

2-7-23

## Cooperative Agreement

between

Utah Transit Authority

and

The University of Utah

This cooperative agreement between the University of Utah (University), a body politic and corporate of the State of Utah, and Utah Transit Authority (UTA) (hereinafter “Party or Parties”) is intended to describe the roles and responsibilities of the Parties with regard to the Federal Transit Administration (FTA) Areas of Persistent Poverty Program (AoPP) grant award study.

Background: UTA was awarded an FTA grant entitled Areas of Persistent Poverty which is aimed at providing better accessibility for public transit to areas of greatest and most persistent poverty within UTA’s transit district. The University of Utah was named as the principal investigator under the grant with Via Mobility LLC (Via) and The Center for Transportation and the Environment (CTE) being also named as subrecipients. UTA and the University intend to enter into a Cooperative Agreement for implementation and accomplishment of the grant objectives. Via and CTE will act as subcontractors to the University in performance of the grant objectives.

Agreement: The Parties hereby enter into this cooperative agreement under the terms described below:

1. Overall Project Description: The project will study a possible transition from UTA's current traditional 24-hour notice Paratransit service powered by gasoline vehicles, as compared to a more dynamic service which also introduces zero emission vehicles. Resulting changes could significantly increase rider convenience, improve service equity and productivity, improve access, and take steps toward cleaner air and better health for an especially vulnerable population.
  - a. The study will focus on four tasks: (1) evaluate the potential to transition UTA’s Paratransit operating software to a more dynamic on demand system with a focus on equitably serving high poverty areas, (2) evaluate the viability of using existing resources during off-peak hours to provide on demand rides to the public, (3) plan to introduce zero emission Paratransit vehicles, and (4) ensure in-depth community engagement to include a diverse range of people with disabilities.
  - b. The intent of the Paratransit Forward project is to improve the customer experience and cost effectiveness of UTA Paratransit services for customers with disabilities who are often below the poverty line. This project provides funds for UTA to partner with the University of Utah, who will work with Via and the Center for Transportation and the Environment (CTE), to study the potential for operational and customer experience improvements for UTA’s paratransit services.

- c. UTA has identified 61 census tracts that meet the criteria of a persistent poverty in the communities of Davis, Salt Lake, Utah and Weber counties which are within the urbanized areas UTA services. In formulating ways to address inequities there is a need to create more applicable datasets to review current conditions and identify action items. UTA is looking to fully assess the impacts of paratransit services on environmental justice (EJ) populations by developing a broader approach to data gathering and utilization in providing these transit services. UTA is in part wanting to conduct surveys and subsequent planning to identify and address any potential disparities between the community and those accessing paratransit services. This project/study will address racial equity and access to opportunity by planning to gather data on the race and income of riders during public engagement. The 61 census tracts in the UTA urbanized area that are defined as areas of persistent poverty are listed in **Exhibit A** along with maps of the identified census tracts.

## 2. UTA Responsibilities & Obligations.

### a. Technical and Management Contribution.

- i. UTA will manage the grant application, award, and implementation processes. UTA will provide and assist with data requested by the University of Utah that is necessary to conduct the project/study. The information provided by UTA will be covered by the confidentiality provision at paragraph 10. i below. UTA will document all data provided for the study as well as the source of the data and date provided.
- ii. UTA will assist in developing several “service alternative” scenarios and will help model service impacts of Via and Trapeze software. UTA will provide any necessary information that may be needed for the electrification portion of the project.
- iii. UTA will work with the U of U and its partners to develop a community engagement plan for the project. UTA will provide incentives (i.e., gift cards) for those in the community participating in certain aspects of the community engagement; further details to be determined.

### b. UTA Financial Match Contribution: Zero

## 3. University Responsibilities & Obligations.

- a. Technical and Management Contribution. The University of Utah group will be responsible for leading the project under the oversight of UTA. The University will be responsible for accomplishment of Work Plan (detailed in **Exhibit B**) described below but shall enter into sublevel agreements with Via and CTE for the individual

scopes of work shown in **Exhibits B, C & D**. The University will manage the sublevel agreements and payments to Via and CTE.

- b. **Scope of Work:** The University is responsible for accomplishment of the following Scope of Work which is detailed in **Exhibit B**:

With consultation and guidance from UTA, the University of Utah will conduct the Paratransit Efficiency Analysis of software scenarios (Trapeze v. Via v. combination) from a neutral third-party perspective. The University will perform cost sensitivity, demand analysis, and evaluation of the potential benefits when comparing different operational strategies. Potential strategies will include using existing resources during off-peak hours to provide on demand rides to the public. Via will support this work by running simulations and providing other input at the request of U of U. For existing conditions analysis, Via will examine the performance of the existing Paratransit service in AoPP and contrast this to other areas served by UTA to understand how Paratransit service is delivered for those living in persistent poverty. This analysis will compare the uptake of Paratransit, reliability, and customer feedback to determine whether there are steps UTA can take to improve paratransit in AoPP.

**The Exhibit B describes the specific tasks contained in the University Scope of Work and for which the University will be held accountable.**

- c. **Financial Contribution:** The U of U will contribute \$35,000 in kind match and Via will provide \$20,000 in kind match totaling 13% matching in-kind funds (\$55,000).
- d. **Deliverables and Allotment Funds**
1. Written report document summarizing work performed for the task “Existing UTA Paratransit Analysis” at a not-to-exceed cost of \$78,000, after matching funds are applied.
  2. Written report document summarizing work performed for the task “Operational Strategies Research” at a not-to-exceed cost of \$65,000, after matching funds are applied.
  3. Written report document summarizing work performed for the task “Alternatives Analysis” at a not-to-exceed cost of \$102,000, after matching funds are applied.
  4. Written report document summarizing work performed for the task “Electrification” at a not-to-exceed the cost of \$35,000, after matching funds are applied.

5. Written report document summarizing work performed for the task “Community Engagement” at a not-to-exceed cost of \$100,000, after matching funds are applied.

Tasks, deliverables and budget are detailed in **Exhibit B**.

TOTAL FEDERAL	\$385,584: \$175,217 (U of U), \$175,367 (Via), \$35,000 (CTE)
TOTAL MATCH	\$55,000: \$35,000 (U of U), \$20,000 (Via)
TOTAL	\$440,584

\*These are not-to-exceed amounts (NTEs)

4. Payment: UTA shall receive, manage, and distribute contributions provided by the AoPP Grant award. The U of U shall submit invoices and expenditure summaries to UTA based on the above workplan and Exhibit B outlining deliverables on a monthly basis. Payment shall be due 30 days from date of invoice. The U of U will manage all billing and payments to Via and CTE, UTA will not pay these partners directly. The U of U will document and verify the value of its \$35,000 effort contribution. of CTE has no in-kind contribution to the project. Invoices to UTA will reflect the 87% reimbursement as well as the 13% in-kind match. Support documentation for each task description 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 the effort of the Principle Investigator, Via software simulation work and the work performed to complete the outlined tasks. University mark ups on VIA and CTE costs shall be equal to its applicable federal negotiated F&A rate for administration and management.
  
