point and Patch	67.00	SF	\$0.78	\$52

**DETAILED ESTIMATE: 1000 - CIP Walls [CONTINUED]**

DESCRIPTION	QTY	UOM	UNIT PRICE	TOTAL COST
TOTAL 1000 - CIP Walls				\$1,227

DETAILED ESTIMATE: 1600 - Piers

DESCRIPTION	QTY	UOM	UNIT PRICE	TOTAL COST
033140 - PIERS				\$14,430
Column Formwork Makeup - Credit	-3,376.00	SF	\$0.80	(\$2,701)
Formwork for Grouting under Plate - L & M	78.00	EA	\$31.50	\$2,457
Stayform Makeup - Material	3,754.00	SF	\$2.50	\$9,385
Form Piers	378.00	SF	\$11.00	\$4,158
4500 psi Concrete	7.00	CY	\$156.50	\$1,096
Plasticizers (MRWR)	7.00	CY	\$5.00	\$35
TOTAL 1600 - Piers				\$14,430

DETAILED ESTIMATE: 1705 - Column Wraps

DESCRIPTION	QTY	UOM	UNIT PRICE	TOTAL COST
033165 - COLUMNS				(\$4,314)
Column Formwork Makeup	-232.00	SF	\$0.80	(\$186)
Form Columns	-232.00	SF	\$11.00	(\$2,552)
Column Formwork Removal	-232.00	SF	\$1.92	(\$445)
4500 psi Concrete	-7.00	CY	\$156.50	(\$1,096)
Plasticizers (MRWR)	-7.00	CY	\$5.00	(\$35)
TOTAL 1705 - Column Wraps				(\$4,314)

Subtotal Direct	\$30,025
-----------------	----------

Indirect Costs	
----------------	--

Subtotal Indirects	\$3,002
--------------------	---------

Project Total	\$33,027
---------------	----------



Supplemental Instruction Transmittal

Stantec | 999 18th Street Suite 202 Denver CO 80202 United States

PROJECT:	UTA-DDCFTC 2270351402	DATE SENT:	6/10/2022
		RETURN BY:	
SUBJECT:	South Site Grading Plan	SUPPLEMENTAL INSTRUCTION ID:	ASI 034 canopy
TYPE:	Supplemental Instruction	TRANSMITTAL ID:	02855
PURPOSE:	For Review	VIA:	Info Exchange

FROM

NAME	COMPANY	EMAIL	PHONE
Barry Newton	Stantec	barry.newton@stantec.com	303-575-8550

TO

NAME	COMPANY	EMAIL	PHONE
David Osborn	Utah Transit Authority - SLC	dosborn@rideuta.com	801-287-2203
Layne Kochel	Big D	layne.kochel@big-d.com	801-415-6000
Spencer Ahlstrom	Big D	spencer.ahlstrom@big-d.com	801-415-6000
Colton Brinkerhoff	Big D	colton.brinkerhoff@big-d.com	801-415-6000
Ezra Douglass	Big D	ezra.douglass@big-d.com	801-415-6000

REMARKS:

Team,

Attached is a revised grading plan to accommodate the top of footing elevations.

Please see the attachment for complete details and documents.

Summary:

1. Adjust the Site Grading based on the attached updated Site Grading Plan for the area south of the MOA, Bus Canopy Parking and Circulation.
2. Update the top of electrical vault elevation to be 4231.95 feet to coordinate with the adjusted grading.

DESCRIPTION OF CONTENTS

QTY	DATED	TITLE	NUMBER	SCALE	SIZE
1	6/10/2022	ASI 034 - Canopy Site			

Supplemental Instruction Transmittal

DATE: 6/10/2022
ID: 02855

		Grading.pdf			
--	--	-------------	--	--	--

COPIES:

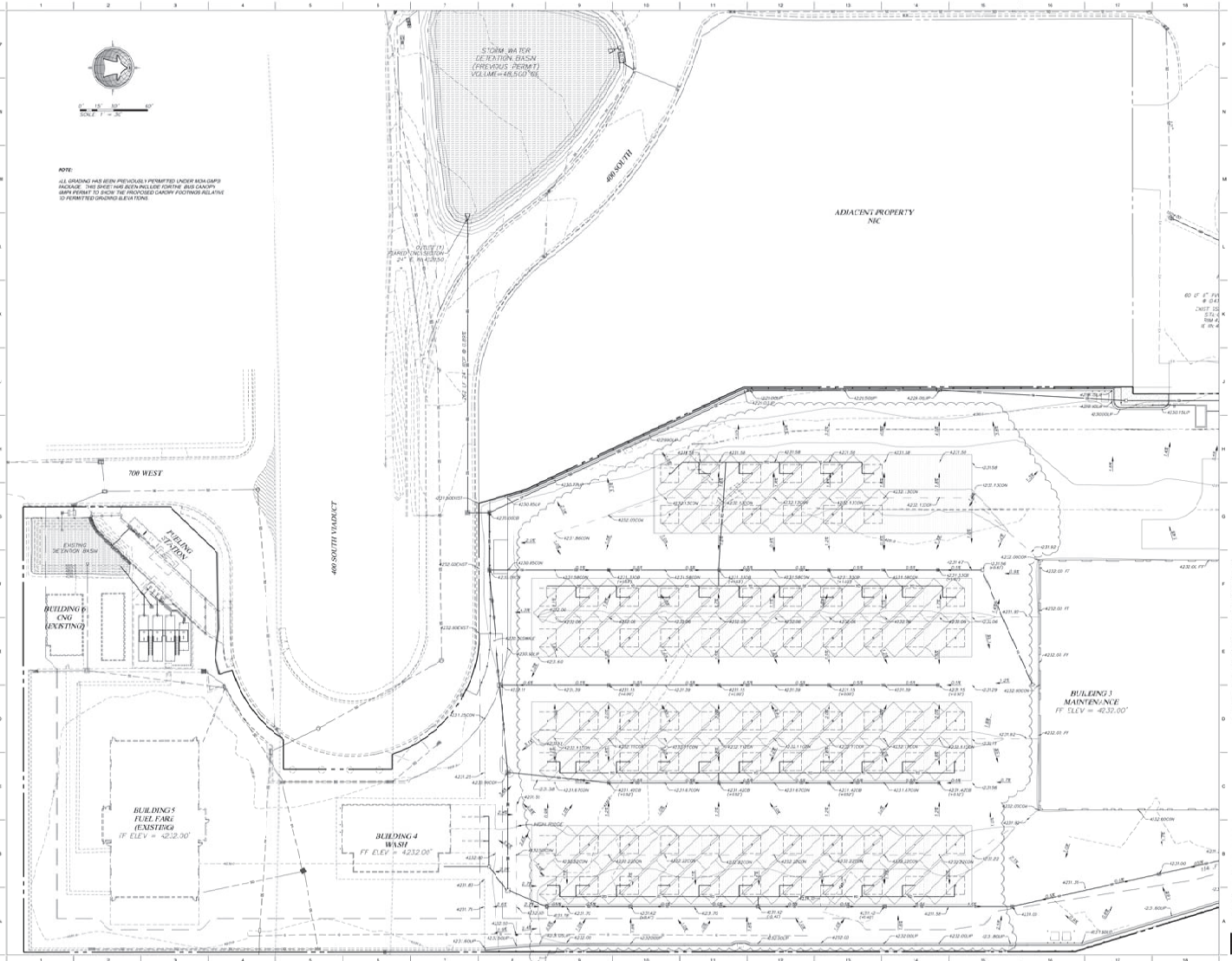
Merlin Maley

(Stantec)