5. Budget: The following is the federal grant and local/in-kind match budget for the AoPP Grant. These amounts will be regarded as Not-to-Exceed amounts for purposes of this Agreement. University is not authorized to exceed, nor allow Via or CTE to exceed, these amounts without the express written consent of UTA.

Description	Federal Amount	Match Amount
CTE Study electrification of UTA Paratransit Fleet – market/cost analysis. Operations recommendation costing.	\$35,000	\$0
VIA Assist U of U in paratransit improvement/resource study. Contract for public engagement. Existing conditions	\$175,367	\$20,000
U of U operations software scenario lead. Evaluate benefits of on-demand. Assist with costing and operational strategies.	\$175,217	\$35,000
TOTAL	\$385,584	\$55,000

The University of Utah is contributing \$35,000 worth of effort of their Principal Investigator for the project as in-kind match for the grant funds.

VIA Mobility is also contributing the value of their software simulation work, valued at \$20,000, as in-kind match to the project. This is reflected on the last line of their submitted cost estimate.

6. Monthly Progress Updates. Each Party agrees to participate in monthly 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.
7. FTA Master Agreement: Each party agrees that as a recipient or sub-recipient of an FTA grant, it will abide by the required FTA clauses from FTA Master Agreement attached as **Exhibit F** to this Agreement. The University will ensure that its sub agreements with VIA and CTE also contain these required federal terms.
8. Reasonable Efforts: Each Party will use reasonable efforts consistent with their mission to effectuate the purpose of the grant as described above.
9. 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.

10. 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. Both Parties to this Agreement are governmental entities 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 either Party of any protections, rights, or defenses applicable to the respective Parties under the Act, including without limitation, the provisions of section 63G-7-604 regarding limitation of judgments. It is not the intent of either Party 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 Parties retained 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 respective Parties.

b. OWNERSHIP WORK PRODUCT

- i. 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, however the other Parties shall receive a non-exclusive, perpetual, royalty free, world-wide, non-sublicensable license in the technology or IP.

Notwithstanding the foregoing, under the official Federal Transit Administration (FTA) Master Agreement that applies to each Underlying Agreement including the subject agreement, the Federal Transit Authority, through UTA as its agent, with regard data first produced under this Agreement, shall receive a license that is royalty-free, non-exclusive, and irrevocable. The Federal Government shall be permitted 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 only. Furthermore, the FTA may make available its licenses data to any FTA Recipient of Third Party, for Federal Government Purposes only.

- 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 a court of competent jurisdiction within the State of Utah.
- 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. GOVERNING 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 All data or information exchanged between the Parties shall be used only for purposes of performance under this Agreement and for no other purpose. The obligations of non-disclosure do not apply when: (a) the receiving party is required to provide such information by law or under a court or other administrative agency ruling, (b) such information is known to the receiving party as of the date of disclosure (other than by breach of a duty of confidence owed to any person), (c) is independently developed by the receiving party, or lawfully comes into its possession from another source, (d) such information is already or comes within the public domain (other than by breach of a duty of confidence owed to any person), or (e) such information is acquired independently from a third party that has the right to disseminate such information at the time it is acquired. Data shall be provided only to those individuals within the University or UTA who have a need to know based on their involvement with this project unless consent is received from the Party furnishing the data or information. Notwithstanding, 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. 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.

- k. 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.
  
- 1. 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.

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

Title:

Date: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_

Title: Chief Financial Officer

Date: \_\_\_\_\_

AATF:

**Michael L Bell** Digitally signed by Michael L Bell  
Date: 2023.03.20 12:26:51 -06'00'

Title: UTA Legal

2-7-23

### EXHIBIT A -Areas of Persistent Poverty Census Tracts

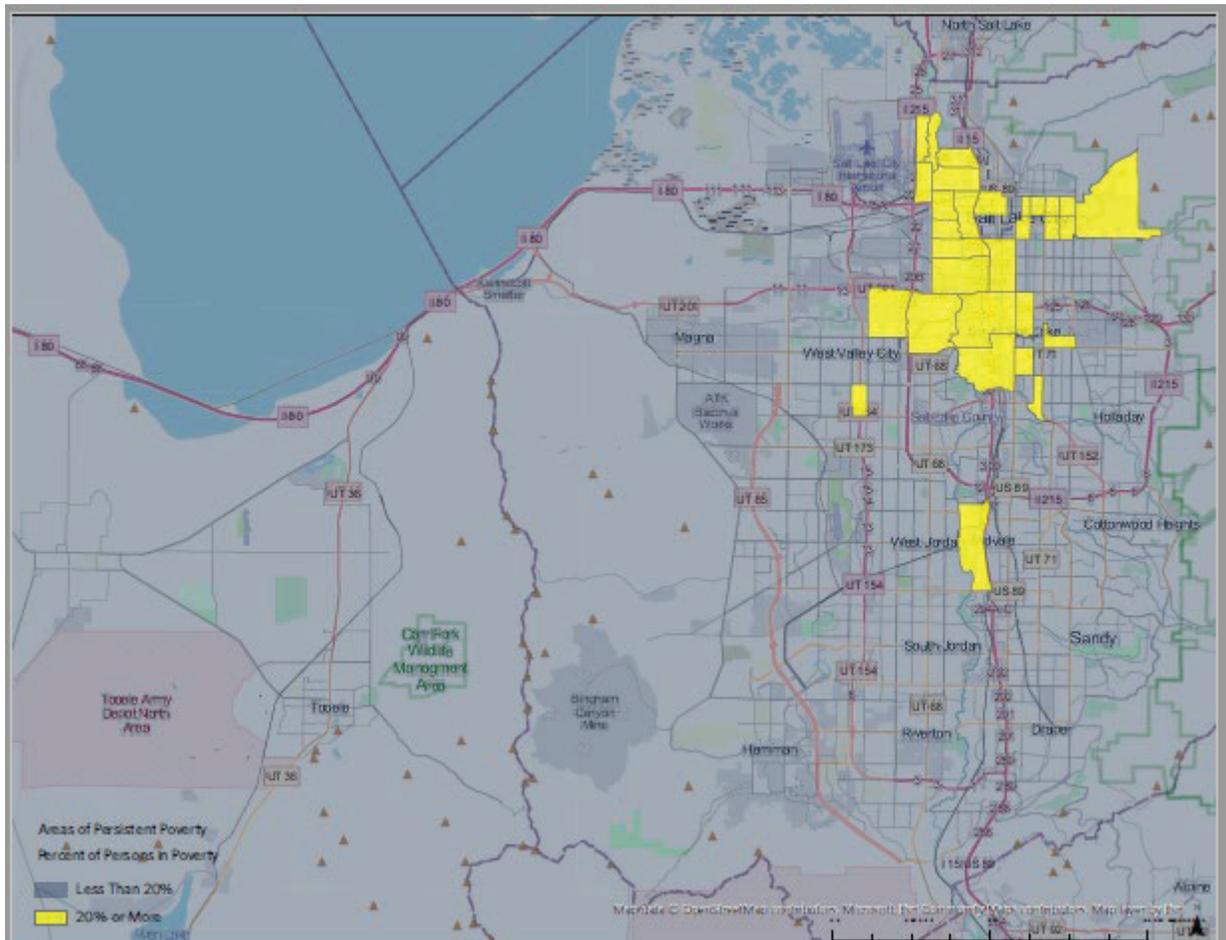
This study affects all 61 census tracts in the UTA urbanized service area that are defined as areas of persistent poverty. This is a list of all qualifying census tracts in the urbanized portions of the counties of Davis, Salt Lake, Utah and Weber:

Davis County (count of 2): 1256, 1257.01.