ARCHITECT'S SUPPLEMENTAL INSTRUCTIONS

END OF ASI



UTAH TRANSIT AUTHORITY
DEPOT DISTRICT CLEAN FUELS TECHNOLOGY CENTER
BUS CANOPIES
600 WEST 600 SOUTH
SALT LAKE CITY, UT 84101
PERMIT DOCUMENTS 31 JUNE 2021



BC-C103



Utah Transit Authority

MEETING MEMO

669 West 200 South
Salt Lake City, UT 84101

Board of Trustees

Date: 10/12/2022

TO: Board of Trustees
THROUGH: Jay Fox, Executive Director
FROM: Alisha Garret, Chief Enterprise Strategy Officer
PRESENTER(S): Kyle Brimley, IT Director

TITLE:

Change Order: Closed Captioning Services for UTA Board Meetings (Carahsoft Technology Corporation/Granicus)

AGENDA ITEM TYPE:

Procurement Contract/Change Order

RECOMMENDATION:

Approve the award and authorize the Executive Director to execute change order #2 and associated disbursements of \$54,390 to Granicus for Closed Captioning Services.

BACKGROUND:

UTA has been streaming Board Meetings since 2017. On September 2, 2020 the Board of Trustees approved (under a Utah State Master Contract), a contract with Granicus/Legistar to transform and improve our customer experience by moving UTA's live-streamed meetings to Granicus' online streaming platform. Legistar is a Software as a Service (SaaS) solution that enables government organizations to automate their legislative process.

As of April 2021, Board Meetings, Audit Committee Meetings, Advisory Council Meetings, etc. have been available through UTA's online Legistar Portal. This is an improved customer experience as it allows the user to easily identify the meeting they may want to view, provides meeting details such as the agenda packet, the minutes of the meeting, as well as live or recorded session of the meeting.

DISCUSSION:

The purpose of this modification number 2 is to amend the current contract with Granicus to include 125 hours per year of closed captioning services to UTA's live-streamed meetings to better align with UTA's strong commitment to providing access to all people. The closed captioning component of services from Granicus will run through the remaining 3 years of the existing Granicus contract. Pricing for closed captioning under this

contract includes 125 hours of service per year at \$145.04 per hour, totaling \$18,130 per year. Hours not used in a year do not roll into the next year.

Granicus' closed captioning is:

- ADA compliant and can be recorded in real time or added to an archived video.
- Meets the federal government's 508 standards that applies to federal agencies.
- Live closed captioning is done in real time with 98% understandability.
- Granicus videos are stored on a government secured AWS (Amazon Web Services) data center that only hosts government videos.

The process is simple:

1. Caption reservations are to be requested by UTA two weeks in advance
2. A representative for Granicus remotes into the meeting and provides real time captioning with 98% understandability.
3. The meeting is then reviewed for errors so the recorded video that is then archived is even more accurate.

CONTRACT SUMMARY:

Contractor Name:	Carahsoft Technology Corporation/Granicus
Contract Number:	20-03326-2
Base Contract Effective Dates:	October 2020 - September 2025
Extended Contract Dates:	Modification Period of Performance: Oct. 2022-Sept 2025
Existing Contract Value:	\$236,004
Amendment Amount:	\$54,390
New/Total Contract Value:	\$290,394
Procurement Method:	State of Utah NASPO Contract AR2472
Budget Authority:	Approved IT Operating Budget

ALTERNATIVES:

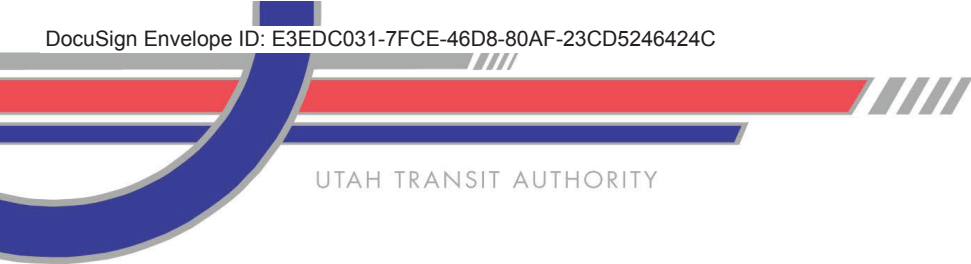
Utilize a different closed captioning service or do not provide closed captioning services. After researching alternative services, Granicus closed captioning was found to be the most compatible with our current live-streaming system and provides a greater degree of accuracy for our customers.

FISCAL IMPACT:

Pricing will be \$145.04 hour for 125 hours a year for an annual cost of \$18,130, which is included in the IT operating budget for 2022 and going forward.

ATTACHMENTS:

Contract Modification



UTAH TRANSIT AUTHORITY



669 West 200 South
Salt Lake City, UT 84101

September 22, 2022

Carahsoft Technology Corporation

[Carahsoft contact](#)

SENT VIA E-MAIL ONLY

RE: Contract 20-03326-2 Granicus UTA Board Agenda Software

Contract Modification No. 2

Dear Ms. Smith,

The purpose of this letter is to modify the current Goods Supply Agreement (“Agreement”) between Carahsoft Technology Corporation (contractor) and Utah Transit Authority (UTA), dated Sept. 2,2020 (UTA Contract Number 20-03326-2). This letter is to add Recurring Captioning Services of 125 hours, annual fee of \$18,130 for 3 additional years.

This amendment is due to modify the initial estimate and will bring the new total contract value not-to-exceed \$290,394.97.

All other terms and conditions of this contract shall continue in full force and effect.

If you are in agreement with the above referenced amendment, please sign on the line indicated below.

UTAH TRANSIT AUTHORITY

Carahsoft Technology Corporation

By: _____ Date: _____
Kyle Brimley
IT Director

By: Kristina Smith Date: 09/23/2022
Kristina Smith
Director of Contracts

By: _____ Date: _____
Carlton Christensen
Member of Board of Trustees

By: _____ Date: _____
Jay Fox
Executive Director

DocuSigned by:
By: Mike Bell Date: 9/23/2022
70E33A415BA44F6...
MIKE BELL
Assistant Attorney General





Utah Transit Authority

669 West 200 South
Salt Lake City, UT 84101

MEETING MEMO

Board of Trustees

Date: 10/12/2022

TO: Board of Trustees
THROUGH: Jay Fox, Executive Director
FROM: Cheryl Beveridge, Chief Operating Officer
PRESENTER(S): Cheryl Beveridge, Chief Operating Officer
Tracy Young, Coordinated Mobility Manager

TITLE:

Change Order: Second Order of Accessible Mini Vans for the Federal Transit Administration (FTA) 5310 Program (Davey Coach Sales, Inc.)

AGENDA ITEM TYPE:

Procurement Contract/Change Order

RECOMMENDATION:

Approve the purchase of 11 accessible minivans for the FTA 5310 program and authorize the executive director to execute the change order and associated disbursements with Davey Coach Sales, Inc. in the amount of \$671, 399.00 ,

BACKGROUND:

The FTA 5310 Grant program provides financial assistance for capital and operating projects that are public transportation projects planned, designed, and carried out to meet the transportation needs of elderly persons and persons with disabilities where public mass transportation services are otherwise unavailable, insufficient, or unequipped to handle their needs. UTA is responsible for the management and administration of FTA Section 5310 Enhanced Mobility of Seniors and Individuals with Disabilities Program (49 U.S.C. §5310) in Utah's three Urbanized Areas (UZAs). One of the prominent projects of the program is awarding vehicles to government and non-profit agencies in the community to transport aging adults and people with disabilities. The vehicles on this procurement will provide such transportation which will greatly benefit many in need of transportation assistance.

- A contract is in place, per federal procurement guidelines, with Davey Coach Sales, Inc. for the accessible minivans. The original contract, along with an initial order of four vans, were approved by the Board of Trustees on June 23, 2021.
- UTA as the designated recipient for FTA 5310 funds for Utah's Urbanized Areas (UZAs) is responsible

per UTA's 5310 Program Management Plan (PMP), for procuring all capital items in excess of \$3,000 for all subawards, to ensure federal procurement rules are followed.

- Funds to purchase each vehicle is paid in the following manner: 80% of the purchase price is paid from UTA managed FTA 5310 funds, 20% of the purchase price is paid by the subrecipient prior to delivery of the vehicle.

No UTA local funds will be used for these vehicles and UTA has no ongoing operations or maintenance obligation beyond monitoring subrecipient compliance through the federal useful life of the vehicles as outlined in the UTA PMP.

DISCUSSION:

This purchase of 11 accessible minivans through the FTA 5310 program will provide transportation to aging adults and persons with disabilities along the Wasatch Front urbanized areas by providing vehicles to Specialized Human Service Transportation organizations selected as subrecipients of the program. The subrecipients for this purchase are: Suzy's Senior Services, Roads to Independence, Destination Services, Yellow Cab, Weber Human Services, and The Road Home.

CONTRACT SUMMARY:

Contractor Name:	Davey Coach Sales, Inc.
Contract Number:	21-03408AB-2
Base Contract Effective Dates:	June2021 - June 2024, plus 2 option years
Extended Contract Dates:	NA
Existing Contract Value:	\$172,350
Amendment Amount:	\$671,399
New/Total Contract Value:	\$843,749
Procurement Method:	IFB
Budget Authority:	FTA pass through funds included in capital budget MSP276, MSP250, MSP 251, MSP 249

ALTERNATIVES:

Staff could seek alternative bids for vehicles or not provide vehicles at this time, which could jeopardize the success of the 5310 program.

FISCAL IMPACT:

No fiscal impact to UTA. The funds to purchase these vehicles are from the FTA 5310 Grant with local match funded by the subrecipient awardee.

ATTACHMENTS:

Order 2

August 25, 2022
Davey Coach Sales Inc
Attention: Comer Hobbs
comerh@daveycoach.com

RE: CONTRACT 21-03408AB Accessible Minivans

**SECOND ORDER NOTICE TO PROCEED
For Eleven (11) FR Conversion Rear/Side entry Minivans
For subrecipients**

Dear Mr. Hobbs,

This letter shall serve as the Second Order against contract 21-03408AB wherein the Authority awarded to Davey Coach Effective June 24, 2021.

These accessible Rear/Side entry minivans are a part of UTA's 5310 Federal program and each vehicle below is being purchased on behalf of the named subrecipients. UTA will act as lienholder and the vehicles will be titled in the recipient's name. These Vans shall be manufactured as outlined in the Contract executed on 6/24/2021 between UTA and Davey Coach.

Title information for each subrecipient will be sent to Davey Coach after acceptance of order.

All Vans must include:

- Hawkeye alarm back up system
- Shoulder harness restraints
- Vinyl or leather seating
- Seats should fold away rather than be removed
- Three seats of keys for each vehicle
- Be titled to subrecipient prior to delivery
- Temporary plated
- Delivered to Riverside facility 3600South 900 West SLC UT 84119 Attn: Robert Rigby

Order includes:

REAR ENTRY:

- Two (2) Subrecipient Suzy's Senior Services. (req 11108)
- One (1) Subrecipient Roads to Independence (req 11133)
- One (1) Subrecipient Destination Services (req 11142)
- Three (3) Subrecipient Yellow Cab (req 11152, 11151)

SIDE ENTRY

- Two (2) Side Entry for Subrecipient Suzy's Senior Services. (req 11146)
- One (1) Side Entry for Subrecipient Weber Human Services (req 11145)
- One (1) Subrecipient The Road Home (Req 11147)

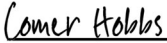
The cost of the Eleven (11) Vehicles are as follows:

QTY	DESCRIPTION	U/PRICE	TOTAL PRICE
7	FR Conversion Rear Entry Voyager minivan	\$41,050.00	\$287,350.00
7	Rear Entry Inflation cost	\$17,387.00	\$ 121,709.00
7	Rear Entry New Total per Vehicle	\$58,437.00	\$409,059.00
4	FR Conversion Side Entry Voyager Minivan	\$49,200.00	\$196,800.00
4	Side Entry Inflation Cost	\$16,385.00	\$65,54000
4	Side Entry New Total Price Per Vehicle	\$65,585.00	\$262,340.00
11	Total Price of Order 2 Notice to Proceed		\$671,399.00

The award of this Second order is a total amount of **\$671,399.00** Delivery of the Eleven (11) Side/Rear Entry Assessible minivans will occur no later than Oct 30, 2023.

If you agree to the above, please sign on the line indicated below and return one copy to Amanda Burton at aburton@rideuta.com A fully executed copy will be provided after all signatures are obtained.

Davey Coach Sales Inc.

DocuSigned by:

 Signature

Comer Hobbs
 Printed Name

Bus Sales Manager 9/20/2022
 Title

UTAH TRANSIT AUTHORITY

 UTA Executive Director

 UTA Chief Operating Officer

DocuSigned by:

 UTA Legal Counsel



Utah Transit Authority

MEETING MEMO

669 West 200 South
Salt Lake City, UT 84101

Board of Trustees

Date: 10/12/2022

TO: Board of Trustees
THROUGH: Jay Fox, Executive Director
FROM: Bill Greene, Chief Finance Officer
PRESENTER(S): Todd Mills, Director of Supply Chain

TITLE:

Pre-Procurements

- Electric Bus On-Route Chargers
- Snow Removal for TRAX and Frontrunner

AGENDA ITEM TYPE:

Pre-Procurement

RECOMMENDATION:

Informational report for discussion

BACKGROUND:

Utah's Public Transit District Act requires all contracts valued at \$200,000 or greater be approved by the UTA Board of Trustees. This informational report on upcoming procurements allows Trustees to be informed and provide input on upcoming procurement projects. Following the bid solicitation and contract negotiation process, final contracts for these projects will come before the board for approval.