Salt Lake County (count of 29): 1003.06, 1003.07, 1003.08, 1005, 1006, 1014, 1015, 1016, 1017, 1018, 1019, 1021, 1023, 1025, 1026, 1027.01, 1027.02, 1028.01, 1028.02, 1029, 1114, 1115, 1116, 1117.01, 1118.02, 1119.05, 1124.03, 1133.05, 1133.07, 1135.36.

Utah County (count of 20): 5.06, 7.03, 8.01, 9.01, 11.03, 12.01, 14.02, 15.04, 16.01, 16.02, 16.03, 17.02, 18.01, 18.02, 18.03, 19, 20, 25, 28.01, 28.02.

Weber County (count of 10): 2002.02, 2003, 2008, 2009, 2011, 2012, 2013.02, 2017, 2018, 2019.







## EXHIBIT B -Workplan and Budget Detail

### I. Research

- a. Existing UTA Paratransit Analysis: Analyze UTA's current paratransit services to a) understand system strengths and weaknesses and b) identify opportunities for improvement. **Cost Not To Exceed (NTE): \$78,217**
  - i. Coverage Analysis: Within UTA's service district a) identify total area with and without paratransit service, b) identify number of paratransit-eligible riders, along with an analysis of riders with conditional and unconditional eligibility, and c) estimate number of potential paratransit customers living in areas without access to UTA paratransit services. **COST NTE: \$25,217 (University)**
  - ii. Operational Analysis: Analyze system ridership (ridership by day/week; ridership from customers with conditional/unconditional eligibility; spatial and temporal ridership patterns) and operating characteristics (numbers of drivers in daily service; number of vehicles in daily service). **COST NTE: \$15,000 (University)**
  - iii. Funding and Costs Analysis: Identify all funding streams for UTA paratransit services. Analyze costs per trip and per mile. **COST NTE: \$10,000 (University), \$8,000 (Via)**
  - iv. Existing Conditions Report: Develop a report summarizing work performed in Task 1.1. including a) identifying coverage gaps in UTA paratransit system, b) summarizing UTA paratransit costs, and c) identifying opportunities to improve system efficiency. **COST NTE: \$20,000 (University)**
    1. Written report document summarizing work performed in the existing UTA Paratransit Analysis.
- b. Operational Strategies Research **COST NTE: \$65,000**
  - i. State-of-the-practice research: Identify organizations and peer agencies employing innovative approaches to paratransit. Identify solutions which may be applicable for UTA. Example cases include (but not limited to) Denver/RTD, Dallas/DART, Florida/HART, Pinellas, Florida/Suncoast. Via to lead two interviews, University to lead two. **COST NTE: \$25,000 (University)**
  - ii. Peer Agency Interviews: Conduct interviews with up to four peer agencies identified in the state-of-the-practice phase (as agreed upon with UTA). Obtain detailed information from peer agencies. **COST NTE: \$10,000 (University), \$10,000 (Via)**
  - iii. Operational strategies report: Develop a report summarizing research and learnings from peer agencies, including but not limited to a) operational characteristics of various programs, b) assessment of these programs performances, and c) best practices based on research of operational strategies employed by other transit providers. **COST NTE: \$20,000 (University)**
    1. Written report document summarizing work in operational strategies research task.
- c. Alternatives Analysis: Based on analysis of UTA's existing paratransit system and research of operational strategies, this task will develop service alternatives to model and develop cost estimates for potential changes to service. **COST NTE: \$102,000**
  - i. Service Delivery Scenario Development: With UTA, develop several "service alternative" scenarios which investigate paratransit service changes, potentially including but not limited to a) paratransit expansion into microtransit zones, b)

TNC/taxi partnerships, c) new paratransit offerings, d) commingled microtransit and paratransit scenarios. Scenarios will include estimated ridership and defined geographic areas. **COST NTE: \$15,000 (University), \$12,000 (Via)**

- ii. Scenario Modeling: With UTA, devise process to model likely service impacts using either or both of Via/Trapeze software. **COST NTE: \$10,000 (University), \$12,500 (Via)**
- iii. Via scenario analysis support: Depending on selected alternative scenarios, Via to provide supporting work which may include a) analysis of existing Via/UTA on-demand services and b) simulation of service in new geographic areas or under new service parameters (e.g., number of vehicles, hours of operation, passenger eligibility and demand). **COST NTE: \$12,500 (Via)**
- iv. Software feature comparison: Compare software features offered by Via and Trapeze. **COST NTE: \$15,000 (University), \$5,000 (Via)**
- v. Alternatives Analysis Report: Summarize analysis of service alternatives including likely costs and operator requirements, impacts to existing services, and potential funding sources. **COST NTE: \$10,000 (University), \$10,000 (Via)**
  - 1. Written report document summarizing work in task Alternatives Analysis.

II. Electrification **COST NTE: \$35,000**

- a. With guidance from UTA, CTE will study electrification (or other zero emission technology) of the UTA Paratransit fleet. Work to include a market and cost analysis, operational recommendations, and final cost estimates. Via will support CTE by providing electric vehicle (EV) model guidance. The University will support CTE by modeling optimal on-route charging locations. **COST NTE: \$35,000 (CTE)**

III. Community Engagement **COST NTE: \$105,367**

- a. Develop Community Engagement Plan: Develop a detailed public engagement plan that outlines the goals, timeline, and deliverables for the public engagement task. Engagement plan may include partnering with local subcontractor to support in-person activities. **COST NTE: \$5,000**
- b. Develop Project Branding and Collateral: Develop a project website and collateral (such as brochures, social media images, a video, etc...) to share when conducting outreach. **COST NTE: \$14,067**
- c. Committee on Accessible Transportation (CAT) Engagement: Join regular CAT meetings or facilitate workshops with CAT to solicit committee input and advice on the Project. Up to 4 meetings. **COST NTE: \$7,500**
- d. Stakeholder Interviews: Conduct up to 20x 30 minute interviews with stakeholders to understand how the current system is meeting the needs of those living with disabilities in AoPP areas. Stakeholders may be members of the CAT or other groups recommended by UTA and the CAT. **COST NTE: \$12,500**
- e. Paratransit User Survey: Conduct a survey of UTA paratransit customers (or those who are paratransit-eligible but do not have access to service) to determine key pain points and strengths associated with the existing paratransit system. Determine priorities for future improvements. **COST NTE: \$25,400**
- f. Paratransit User Interviews: Conduct 30x interviews with paratransit users or potential users, either in a one-on-one or small group setting, to understand how the service currently meetings their needs and share ideas for improving the service. **COST NTE: \$20,400**