DISCUSSION:

- **Electric bus on-route chargers.** This is a procurement to contract with a firm to provide construction of civil improvements and installation of charging equipment at charging stations in Salt Lake City, and to provide the civil infrastructure and power for UTA's Electric Bus on-route and depot charging program. The purchase and installation of these electric buses and chargers is part of the Volkswagen enforcement action grants and includes the construction of 4 overhead bus chargers. The design has been completed by Spectrum Engineering and the selected locations have been reviewed and confirmed with Service Planning, Operations Planning and Bus Maintenance. This contract will be for a term of 3 years, plus two one-year options. This procurement will be conducted as an RFP, where technical criteria will be evaluated and scored in addition to price. (Req. 11127, and 11130, Hal Johnson)

- ***Snow removal for TRAX and Frontrunner.*** This is a procurement to contract with a firm to provide snow removal services for all UTA owned parking areas and sidewalks located through-out Salt Lake Valley, FLHQ, CNG Depot, and Central Station Hub. We anticipate multiple bidders and potentially multiple contracts based on the number of locations and geographic areas. Funding for this contract is included in the Facilities Management budget. This contract will be a three-year contract with two 1-year options. This procurement will be conducted as an IFB, where price will be the sole determining factor. (Req. 11164, Johnny Johnson)
-

ATTACHMENTS:

None



Utah Transit Authority

MEETING MEMO

669 West 200 South
Salt Lake City, UT 84101

Board of Trustees

Date: 10/12/2022

TO: Board of Trustees
THROUGH: Jay Fox, Executive Director
FROM: William Greene, Chief Financial Officer
PRESENTER(S): Megan Waters, Director Community Engagement
Kensley Kunkel, Mgr. Business Development and Sales

TITLE:

Fare Agreement: Special Events Complimentary Fare (The Utah Division of Multicultural Affairs)

AGENDA ITEM TYPE:
Service or Fare Approval

RECOMMENDATION:
Authorize Executive Director to enter a Special Events Agreement with The Utah Division of Multicultural Affairs for the Latino Town Hall with Governor Cox

BACKGROUND:
UTA has historically partnered with events to allow attendees to use their event ticket as fare on the UTA system. Event tickets are printed with the UTA logo and specific wording that identifies the ticket as valid transit fare for the date identified on the event ticket. This partnership is formalized through a special event contract that is facilitated by the Fares team and approved by the Board of Trustees.

UTA staff desire to partner with the Utah Division of Multicultural Affairs (the Division) for their Latino Town Hall with Governor Cox (Town Hall) taking place on October 24 at the Salt Lake Community College.

DISCUSSION:
UTA Fare Policy allows staff to present to the Board of Trustees for approval Complimentary fare provided for events in exchange for advertising value or other forms of recognitions that promote collaboration with the Authority. The Division and Utah Transit Authority are strategic partners who work to get more members of their community out of their cars and on to public transportation. In that spirit of partnership, UTA will partner with the Division to offer ticket as fare to event attendees on the day of the Town Hall. In exchange for the transit fare, The Division agrees to give UTA social media mentions, an email blast to ticket-holders, as well as

digital and print recognition.

CONTRACT SUMMARY:

Contractor Name: Utah Division of Multicultural Affairs
Contract Number: 22-F0303
Base Contract Effective Dates: October 24, 2022 through October 25, 2022
Extended Contract Dates: NA
Existing Contract Value: NA
Amendment Amount: NA
New/Total Contract Value: \$500-\$1,500
Procurement Method: NA
Budget Authority: NA

ALTERNATIVES:

Not partner with the Division of Multicultural Affairs for the Town Hall

FISCAL IMPACT:

Estimated up to fifteen hundred dollars (\$1,500) in fare revenue donated. Estimate assumes between ten to thirty percent (10-30%) of the total event attendance.

Total Attendance	% Riding Transit	Total Value
500	30%	\$1,500
500	20%	\$1,000
500	10%	\$500

ATTACHMENTS:

Contract

**SPECIAL EVENTS AGREEMENT
Tickets for Transit**

This Special Events Agreement-Tickets for Transit (“Agreement”) is entered into on October 24, 2022, by and between Utah Division of Multicultural Affairs (“Sponsor”), and Utah Transit Authority, a public transit district organized under the laws of the State of Utah (“UTA”). Sponsor and UTA hereafter collectively referred to as the “parties” and either of the foregoing may be individually referred to as “party,” all as governed by the context in which such words are used.

RECITALS

WHEREAS Sponsor will host a Town Hall with Governor Cox (“Event”) on the following date(s): October 24, 2022 and at the following location: Salt Lake Community College _____ (“Venue”), and

WHEREAS Sponsor desires to procure transit passes for transportation to its Event using UTA’s transit system; and

WHEREAS UTA is willing to accept payment-in-kind consisting of marketing and promotional activities for the UTA transit system; and

WHEREAS the parties desire to establish a program whereby Sponsor is authorized to procure transit passes by providing a payment-in-kind marketing package for those attending its Event.

AGREEMENT

NOW THEREFORE, on the stated Recitals, which are incorporated herein by reference, and for and in consideration of the mutual covenants herein and in the Agreement, the mutual benefits to the parties to be derived here from, and for other valuable consideration, the receipt and sufficiency of which the parties acknowledge, it is hereby agreed as follows:

SECTION I: DEFINITIONS

- 1.1 The term “**Base Service**” means public transit service as produced in UTA’s ordinary operations and published at www.rideuta.com.
- 1.2 The term “**Effective Date**” shall mean October 24, 2022, unless the parties agree otherwise above.
- 1.3 The term “**Sponsor**” means the business entity defined as Sponsor on the initial page of this agreement.

SECTION II: TERMS AND CONDITIONS

1. Tickets for Transit Program. The parties agree to establish a Tickets for Transit Program, whereby the Sponsor procures transit passes using payment-in-kind for ticket holders to its Event(s) (the “Tickets for Transit Pass”).

2. Authorized Users. Upon the terms and conditions contained herein, UTA agrees to allow Sponsor to provide a Tickets for Transit Pass to ticket holders (“Authorized Users”) attending the Event(s) at the Venue.
3. Payment-in-Kind for Fare. Sponsor agrees to provide payment-in-kind consisting of a marketing package (see Exhibit A “Marketing Package”). The marketing package shall promote use of UTA’s transit system and shall be subject to pre-approval by UTA.
4. Term of Agreement. The term of this Agreement shall be from the Effective Date and runs through October 25, 2022.
5. Pass Recognized as Fare Payment. An Authorized User’s event ticket shall also serve as a transit pass when: (1) printed with the wording “Valid as UTA fare on the date indicated” or similar wording approved by UTA and (2) used for fare payment on the date of the event stated on the ticket. The Tickets for Transit Pass shall be recognized by UTA as fare payment on all Local Bus Routes, TRAX Light Rail Routes, Streetcar Light Rail, FrontRunner Commuter Rail Routes, and BRT Routes on the day of the event. The Tickets for Transit Pass shall not be recognized as fare payment on Paratransit Service, Park City-Salt Lake City Connect Service, or any other special service. (3) Issued to event attendees via email, home delivery, or through an app. Attendees using transit to get to/from the event present acceptable fare media upon boarding the bus or upon rail inspection. Acceptable fare media for events includes: a printed copy of the vendor issued email displaying the attendee’s ticket, a vendor issued ticket, or the mobile app with the ticket displayed. Fare media that is not accepted includes: generic download from the vendor’s website, a form of ticket not provided to UTA as an acceptable ticket type, a camera image of the ticket, or any other form not listed as acceptable. Vendor must provide UTA with images of all the different ticket types. UTA will use the images to verify the logo is printed and distribute to operators so they are aware of them prior to the event.
6. Use of the UTA Logo.
 - a. The UTA Logo, which is attached hereto as Exhibit B, is the sole and exclusive property of UTA. UTA hereby grants Sponsor, so long as it is not in breach of this Agreement a limited and revocable license to use or print the UTA logo as specified herein. The interpretation and enforcement (or lack thereof) of these terms and conditions, and compliance therewith, shall be in UTA’s sole discretion. The UTA Logo may not be altered in any way and must be displayed in the same form as produced by UTA. The UTA Logo must be printed in either black or in the official color of blue and red.
 - b. The UTA Logo shall be used in a professional manner on all Event tickets; on the Event main entrance, VIP area, stage banners, website, and posters; and in print advertising for the Event.