- g. UTA Ride-Along: Ride UTA services (including on-demand, paratransit, and fixed-route services, along with transfers between modes) to gain first-hand experience with service offerings in various geographic areas. **COST NTE: \$2,500**
- h. Develop Memo: Develop a memorandum that captures the findings from this task. **COST NTE: \$12,000**
- i. Travel and Expenses: Three trips (one individual) for up to two days per visit. **COST NTE: \$6,000**

		Team	UoU	Via	CTE
<b>1</b>	<b>Research</b>	\$ 198,000	\$ 175,000	\$ 23,000	
<b>1.1</b>	<b>Existing UTA Paratransit Analysis</b>	\$ 78,000	\$ 70,000	\$ 8,000	
	a. Coverage analysis	\$ 25,000	\$ 25,000		
	b. Operational Analysis	\$ 15,000	\$ 15,000		
	c. Funding and Costs analysis	\$ 18,000	\$ 10,000	\$ 8,000	
	d. Existing Conditions Report	\$ 20,000	\$ 20,000		
		\$ 78,000	\$ 70,000	\$ 8,000	
<b>1.2</b>	<b>Operational Strategies Research</b>	\$ 65,000	\$ 55,000	\$ 10,000	
	a. State-of-the-practice research	\$ 25,000	\$ 25,000	\$ -	
	a. Peer Agency Interviews	\$ 20,000	\$ 10,000	\$ 10,000	
	c. Operational Strategies Report	\$ 20,000	\$ 20,000	\$ -	
		\$ 65,000	\$ 55,000	\$ 10,000	
<b>1.3.</b>	<b>Alternatives Analysis</b>	\$ 102,000	\$ 50,000	\$ 52,000	
	a. Service Delivery Scenario Development	\$ 27,000	\$ 15,000	\$ 12,000	
	b. Scenario Modeling	\$ 22,500	\$ 10,000	\$ 12,500	
	c. Via scenario analysis support	\$ 12,500		\$ 12,500	
	d. Software feature comparison	\$ 20,000	\$ 15,000	\$ 5,000	
	e. Alternatives Analysis Report.	\$ 20,000	\$ 10,000	\$ 10,000	
		\$ 102,000	\$ 50,000	\$ 52,000	
	<b>Task 1 Subtotal</b>	\$ 123,000	\$ 105,000	\$ 18,000	
<b>2</b>	<b>Electrification</b>	\$ 35,000	\$ -	\$ -	\$ 35,000
<b>3</b>	<b>Community Engagement</b>	\$ 100,000	\$ -	\$ 100,000	
	a Develop Community Engagement Plan	\$ 5,000		\$ 5,000	
	b Develop Project Branding and Collateral	\$ 11,200		\$ 11,200	
	c Transportation (CAT) Committee on Accessible Engagement	\$ 7,500		\$ 7,500	
	d Stakeholder Interviews	\$ 10,000		\$ 10,000	
	e Paratransit User Survey	\$ 25,400		\$ 25,400	
	f Paratransit User Interviews	\$ 20,400		\$ 20,400	
	g UTA Ride-Along	\$ 2,500		\$ 2,500	
	h Develop memo	\$ 12,000		\$ 12,000	
	i Travel and Expenses	\$ 6,000		\$ 6,000	

<b>1</b>	<b>Research</b>	\$ 245,217	\$ 175,217	\$ 70,000	\$ -
<b>1.1</b>	<b>Existing UTA Paratransit Analysis</b>	\$ 78,217	\$ 70,217	\$ 8,000	
	a. Coverage analysis	\$ 25,217	\$ 25,217		
	b. Operational Analysis	\$ 15,000	\$ 15,000		
	c. Funding and Costs analysis	\$ 18,000	\$ 10,000	\$ 8,000	
	d. Existing Conditions Report	\$ 20,000	\$ 20,000		
		\$ 78,217	\$ 70,217	\$ 8,000	
		<b>Team</b>	<b>UoU</b>	<b>Via</b>	<b>CTE</b>
<b>1.2</b>	<b>Operational Strategies Research</b>	\$ 65,000	\$ 55,000	\$ 10,000	
	a. State-of-the-practice research	\$ 25,000	\$ 25,000	\$ -	
	a. Peer Agency Interviews	\$ 20,000	\$ 10,000	\$ 10,000	
	c. Operational Strategies Report	\$ 20,000	\$ 20,000	\$ -	
		\$ 65,000	\$ 55,000	\$ 10,000	
		<b>Team</b>	<b>UoU</b>	<b>Via</b>	<b>CTE</b>
<b>1.3.</b>	<b>Alternatives Analysis</b>	\$ 102,000	\$ 50,000	\$ 52,000	
	a. Service Delivery Scenario Development	\$ 27,000	\$ 15,000	\$ 12,000	
	b. Scenario Modeling	\$ 22,500	\$ 10,000	\$ 12,500	
	c. Via scenario analysis support	\$ 12,500		\$ 12,500	
	d. Software feature comparison	\$ 20,000	\$ 15,000	\$ 5,000	
	e. Alternatives Analysis Report.	\$ 20,000	\$ 10,000	\$ 10,000	
	f. Microtransit Simulation Tool	\$ 20,000		\$ 20,000	
		\$ 102,000	\$ 50,000	\$ 52,000	
		\$ 245,217	\$ 175,217	\$ 70,000	
<b>2</b>	<b>Electrification</b>	\$ 35,000	\$ -	\$ -	\$ 35,000
		\$ -			
<b>3</b>	<b>Community Engagement</b>	\$ 105,367	\$ -	\$ 105,367	\$ -
a	Develop Community Engagement Plan	\$ 5,000		\$ 5,000	
b	Develop Project Branding and Collateral	\$ 14,067		\$ 14,067	
c	Committee on Accessible Transportation (CAT) Engagement	\$ 7,500		\$ 7,500	
d	Stakeholder Interviews	\$ 12,500		\$ 12,500	
e	Paratransit User Survey	\$ 25,400		\$ 25,400	
f	Paratransit User Interviews	\$ 20,400		\$ 20,400	
g	UTA Ride-Along	\$ 2,500		\$ 2,500	
h	Develop memo	\$ 12,000		\$ 12,000	
	Travel and Expenses	\$ 6,000		\$ 6,000	
		\$ -			
	<b>TOTAL</b>	\$ 385,584	\$ 175,217	\$ 175,367	\$ 35,000

### Exhibit C – VIA SCOPE OF WORK

Via will assist with the following work to complete the Areas of Persistent Poverty study\*:

With guidance from UTA, the University of Utah will conduct the Paratransit Efficiency Analysis of software scenarios (Trapeze v. Via v. combination) from a neutral third-party perspective. The University will perform cost sensitivity, demand analysis, and evaluation of the potential benefits when comparing different operational strategies. Potential strategies will include using existing resources during off-peak hours to provide on demand rides to the public. Via will support this work by running simulations and providing other input at the request of U of U. For existing conditions analysis, Via will examine the performance of the existing Paratransit service in AoPP and contrast this to other areas served by UTA to understand how Paratransit service is delivered for those living in persistent poverty. This analysis will compare the uptake of Paratransit, reliability, and customer feedback to determine whether there are steps UTA can take to improve paratransit in AoPP.

Task 1.1 Existing UTA Paratransit Analysis

Analyze UTA's current paratransit services to a) understand system strengths and weaknesses and b) identify opportunities for improvement.

Task 1.2 Operational Strategies Research

This task will examine paratransit solutions in other cities which may be applicable to UTA

Task 1.3 Alternatives Analysis

Based on analysis of UTA's existing paratransit system and research of operational strategies, this task will develop service alternatives to model and develop cost estimates for potential changes to service.

Task 3 Community Engagement

With guidance from UTA, throughout the study Via will conduct an extensive public engagement process with current and potential Paratransit users to understand the performance of the current system and potential tools to improve the service, with a focus on designing it to serve all disability types.

**\*Detailed in Exhibit B**

**Exhibit D - CTE SCOPE OF WORK**

2-7-23

### **Study Zero Emission Vehicle Strategies**

**With guidance from UTA, CTE will study electrification (or other zero emission technology) of the UTA Paratransit fleet. Work to include a market and cost analysis, operational recommendations, and final cost estimates. Via will support CTE by providing electric vehicle (EV) model guidance. The University will support CTE by modeling optimal on-route charging locations.**

2-7-23

<https://www.govinfo.gov/content/pkg/FR-2021-06-30/pdf/2021-13980.pdf>

**Exhibit F- FEDERAL TRANSIT ADMINISTRATION REQUIRED CLAUSES**

University agrees, except as modified by the specific terms of this Agreement, the provisions of the Prime Award, attached hereto are hereby incorporated by reference into this Agreement. It is intended that the referenced clauses shall apply to University in such a manner as is necessary to reflect the position of the University as a subcontractor to UTA, to insure University's obligations to UTA and FTA, and to enable UTA to meet its obligations under its Prime Award. Provided, to the extent services performed or compensation received by the University hereunder do not meet the threshold requirements established under the specific provisions applicable to the following clauses or their applicable prescriptions, then those clauses shall be self-deleting and not applicable.

#### **FEDERAL TRANSIT ADMINISTRATION REQUIRED CLAUSES**

It is the responsibility of the University to comply with the applicable FTA required clauses listed below and to also ensure that all applicable clauses are flowed down to Via and CTE.

<b>Sec.</b>	<b>Contract Clause</b>	<b>Applicability to Type of Contract</b>
1	Fly America Requirements	When Transportation Paid by FTA Funds
2	Buy America Requirements	Value > 150K for Construction, Goods, Rolling Stock
3		
4		
5		
6		
7	Special Department of Labor (DOL) Equal Employment Clause	Value > 10K for Construction
8	Energy Conservation Requirements	All
9	Clean Water Requirements	Value > 100K
10		
11		
12	Lobbying	All (Certification required if > \$100K)
13	Access to Records and Reports	All
14	Federal Changes	All
15		
16	Clean Air	Value > 100K
17	Recycled Products	Value > 10K In Fiscal Year
18	Davis-Bacon and Copeland Anti-Kickback Acts	Construction > \$2000
19		
20	No Government Obligation to Third Parties	All
21	Program Fraud and False or Fraudulent Statements and Related Acts	All
22	Termination	Value > 10K

23	Government-Wide Debarment and Suspension (Non-procurement)	Value > 25K
24		
25	Civil Rights Requirements	All
26	ADA Access Requirements	All
27	Breaches and Dispute Resolution	Value > 100K
28	Patent and Rights in Data	Research Projects Only NOTE: The Parties acknowledge that this project does not include any experimental, developmental, or research work as defined in Exhibit F, Section 28 ("Patent and Rights in Data"). To the extent UTA receives any request from the FTA indicating otherwise with respect to this project, the Parties will work together in good faith to amend the wording herein as necessary to allow UTA to comply with such request.
29	Transit Employee Protective Agreements	Transit Operations
30	Disadvantaged Business Enterprise (DBE)	All
31	Incorporation of FTA Terms	All
32		
33		
34	Metric Requirements	Sealed Bid Procurements, Rolling Stock, Construction
35	Conformance with National ITS Architecture	Contracts and Solicitations for ITS projects only
36		
37	Veterans Employment	Capital Projects
38	Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment	ALL

## 1. FLY AMERICA REQUIREMENTS

**49 U.S.C. §40118**

**41 CFR Part 301-10.131 - 301-10.143**

**Applicability to Contracts:** The Fly America requirements apply to the transportation of persons or property, by air, between a place in the U.S. and a place outside the U.S., or between places outside the U.S., when the FTA will participate in the costs of such air transportation. Transportation on a foreign air carrier is permissible when provided by a foreign air carrier under a code share agreement when the ticket identifies the U.S. air carrier's designator code and flight number. Transportation by a foreign air carrier is also permissible if there is a bilateral or multilateral air transportation agreement to which the U.S.

Government and a foreign government are parties and which the Federal DOT has determined meets the requirements of the Fly America Act.

**Flow down Requirements:** The Fly America requirements flow down to first tier contractors, who are responsible for ensuring that lower tier contractors and sub-contractors are in compliance.

**Fly America** - The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10.131 - 301-10.143, which provide that recipients and sub-recipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-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 the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

## **2. BUY AMERICA REQUIREMENTS**

**49 U.S.C. 5323(j)**

**49 U.S.C. 5323(h)**

**49 CFR Part 661**

**Applicability to Contracts:** The Buy America requirements apply to the following types of contracts: Construction Contracts and Acquisition of Goods or Rolling Stock (valued at more than \$150,000).

**Flow down Requirements:** The Buy America requirements flow down to first tier Consultant, who are responsible for ensuring that lower tier contractors and sub-contractors are in compliance. **Buy America** - The Contractor agrees to comply with 49 U.S.C. 5323(j) as amended by MAP-21, 49 U.S.C. 5323(h), 49 CFR Part 661, and FAST Act (Pub. L. 114-94) which provide that Federal fund 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 and was amended by Section 3011 of the FAST Act (Pub. L. 114-94). Separate requirements for rolling stock are set out at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a sixty percent (60%) domestic content for FY16 & FY17; sixty-five percent (65%) domestic content for FY18 & FY19; and seventy percent (70%) domestic content for FY20 & beyond.

General waivers for small purchases do not apply to Contractor's equipment purchases when Consultant's contract value exceeds \$150,000 in value. Contractor must submit to UTA the appropriate Buy America certification with all bids on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as non-responsive. This requirement does not apply to lower tier sub-contractors.