- c. Notwithstanding the foregoing, the UTA Logo may not be used in any manner that, in the sole discretion of UTA: discredits UTA or tarnishes its reputation and goodwill; is false or misleading; violates the rights of others, violates any law, regulation or other public policy; or mischaracterizes the relationship between UTA and the user, including but not limited to any use of the UTA Logo that might be reasonably construed as an endorsement, approval, sponsorship or certification by UTA of Sponsor, Sponsor's business or organization, or Sponsor's products or services or that might be reasonably construed as support or encouragement to purchase or utilize Sponsor's products or services.
 - d. Use of the UTA Logo shall create no rights for Sponsor in or to the UTA Logo or their use beyond the terms and conditions of this limited and revocable license. The UTA Logo shall remain at all times the sole and exclusive intellectual property of UTA. UTA shall have the right, from time to time, to request samples of use of the UTA Logo from which it may determine compliance with these terms and conditions. Without further notice, UTA reserves the right to prohibit use of the UTA Logo if it determines, in its sole discretion, that Sponsor's UTA Logo usage, whether willful or negligent, is not in strict accordance with the terms and conditions of this license, otherwise could discredit UTA or tarnish its reputation and goodwill, or Sponsor is otherwise in breach of this Agreement.
7. Pass Distribution. Sponsor shall be solely responsible for issuing Tickets for Transit Passes to Authorized Users.
8. Public Transit Services. The Parties understand that the transit services being used under this Agreement are public transit services. As such, Authorized Users must comply with all UTA rider rules and rules governing the use of public transit services. Authorized Users must present their Tickets for Transit Passes as proof of fare payment to UTA bus operators and fare inspectors. Authorized Users who do not have possession of a Tickets for Transit Pass must pay the regular fare for the transit service they use. UTA reserves the right to modify its service and schedules as it deems appropriate in its sole discretion.
9. Indemnification. Each party hereby agrees to be responsible and assume liability for its own negligent or wrongful acts or omissions or those of its officers, agents or employees to the full extent required by law and agrees to indemnify and hold the other party harmless from any such liability, damage, expense, cause of action, suit, claim, judgment, or other action arising from participation in this Agreement. Both parties are subject to the provisions of the Utah Governmental Immunity Act. Neither party waives any legal defenses or benefits available to them under applicable law, and both agree to cooperate in good faith in resolving any disputes that may arise under this Agreement.
10. Termination. This Agreement shall continue in full force and effect during the term of this Agreement unless it is terminated earlier by either party. Each party may terminate this Agreement in its sole discretion by giving the other party written notice of termination at least forty-five (45) days prior to the termination date. If UTA terminates this Agreement before the Event ends, Sponsor shall pay a prorated amount for the concerts for which UTA provides

transportation services. Sponsor may also terminate all or part of this agreement in the event the Covid-19 pandemic precludes performance of all or part of the concert series and pay UTA a pro-rated amount only for the shows performed.

11. Nondiscrimination. Sponsor agrees that it shall not exclude any individual from participation in or deny any individual the benefits of this Agreement, based on race, color, national origin, creed, sex, or age in accordance with the requirements of 49 U.S.C. §5332.
12. Third Party Interests. No person not a party to this Agreement shall have any rights or entitlements of any nature under it.
13. Entire Agreement. This Agreement contains the entire agreement between the parties hereto for the term stated and cannot be modified except by written agreement signed by both parties. Neither party shall be bound by any oral agreements or special arrangements contrary to or in addition to the terms and conditions as stated herein.
14. Costs and Attorney's Fees. If either party pursues legal action to enforce any covenant of this Agreement, the parties agree that all costs and expenses of the prevailing party incident to such legal action, including reasonable attorney fees and court costs shall be paid by the non-prevailing party.

Remainder of page left intentionally blank

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth herein.

SPONSOR

UTAH TRANSIT AUTHORITY

By: DocuSigned by: Claudia Loayza Date: 9/22/2022
DCDF6F0CC420425...

Name: Claudia Loayza

Title: Planning Policy & Engagement Coordinator

By: _____ Date: _____
Name:
Title

By: _____ Date: _____
Name:
Title:

Approved as to Form:

By: DocuSigned by: Mike Bell Date: 9/22/2022
70E33A415BA44F6...

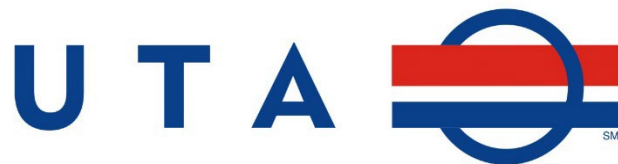
Michael Bell
Assistant Attorney General
Counsel for UTA

Exhibit "A"
Example Marketing Package

Details of Package:

**No less than 2 email blasts (E-Newsletter and Gmail listserv);
No less than 2 social media posts (will post on 3 platforms; Facebook,
Instagram, and Twitter); and no less than 2 website postings (hosted on
Multicultural Affairs site and Eventbrite page).**

Exhibit "B"
UTA Logo





Utah Transit Authority

MEETING MEMO

669 West 200 South
Salt Lake City, UT 84101

Board of Trustees

Date: 10/12/2022

TO: Board of Trustees
THROUGH: Jay Fox, Executive Director
FROM: Mary DeLoretto, Chief Service Development Officer
PRESENTER(S): Daniel Hofer, Director of Capital Assets and Project Controls

TITLE:

TBA2022-10-01 - Technical Budget Adjustment-2022 Capital Budget

AGENDA ITEM TYPE:

Discussion

RECOMMENDATION:

It is recommended that the Board approve the Technical Budget Adjustment TBA2022-10-01 to transfer \$130,000 from contingency funds to the MSP189 - Signal Pre-Emption Project.

BACKGROUND:

Budget Adjustment

In accordance with Board of Trustee Policy Number 2.1, Financial Management, the Board of Trustees may amend or supplement the budget at any time after its adoption. This request is to supplement funding of a Utah Department of Transportation (UDOT) partnership project through a technical budget adjustment.

This proposed technical budget adjustment will transfer \$130,000 from the Capital Contingency project to MSP189 - Signal Pre-Emption project to aid in 2022 project delivery.

This request is fully revenue backed by UDOT and Kearns Metro Township (KMT) funds.

DISCUSSION:

MSP189- Signal Pre-Emption Projects with UDOT

This project has an approved 2022 budget of \$365,000. This project is a partnership project between UDOT and UTA's Systems Engineering group to address signalization activities to optimize system performance between UDOT's and UTA's traffic signal systems. UTA will be fully reimbursed for UTA expenses in support of

this this project.

Three task orders were mistakenly executed against this project in the total amount of approximately \$98,000, thereby over obligating this project. This \$130,000 request will cover the amount needed to fund these task orders as well as cover additional work still needing to be accomplished this year and is fully revenue backed by UDOT and KMT funds per UTA's existing agreements with the parties.

If approved the revised 2022 MSP189 project budget will be \$495,000. To date UTA has incurred \$77,000 in project costs and expects to fully expend the revised requested budget of \$495,000 in 2022.

MSP999- Capital Contingency

The current remaining budget authority for the Capital Contingency fund is \$2,346,000. With the approval of this request, the remaining Capital Contingency budget authority will be \$2,216,000.

ALTERNATIVES:

The Board may ask staff to consider alternatives to fund or delay the project.

FISCAL IMPACT:

These requests would be covered by existing budget authority and are 100% reimbursable by UDOT and KMT. There would be no fiscal impact to the 2022 capital budget or UTA fund balances as a result of this technical budget adjustment

ATTACHMENTS:

Technical Budget Adjustment - Attachment A

UTAH TRANSIT AUTHORITY
Exhibit A - 2022 Budget Amendment
Technical Budget Adjustment - October 12 2022

Funding Sources	Amended 2022		Adjusted 2022
	Budget	Tranfers	Budget
1 UTA Current Year Funding	127,428,500	(130,000)	127,298,500
2 Grants	44,869,500	-	44,869,500
3 Local Partner Contributions	10,693,000	-	10,693,000
4 State Contribution	33,446,000	130,000	33,576,000
5 Leasing	15,832,000	-	15,832,000
6 Fund Balance	-	-	-
7 Total Funding Sources	232,269,000	-	232,269,000
Expense			
8 State of Good Repair	70,588,000	-	70,588,000
9 Depot District	32,562,000	-	32,562,000
10 Ogden/Weber BRT	25,465,000	-	25,465,000
11 Front Runner Forward	15,000,000	-	15,000,000
12 Mid Valley Connector	10,000,000	-	10,000,000
13 Optical Detection Next Steps	475,000	-	475,000
14 Meadowbrook Expansion	466,000	-	466,000
15 Tooele Bus Facility	684,000	-	684,000
16 Route End of Line Enhancements	1,500,000	-	1,500,000
17 TRAX Operational Simulator	1,700,000	-	1,700,000
18 Transit Signal Priority On-board Units	110,200	-	110,200
19 MSP 254 Techlink Corridor Study	450,000	-	450,000
20 NP-69 Techlink Corridor Study	-	-	-
21 Gap Filler on FR Stations	750,000	-	750,000
22 Bus Stop Improvements Utah Co.	288,000	-	288,000
23 Station Area Planning	120,000	-	120,000
24 Fiber Rehab and Replacement	750,000	-	750,000
25 Meadowbrook Flooring/Lighting	140,000	-	140,000
26 Northern Utah Double Track	800,000	-	800,000
27 Bus Stop Enhancements	2,300,000	-	2,300,000
28 Bus Replacement	12,027,289	-	12,027,289
29 Camera Sustainability	520,000	-	520,000
30 Positive Train Control	1,102,000	-	1,102,000
31 TIGER Program of Projects	9,506,000	-	9,506,000
32 Public Partnership Projects	7,400,000	-	7,400,000
33 Bike Racks on Front Runner	144,000	-	144,000
35 Signal Pre-emption Project	365,000	130,000	495,000
36 Capital Contingency	2,346,000	(130,000)	2,216,000
37 Other Capital Projects	34,710,511	-	34,710,511
Total Budget	\$ 232,269,000	\$ -	\$ 232,269,000



Utah Transit Authority

MEETING MEMO

669 West 200 South
Salt Lake City, UT 84101

Board of Trustees

Date: 10/12/2022

TO: Board of Trustees
THROUGH: Jay Fox, Executive Director
FROM: William Greene, Chief Financial Officer
PRESENTER(S): Jay Fox, Executive Director
Brad Armstrong, Director of Budget and Financial Strategy
Dan Hofer, Director Capital Assets and Project Controls
Troy Bingham, Comptroller

TITLE:

Tentative 2023 Budget

AGENDA ITEM TYPE:

Discussion

RECOMMENDATION:

Report for discussion.

BACKGROUND:

Each year, the Authority is required to prepare an operating and capital budget for the succeeding year. After consultation with the Board of Trustees, and in accordance with the provisions of the Local Districts Act (§17B-1-702) and Public Transit District Act (§17B-2a-8), the Executive Director has prepared the 2023 Tentative Budget.

DISCUSSION:

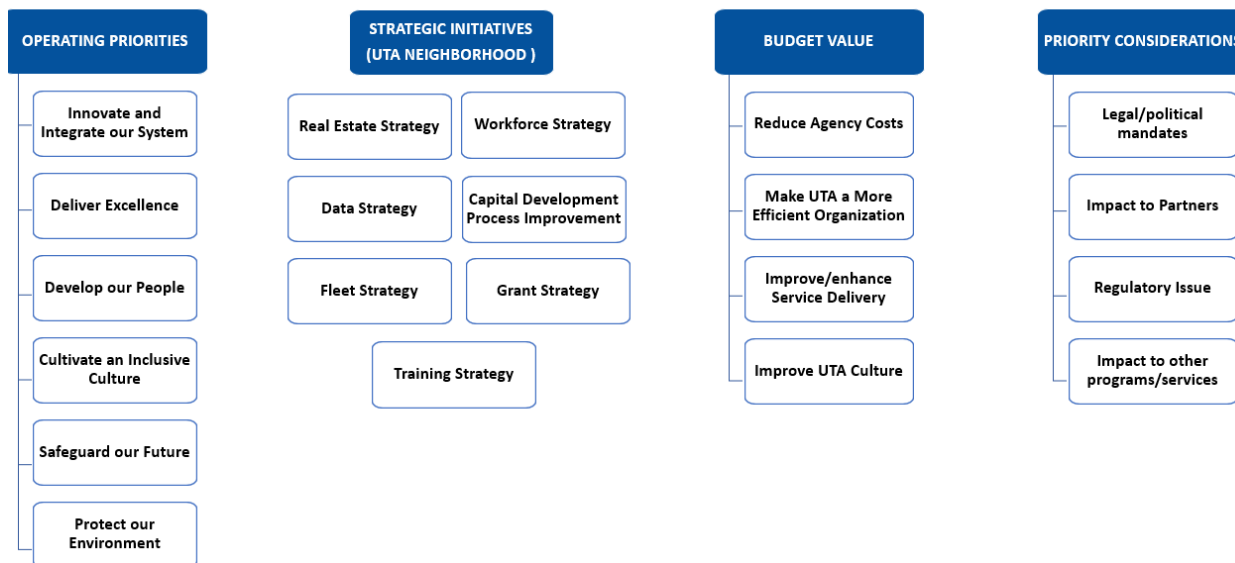
The operating budget was developed in a time of economic uncertainty. As the nation and region continue to recover from the pandemic, forecasting the impacts of inflation and the federal response, a competitive regional job market, and the potential of slowdown in the Utah economy requires a flexible approach.

Over the first half of 2022, the Board of Trustees and UTA staff reviewed 2022 program delivery, current operating environment including economic conditions, revenue projections, and the organization's strategic priorities to support near and long-term public transportation needs in the region.

Using 2022 existing operating budgets as a starting point, the organization updated inflationary assumptions for labor, fuel, and other expenses, eliminated one-time 2022 costs, and annualized the cost of mid-year budget adjustments (August 2022 service changes, technical budget adjustments, etc.). The resulting 2023 base budget or budget target was developed at the department and object of expenditure level.

Using foundational Operating Priorities and informed by discussions with the Board of Trustees, the organization began the process to consider new 2023 Budget Requests. Business cases were developed for new requests and requests were prioritized, rated, ranked, and ultimately selected for inclusion in the 2023 Budget Request after considering budget value and other priority considerations.

Budget Filters/Lenses



Simultaneously, the capital program development process revisited the existing 5-year capital plan, held a call for new projects, and prioritized the resulting list to select projects for consideration, culminating in a draft 5-year capital program.

In September, the Board of Trustees and Local Advisory Council reviewed 2022 capital program delivery, discussed 2023-2027 assumptions, and staff previewed existing projects and new projects being considered for inclusion in the 5-year Capital Plan. The Board of Trustees also held four budget work sessions to discuss the 2023 operating budget in September.