**EXCEPTION SPECIFIC TO THIS PROCUREMENT:** UTA is seeking Buy America compliant [bids/proposals] with this [RFP/IFB/RFQ]. However, UTA holds an FTA Non-Availability Waiver that is applicable to this procurement. Accordingly, the inability to certify Buy America compliance on this procurement shall not result in the [bid/proposal] being deemed non-responsive. The requirement for the proposal to include a completed Buy America Certificate, however, is not waived by this exception.

## **3. CHARTER BUS REQUIREMENTS - RESERVED**

## **4. SCHOOL BUS REQUIREMENTS -RESERVED**

### **(1) 5. CARGO PREFERENCE REQUIREMENTS - RESERVED**

## **6. SEISMIC SAFETY REQUIREMENTS- RESERVED**

## 7. SPECIAL DOL EQUAL EMPLOYMENT CLAUSE

41 CFR Part 60

See Section 25 – Contract Clause Civil Rights Requirements

## 8. ENERGY CONSERVATION REQUIREMENTS

42 U.S.C. 6321 et seq.

49 CFR Part 622

**Applicability to Contracts:** The Energy Conservation requirements are applicable to all contracts.

**Flow down Requirements:** The Energy Conservation requirements extend to all third-party contractors and their contracts at every tier and, sub-recipients and their sub-agreements at every tier.

**Energy Conservation** - The Contractor 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. The contractor agrees to perform an energy assessment for any building constructed, reconstructed, or modified with FTA funds required under FTA regulations, "Requirements for Energy Assessments," 49 CFR part 622, subpart C.

## 9. CLEAN WATER REQUIREMENTS

33 U.S.C. 1251 - 1377

**Applicability to Contracts:** The Clean Water requirements apply to each contract and subcontract which exceeds \$150,000.

**Flow down Requirements:** The Clean Water Act requirements flow down to UTA third party contractors and their contracts at every tier, and sub-recipients and their sub-agreements at every tier.

**Clean Water** - (a) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Water Act, as amended, 33 U.S.C. 1251 – 1377 et seq.

(b) The contractor agrees to report each violation to UTA and understands and agrees that UTA will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office in compliance with the notice of violating facility provisions in section 508 of the Clean Water Act, as amended, 33 U.S.C. 1368

(c) The contractor agrees to protect underground sources of drinking water in compliance with the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. 300f – 300j-6.

(d) The contractor also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

## 10. BUS TESTING - RESERVED

a)

## 11. PRE-AWARD AND POST-DELIVERY AUDITS REQUIREMENTS - RESERVED

(1)

## 12. LOBBYING

31 U.S.C. 1352

49 CFR Part 19

49 CFR Part 20

**Applicability to Contracts:** The Lobbying requirements apply to Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey contracts.

**Flow Down Requirements** the Lobbying requirements mandate the maximum flow down, pursuant to Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352(b)(5) and 49 C.F.R. Part 19, Appendix A, Section 7.

**Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.]** - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." 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 a federal 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 certifies to the tier above that it will not and has not taken any action involving the Project or the Underlying Agreement for the Project, including any award, extension, or modification. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to UTA.

**13. ACCESS TO RECORDS AND REPORTS**

**49 U.S.C. 5325**  
**18 CFR 18.36(i)**  
**49 CFR 633.17**

**Applicability to Contracts:** Reference Chart "Requirements for Access to Records and Reports by Type of Contracts", Item 6 of this Section.

**Flow down Requirements** FTA does not require the inclusion of these requirements in subcontracts.

**Access to Records** - The following access to records requirements apply to this Contract:

- (1) The Contractor agrees to provide UTA, 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 Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Consultant's

<b>Contract Characteristics</b>	<b>Operational Service Contract</b>	<b>Turnkey</b>	<b>Construction</b>	<b>Architectural Engineering</b>	<b>Acquisition of Rolling Stock</b>	<b>Professional Services</b>
<u>Non-State Grantees</u>	Yes <sup>1</sup>		Yes	Yes	Yes	Yes
a. Contracts below SAT (\$250,000)	Yes <sup>1</sup>	Those imposed on nonstate Grantee pass thru to Contractor	Yes	Yes	Yes	Yes
b. Contracts above \$250,000/ Capital Projects						

records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

- (2) Where UTA or a sub-grantee of UTA in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a) 1) through other than competitive bidding, the Contractor shall make available records related to the contract to UTA, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
- (3) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- (4) The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three (3) years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until UTA, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i) (11).
- (5) FTA does not require the inclusion of these requirements in subcontracts.
- (6) Requirements for Access to Records and Reports by Types of Contract Sources of Authority: <sup>1</sup> 18 CFR 18.36 (i)

#### 14. FEDERAL CHANGES

##### 49 CFR Part 18

**Applicability to Contracts:** The Federal Changes requirement applies to all contracts.

**Flow down Requirements:** The Federal Changes requirement flows down appropriately to each applicable changed requirement.

**Federal Changes** - Contractor 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 UTA and FTA, as they may be amended or promulgated from time to time during the term of this contract. Consultant's failure to so comply shall constitute a material breach of this contract.

#### 15. BONDING REQUIREMENTS - RESERVED

#### 16. CLEAN AIR

##### 42 U.S.C. 7401 – 7601(q)

##### 40 CFR 15.61

##### 49 CFR Part 18

**Applicability to Contracts:** The Clean Air requirements apply to all contracts exceeding \$150,000, including indefinite quantities where the amount is expected to exceed \$150,000 in any year.

**Flow down Requirements:** The Clean Air requirements flow down to all subcontracts which exceed \$150,000.

**Clean Air** - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 – 7601(q) et seq. The Contractor agrees to report each violation to UTA and understands and agrees that UTA, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

## 17. RECYCLED PRODUCTS

**42 U.S.C. 6962**  
**40 CFR Part 247**  
**Executive Order 12873**

**Applicability to Contracts:** The Recycled Products requirements apply to all contracts for items designated by the EPA, when the Contractor procures \$10,000 or more of one (1) of these items during the fiscal year or has procured \$10,000 or more of such items in the previous fiscal year, using Federal funds.

**Flow down Requirements:** These requirements flow down to all contractor and sub-contractor tiers.

**Recovered Materials** - The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247. The contractor agrees to comply with the U.S. Environmental Protection Agency (US EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 CFR part 247.

## 18. DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS

**49 U.S.C. 5333**  
**40 U.S.C. 3141 – 3144**  
**40 U.S.C. 3146 – 3147**  
**18 U.S.C. 874**  
**40 U.S.C. 3145**

**Applicability to Contracts:** The Davis-Bacon and Copeland Acts are codified at 40 USC 3141, *et seq.* and 18 USC 874. The Acts apply to grantee construction contracts and subcontracts that "at least partly are financed by a loan or grant from the Federal Government." 40 USC 3145(a), 29 CFR 5.2(h), 49 CFR 18.36(i) (5). The Acts apply to any construction over \$2,000. 40 USC 3142(a), 29 CFR 5.5(a). 'Construction,' for purposes of the Acts, includes "actual construction, alteration and/or repair, including painting and decorating." 29 CFR 5.5(a). The requirements of both Acts are incorporated into a single clause (see 29 FR 3.11) enumerated at 29 CFR 5.5(a) and reproduced below.

**Flow down Requirements:** Applies to third party contractors and sub-contractors

(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 the contractor 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 Monthly) 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 (1) 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 the contractor and its sub-contractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The Contracting Officer 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. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) 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
- (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; and
- (4) 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 the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer 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 the Contracting Officer 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 thirty (30) days of receipt and shall advise the Contracting Officer or will notify the Contracting Officer within the thirty (30) day period that additional time is necessary.

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

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

(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, the contractor 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.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor 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 the consultant, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account asset for the meeting of obligations under the plan or program.

(v)(A) The Contracting Officer 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. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefor 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 the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer 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 the Contracting Officer 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 thirty (30) days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the thirty (30) day period that additional time is necessary.

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

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this 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 the contractor under this contract or any other Federal contract with the same prime consultant, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime 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 the contractor or any sub-contractor 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 the 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 the contractor during the course of the work and preserved for a period of three (3) 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, the contractor 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. Contractors employing apprentices or trainees under approved programs 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) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to UTA for transmission to the Federal Transit Administration. 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 WH347 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. The prime contractor is responsible for the submission of copies of payrolls by all sub-contractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or sub-contractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a) (3) (i) of Regulations, 29 CFR part 5 and that such information is correct and complete;

(2) 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;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the 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 (a)(3)(ii)(B) of this section.

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

(iii) The contractor or sub-contractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or sub-contractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the 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 ninety (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 the contractor 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 a contractor 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 the Consultant's or Sub-consultant'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, the contractor 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.

(ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the 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 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, the contractor 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.

(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.

**(5) Compliance with Copeland Act requirements** - The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract. Contractor 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.

**(6) Subcontracts** - The contractor or sub-contractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the sub-contractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier sub-contractor with all the contract clauses in 29

CFR 5.5. (7) **Contract termination: debarment** - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a sub-contractor as provided in 29 CFR 5.12.

(8) **Compliance with Davis-Bacon and Related Act requirements** - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) **Disputes concerning labor standards** - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) **Certification of eligibility** - (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or Contractor who has an interest in the consultant's Contractor is a person or Contractor ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or Contractor ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(b) **Contract Work Hours and Safety Standards Act.** The Agency Head shall cause or require the contracting officer to insert the following clauses set forth in paragraphs (b)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by §5.5(a) or §4.6 of part 4 of this title. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) **Overtime requirements.** No contractor or sub-contractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half (1.5) times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek.

(2) **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any sub-contractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and sub-contractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) **Withholding for unpaid wages and liquidated damages.** The (write in the name of the Federal agency or the loan or grant recipient) 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 any moneys payable on account of work performed by the contractor or sub-contractor under any such contract or any other Federal contract with the same prime consultant, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime consultant, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or sub-contractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or sub-contractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the sub-contractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any sub-contractor or lower tier sub-contractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(c) In addition to the clauses contained in paragraph (b), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in §5.1, the Agency Head shall cause or require the contracting officer to insert a clause requiring that the contractor or sub-contractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Agency Head shall cause or require the contracting officer to insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or sub-contractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or sub-contractor will permit such representatives to interview employees during working hours on the job.

(The information collection, recordkeeping, and reporting requirements contained in the following paragraphs of this section were approved by the Office of Management and Budget:

OMB Control Number  
(a)(1)(ii)(B) 1215-0140  
(a)(1)(ii)(C) 1215-0140  
(a)(1)(iv) 1215-0140  
(a)(3)(i) 1215-0140,  
1215-0017  
(a)(3)(ii)(A) 1215-0149  
(c) 1215-0140,  
1215-0017

[48 FR 19540, Apr. 29, 1983, as amended at 51 FR 12265, Apr. 9, 1986; 55 FR 50150, Dec. 4, 1990; 57 FR 28776, June 26, 1992; 58 FR 58955, Nov. 5, 1993; 61 FR 40716, Aug. 5, 1996; 65 FR 69693, Nov. 20, 2000; 73 FR 77511, Dec. 19, 2008]

Effective Date Note: At 58 FR 58955, Nov. 5, 1993, §5.5 was amended by suspending paragraph (a)(1)(ii) indefinitely.

## **19. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT - RESERVED**

(1)

## **20. NO GOVERNMENT OBLIGATION TO THIRD PARTIES**

**Applicability to Contracts:** Applicable to all contracts.

**Flow down Requirements:** This concept should flow down to all levels to clarify, to all parties to the contract, that the Federal Government does not have contractual liability to third parties, absent specific written consent.

### **No Obligation by the Federal Government.**

(1) UTA and the Contractor 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 UTA, Consultant, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) The Contractor agrees to include the above clause in each subcontract 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 sub-contractor who will be subject to its provisions.

## **21. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS**

**31 U.S.C. 3801 et seq.**

**49 CFR Part 31**

**18 U.S.C. 1001**

**49 U.S.C. 5307**

**Applicability to Contracts:** These requirements are applicable to all contracts.

**Flow down Requirements:** These requirements flow down to contractors and sub-contractors who make, present, or submit covered claims and statements.

### **Program Fraud and False or Fraudulent Statements or Related Acts**

(1) The Contractor acknowledges that the provisions of 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 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies 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 this contract work is being performed. In addition to other penalties that may be applicable, the Contractor 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 Contractor to the extent the Federal Government deems appropriate.

(2) The Contractor 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 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Consultant, to the extent the Federal Government deems appropriate.

(3) The Contractor agrees to include the above two (2) clauses in each subcontract 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 sub-contractor who will be subject to the provisions.

## **22. TERMINATION**

**49 CFR Part 18**

**FTA Circular 4220.1F**

**Applicability to Contracts:** These requirements are applicable to all contracts over \$100,000.

**Flow down Requirements:** These requirements flow down to contractors and sub-contractors over \$100,000.

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

(Recipient), the Contractor 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 Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the (Recipient) may terminate this contract for default. Termination shall be affected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor 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 Contractor 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 Contractor, the (Recipient), after setting up a new delivery of performance schedule, may allow the Contractor 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 Contractor [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 Contractor 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 Contractor 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 Contractor. Any such termination for default shall not in any way operate to preclude (Recipient) from also pursuing all available remedies against Contractor and its sureties for said breach or default.

**d. Waiver of Remedies for any Breach** In the event that (Recipient) elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by (Recipient) shall not limit (Recipient)'s 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 Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will ensure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor 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 Contractor a Notice of Termination specifying the nature of the default. In this event, the Recipient may take over the work and complete 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 Contractor and its sureties shall be liable for any damage to the Recipient resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Recipient in completing the work.

The Contractor's right to proceed shall not be terminated nor the Contractor 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 Contractor. Examples of such causes include acts of God, acts of the Recipient, acts of another Contractor in the performance of a contract with the Recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and
2. the contractor, 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 Contractor's right to proceed, it is determined that the Contractor 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.