Transit agencies across the country are experiencing difficulty recruiting and retaining workers, especially operators and maintenance workers, leading to service performance issues and, in many cases, service reductions related to staffing shortages. The 2023 budget includes a service strategy to address this issue. The 2023 service strategy includes service additions for bus and light rail, adding an estimated 24,000 annual operating hours to existing service. The microtransit program adds service in South Salt Lake County (about 9,000 annual hours). Combined, UTA is requesting about \$4 million in service additions in 2023.

As part of the 2023 service strategy, UTA is adding Extra Board staffing at all three bus business units to address recruitment and retention of operators. These Extra Board or entry level operators fill a vital role at UTA filling part-time and split shifts and providing on-call support for other shifts. These Extra Board operators

will allow UTA to deliver scheduled service and meet emerging service needs.

The service request also includes contingencies aimed at addressing recruitment and retention and UTA's ability to deliver on 2023 and future service commitments. These contingencies also provide the Board with tools to react to near-term economic slowdowns. These include:

- Nearly 32,000 hours of local service to compliment and support introduction of the new Ogden bus rapid transit service. Given the uncertainty of UTA's ability to recruit and retain operators, this service addition has been placed in contingency and will only be added if hiring conditions improve and ultimately, this addition will require Board approval. The Board will make a decision on this service in time for August 2023 implementation.
- Planning, Operations, Finance, and the People Office have reviewed service priorities for the 2024 budget and recommends a strategy to begin ramping up the recruitment process for new operators in 2023. This will support 2023 service delivery and build capacity for future service additions.
- Operations has identified a need for additional operations supervisors as a priority need for the agency. The current supervisor/operator ratio and resulting workload is unsustainable.
- Staff will return to the Board with specifics on the ramp up strategy and increased supervisor support in 2023. The Board will consider approval of additional staffing from the Operating Contingency at that time.

Other 2023 requests that will be detailed by staff at the October 12 meeting include data development and security, improved fleet and grant management initiatives, audit and government relations support funding, Operations and People Office support, and a continued emphasis on workforce strategy.

The request also includes a new Workforce Innovation program. This program will seek innovative ideas from our employees to generate savings, improve service delivery, and/or improve culture at UTA. This program is envisioned to be self-sustaining within three years, with the goal to have a positive return on investment while increasing efficiency and employee culture/engagement.

Finally, UTA is requesting funding to stand up a Transit Connection Program aimed at improving customer experience and addressing unhoused rider resources on the UTA system.

At the October 26, 2022 Board of Trustees meeting, UTA will present to the Board a resolution to adopt the 2023 Tentative Budget. Pending approval by the Board, staff will consult with the Local Advisory Council on November 2, 2022 and receive their input on the 2023 Tentative Budget.

Summary information about the 2023 Tentative Budget is provided in the tables below.

Expenses by Category

Category	FY2022 Budget	FY 2023 Budget	Change	% Change
Wages	\$172,287,000	\$185,631,000	13,344,000	7.7%
Fringe	84,779,000	94,633,000	9,854,000	11.6%
Services	34,914,000	39,897,000	4,983,000	14.3%
Fuel	27,464,000	31,408,000	3,944,000	14.4%
Parts	22,863,000	23,447,000	584,000	2.6%
Utilities	6,397,000	6,189,000	(208,000)	-3.3%
Other O&M	25,141,000	26,679,000	1,538,000	6.1%
Capitalized Costs	(10,689,000)	(11,688,000)	(999,000)	9.3%
Total Budget	\$363,157,000	\$396,197,000	\$33,040,000	9.1%

Expenses by Office

Office	FY2022 Budget	FY 2023 Budget	Change	% Change
Board	\$2,702,000	\$3,147,000	\$445,000	16.5%
Executive Director	6,108,000	6,926,000	818,000	13.4%
Communications	3,382,000	3,943,000	561,000	16.6%
Operations	274,918,000	298,456,000	23,538,000	8.6%
Finance	15,376,000	17,195,000	1,819,000	11.8%
Service Development	7,783,000	8,754,000	971,000	12.5%
Enterprise Strategy	22,525,000	24,822,000	2,297,000	10.2%
Planning & Engagement	14,884,000	18,648,000	3,764,000	25.3%
People Office	15,479,000	14,307,000	(1,172,000)	-7.6%
Total Division	\$363,157,000	\$396,197,000	\$33,040,000	9.1%

UTA FTE Summary

Department	2022 Amended Budget	2023 Proposed Budget	Change FTE FY22 - FY23	Change FTE % FY22 - FY23
Board	13.4	14.4	1.0	7.5%
Executive Director	28.5	30.5	2.0	7.0%
Operations	2,279.2	2,334.2	55.0	2.4%
Finance	120.5	123.5	3.0	2.5%
Service Development	56.0	62.0	6.0	10.7%
Enterprise Strategy	115.0	122.0	7.0	6.1%
Planning & Engagement	73.2	80.2	7.0	9.6%
Communications	13.0	15.0	2.0	15.4%
People Office	84.0	84.0	-	0.0%
Totals	2,782.8	2,865.8	83.0	3.0%

UTA 5-YEAR CAPITAL BUDGET BY YEAR

Year	Proposed Budget	Grants	Lease	State/Local Partners	UTA Funds*
2023	324,960,000	111,929,000	41,755,000	30,847,000	123,695,000
2024	271,104,000	60,245,000	52,201,000	28,273,000	109,278,000
2025	270,303,000	50,634,000	47,826,000	16,055,000	95,442,000
2026	206,597,000	18,030,000	44,195,000	1,400,000	80,157,000
2027	233,170,000	18,002,000	27,534,000	1,112,000	84,966,000
Total	\$1,306,154,000	\$258,840,000	\$215,882,000	\$77,687,000	\$493,538,000

Discrepancy between the proposed budget totals and funding source totals (~\$260.2 Million) is actively being pursued through current grant applications and discussions with the State

More detail will be provided in the 2023 Tentative Budget documentation that will be included in the resolution on October 26, 2022.

ALTERNATIVES:

Discussion Item

FISCAL IMPACT:

The proposed 2023 Tentative Budget and supporting 5-year Financial Plan are financially constrained with all required reserves fully funded.

ATTACHMENTS:

None



Utah Transit Authority

MEETING MEMO

669 West 200 South
Salt Lake City, UT 84101

Board of Trustees

Date: 10/12/2022

TO: Board of Trustees
THROUGH: Jay Fox, Executive Director
FROM: Mary DeLoretto, Chief Service Development Officer
PRESENTER(S): Patti Garver, Manager of Environmental & Grant Services

TITLE:

Discretionary Grants Update

AGENDA ITEM TYPE:

Discussion

RECOMMENDATION:

Informational report for discussion.

BACKGROUND:

Since June 2022, two grants were selected for award, two grants are awaiting review/selection, and one grant is being prepared for submittal.

DISCUSSION:

Patti Garver, UTA Manager of Environmental & Grant Services, will give an update on grants selected for award, outstanding grant submittals, and upcoming submittals since June 2022.

ALTERNATIVES:

N/A

FISCAL IMPACT:

Local match for the awarded and requested grants will come from existing capital project or operating budgets.

ATTACHMENTS:

N/A



Utah Transit Authority

MEETING MEMO

669 West 200 South
Salt Lake City, UT 84101

Board of Trustees

Date: 10/12/2022

TO: Board of Trustees
THROUGH: Jay Fox, Executive Director
FROM: Bill Greene, Chief Financial Officer
PRESENTER(S): Troy Bingham, Comptroller

TITLE:

UTA Policy - UTA.02.09 - Fuel Price Risk Management Program

AGENDA ITEM TYPE:

UTA Policy

RECOMMENDATION:

Adopt UTA.02.09 - Fuel Price Risk Management Program.

BACKGROUND:

Currently, UTA utilizes about 5-6 million gallons of diesel annually to operate its buses and commuter rail. Pricing for fuel is set by the daily rack price on the day the fuel is delivered. This method of fuel pricing leaves UTA susceptible to price swings in the market. UTA currently estimates annual fuel prices during the budget process based on the best information available. This sets a fixed price per gallon for the budget year.

Fuel hedging is a risk mitigation mechanism that protects fuel purchasers like UTA from price volatility. Fuel hedging is common in transit agencies throughout the United States. By buying or selling forward priced heating oil contracts, UTA limits the impact of price variances in the future.

UTA will continue to purchase and have fuel delivered per current practices. Future contracts will be traded, and the net value of these transactions will provide offsets to variances in the price of fuel purchased.

DISCUSSION:

Due to the complexity of the fuel derivatives market UTA will take two steps:

1. Establish a contract with an expert in transit fuel hedging to advise the CFO on all hedging practices.
2. Establish this policy for fuel hedging that establishes the following criteria:

- a. Instruments that can be purchased
 - b. The maximum hedging ratio (Gallons of Fuel Purchased Monthly/Gallons of Heating Oil Hedged in Forward Purchase)
 - c. Duration of hedge instrument
 - d. Strategy on how the program objectives will be achieved
 - e. Execution, monitoring & reporting
-

ALTERNATIVES:

If this policy is not adopted, no other policy providing similar functions is in force and UTA would continue business operations as normal.

FISCAL IMPACT:

In 2020 UTA budgeted \$2.50 per gallon for diesel fuel and ended up spending \$8.2 million less than budgeted due mostly to less consumption due to the COVID-19 pandemic.

In 2021 UTA budgeted \$2.25 per gallon for diesel fuel and ended up spending \$467,000 more than budgeted.

In 2022 UTA budgeted \$2.75 per gallon for diesel fuel and YTD is spending \$3.2 million more than budgeted.

ATTACHMENTS:

Policy: UTA.02.09 - Fuel Price Risk Management Program

UTAH TRANSIT AUTHORITY POLICY

No. UTA.02.09

FUEL PRICE RISK MANAGEMENT PROGRAM

1) Purpose.

UTA will establish and maintain a fuel price risk management program addressing petroleum fuels that will:

- seek to decrease the volatility of fuel cost;
- seek to increase the certainty of future fuel cost;
- seek to manage year-over-year changes in fuel cost.

The purpose of this program is not to make or lose money but to manage risk. This program is not an investment and should not be construed as such. Realized gains or losses will be considered and accounted for as an element of fuel cost.

2) Definitions. As used in this Policy:

“*Advisor*” means the person at a Futures Commission Merchant who acts as an agent to execute buy or sell orders for futures contracts or commodity options.

“*Futures Commission Merchant (FCM)*” means an entity that solicits and accepts orders to buy or sell futures contracts, options on futures, retail off-exchange or swaps, and accepts money or other assets from customers to support such orders.

“*Hedging*” means the use of financial derivatives such as futures contracts or options, making advance purchases of fuel at a fixed price for future contract settlement to protect against market volatility.

“*UTA*” means Utah Transit Authority

3) Policy

A. Program Infrastructure:

1. Instruments

UTA will establish and maintain a futures account with a Futures Commission Merchant. UTA, through the management and direction of a contracted Advisor, will acquire, hold, and dispose of petroleum futures contracts (typically heating oil futures) in the operation of its program. The high correlation between the movement of the price that UTA pays for its fuel and the movement of the value of the futures contracts produces the program’s effectiveness as a hedge. The volume of each petroleum futures contract is 42,000 gallons and there is a futures contract corresponding to each month for the next 0-36 months.

2. Maximum Hedge Ratio

UTA’s volume of fuel consumption is highly predictable and without significant variability over time. Given this, the maximum hedge ratio will be limited to 100% of forecasted consumption.

3. Maximum Hedge Maturity

To allow the establishment of cost certainty in current and future budget periods, the maximum maturity of the futures contracts taken in conjunction with the program is 36 months forward from the acquisition date.

4. Exiting Market Positions

The Advisor will exit the futures contracts evenly through time to coincide with UTA's purchase and consumption of fuel evenly through time. This even liquidation of hedges and purchases of fuel across time by UTA assures the effectiveness of the hedging process. Based on the difference between the hedge price (entry price) and the settlement price (exit price), there will be a realized gain/loss associated with each futures contract. Futures contracts will be held to maturity (exited when the corresponding fuel is purchased). There will be no interim trading or early exit allowed unless situations where the volume of forecasted fuel consumption decreases in which case the hedge position may be adjusted to comply with policy.

B. Physical Supply:

1. The physical supply of fuel will continue according to the current process of UTA. The physical supply will be priced according to the floating daily price according to the current fuel supply process.

C. Strategy:

1. The Strategy is how the program's objectives are achieved. The strategy will utilize a process that:
 - a. addresses market opportunities and market risks
 - b. examines fundamental and technical market factors in the hedge decision-making process
 - c. holds the risk of exceeding budget at or below an acceptable level
 - d. uses historical pricing ranges as pricing parameters
 - e. is continuously applied through time
 - f. will take advantage of the inherent "dollar cost averaging" properties of a continuous hedging program
 - g. mitigates transaction timing risk by making more numerous smaller volume transactions
2. Operationally, the portfolio will be:
 - a. expanded further forward in time when the market is offering a relatively low price opportunity
 - b. maintained at a minimum of 12 months forward at the policy maximum to insure cost certainty in the short-term
 - c. expanded to protect budgets/cost targets when prices are rising

These things will be accomplished by executing (to the greatest extent possible), the appropriate transactions at the appropriate times and at the appropriate prices, and in the appropriate volumes in order to create the desired effect within the constraints of the policy under the direction of the Advisor.

D. Execution, Monitoring & Reporting:

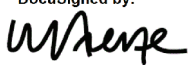
1. The Advisor will be responsible for the day-to-day execution and operation of the program including the execution of transactions, generating reports on the program's status and results, and monitoring the program and the energy markets.

2. The Advisor will generate periodic updates on the status and results of the program.
3. Oversight of the program will be primarily the responsibility of the Chief Financial Officer (CFO) at UTA.
4. Reporting to/communicating with UTA’s CFO on the performance and status of the program will occur periodically as the CFO deems appropriate. This reporting and communication may include weekly and monthly reporting and periodic conference calls/meetings according to UTA’s needs and wishes.

4) Cross-References.

- Board Policy 2.1 - Financial Management

This UTA Policy was reviewed by UTA’s Chief Officers on 09/09/22, approved by the Board of Trustees on _____ and approved by the Executive Director on _____. This policy takes effect on the latter date.

DocuSigned by:

 E17559BFE7DD49E...

 Chief Financial Officer
 Accountable Executive

Jay Fox

 Executive Director

Approved as to form and content:

DocuSigned by:

 70E33A415BA44F6...

 Authority

History

Date	Action	Owner
	Board Approved – UTA.02.09 – Fuel Price Risk Management Policy	Chief Financial Officer
	Adopted - UTA.02.09 – Fuel Price Risk Management Policy	Chief Financial Officer