### **23. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NON-PROCUREMENT)**

**49 CFR 18**

**2 CFR 1200**

**2 CFR 180**

**Executive Orders 12549 and 12689**

**Background and Applicability:** In addition to the contracts covered under 2 CFR 180.220(b) of the OMB guidance, this part applies to any contract, regardless of tier, that is awarded by a consultant, subconsultant, supplier, Consultant, or its agent or representative in any transaction, if the contract is to be funded or provided by the Department of Transportation under a covered non-procurement transaction and the amount of the contract is expected to equal or exceed \$25,000. This extends the coverage of the Department of Transportation non-procurement suspension and debarment requirements to all lower tiers of subcontracts under covered non-procurement transactions, as permitted under the OMB guidance at 2 CFR 180.220(c) (see optional lower-tier coverage in the figure in the appendix to 2 CFR part 180). This government-wide regulation implements Executive Order 12549, *Debarment and Suspension*, Executive Order 12689, *Debarment and Suspension*, and 31 U.S.C. 6101 note (Section 2455, Public Law 103-355, 108 Stat. 3327).

These provisions apply to all UTA contracts and subcontracts at any level expected to equal or exceed \$25,000 as well as any contract or subcontract (at any level) for federally required auditing services. These are contracts and subcontracts referred to in the regulation as "covered transactions."

Grantees, contractors, and sub-contractors (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) they propose to contract or subcontract with is not excluded or disqualified. They do this by (a) Checking the Excluded Parties List System (EPLS), (b) Collecting a certification from that person, or (c) Adding a clause or condition to the contract or subcontract. Grantees, contractors, and sub-contractors who enter into covered transactions also must require the entities they contract with to comply 2 CFR 180 and include this requirement in their own subsequent covered transactions (i.e., the requirement flows down to subcontracts at all levels).

**Flow down Requirements:** These requirements flow down to contractors and sub-contractors at all levels.

**Suspension and Debarment:** This contract is a covered transaction for purposes of 49 CFR Part 18. As such, the contractor is required to verify that none of the consultant, its principals, are excluded or disqualified as defined under Executive Orders Nos. 12549 and 12689.

The contractor is required to comply with 2 CFR 1200 and must include the requirement to comply with 2 CFR 1200, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the Firm certifies as follows:

The certification in this clause is a material representation of fact relied upon by UTA. If it is later determined that the Firm knowingly rendered an erroneous certification, in addition to remedies available to UTA, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Firm agrees to comply with the requirements 2 CFR 180 while this offer is valid and throughout the period of any contract that may arise from this offer. The Firm further agrees to include a provision requiring such compliance in its lower tier covered transactions.

## **24. PRIVACY ACT - RESERVED**

## **25. CIVIL RIGHTS REQUIREMENTS**

**29 U.S.C. § 623, 42 U.S.C. § 2000**

**42 U.S.C. § 6102, 42 U.S.C. § 12112**

**42 U.S.C. § 12132, 49 U.S.C. § 5332**

**29 CFR Part 1630, 41 CFR Parts 60 et seq.**

1. The Contractor will be required to comply with these applicable civil rights, nondiscrimination, and equal employment opportunity laws and regulations:

i. 49 CFR Part 21, 49 CFR Part 25, 49 CFR Part 26, 49 CFR Part 27, 49 CFR Part 37, 49 CFR Part 38, 49 CFR Part 39, 20 U.S.C. §§ 1681 – 1683 and 1685 – 1687, 21 U.S.C. § 1101, 29 U.S.C. § 794, et seq., 42 U.S.C. § 290dd – 290dd-2, 42 U.S.C. § 2000d, 42 U.S.C. § 3601, 42 U.S.C. § 4541, 42 U.S.C. § 6101 – 6107, 42 U.S.C. § 12101, et seq., 42 U.S.C. § 12132, 49 U.S.C. § 5307 (c)(1)(D)(ii), 49 U.S.C. § 5332, 29 CFR Part 1630, 41 CFR Part 60, 29 U.S.C. § 623, 42 U.S.C. § 2000e, 42 U.S.C. § 12112, 49 U.S.C. § 5325 (k). Fixing America's Surface Transportation (FAST) Act, Public Law No: 114-94, as may be amended.

2. The Civil Rights requirements flow down to all third-party sub-contractors and their subcontracts at every tier.

3. The following requirements apply to a contract awarded as a result of this solicitation:

i. **Nondiscrimination** - In accordance with U.S. Department of Transportation (DOT) regulations at 49 CFR Part 21, 49 CFR Part 25, 49 CFR Part 27, 49 CFR Part 37, 49 CFR Part 38, 49 CFR Part 39, the Rehabilitation Act of 1973, as amended, 20 U.S.C. §§ 1681 – 1683 and 1685 – 1687, 21 U.S.C. § 1101, 29 U.S.C. § 794, Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 290dd – 290dd-2, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 3601, 42 U.S.C. § 4541, 42 U.S.C. § 6102, 42 U.S.C. § 6101 – 6107, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, 42 U.S.C. § 12132, Federal transit law 49 U.S.C. § 5307 (c)(1)(D)(ii), Federal transit law 49 U.S.C. § 5332, FTA Circular 4702.1, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients.", DOT Order to Address Environmental Justice in Minority Populations and Low-Income Populations, Executive Order No. 13166 and DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (70 FR 74087, Dec. 14, 2005), the Contractor agrees that it will comply with the identified Federal laws and regulations, pertaining to UTA programs and activities, to ensure that no person will be denied the benefits of, or otherwise be subjected to, discrimination (particularly in the level and quality of transportation services and transportation-related benefits) on the bases of race, color, religion, national origin, ancestry, sex, sexual orientation, gender identity, gender expression, age, marital status, genetic information, medical condition, or disability. In addition, the Contractor agrees to

comply with applicable Federal implementing regulations, other implementing requirements that DOT or FTA may issue, and any other applicable Federal and State of Utah statutes and/or regulations that may be signed into law or promulgated.

- ii. Equal Employment Opportunity - The following equal employment opportunity requirements apply to a contract awarded as a result of this solicitation:
  - a) Race, Color, Ancestry, Marital Status, Medical Condition, Genetic Information, Religion, National Origin, Sex, Sexual Orientation, Gender Identity, Gender Expression - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, 49 U.S.C. § 5332, FTA Circular 4704.1, "Equal Employment Program Guidelines for Grant Recipients", and , the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, including "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), Fair Employment and Housing Act, and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect Bidder agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, ancestry, religion, marital status, medical condition, genetic information, national origin, sex, sexual orientation, gender identity, gender expression, 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 Contractor agrees to comply with any implementing requirements that DOT, or FTA may issue, and any other applicable Federal statutes that may be signed into law or Federal regulations that may be promulgated.
  - b) Sex – The Contractor agrees to comply with all applicable requirements of Title IX of the Education Amendments of 1975, as amended, 20 U.S.C. § 1681, and 49 CFR part 25. In addition, the Contractor agrees to comply with any implementing requirements that DOT, or FTA may issue.
  - c) Age - The Contractor agrees to comply with all applicable requirements of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101, 45 CFR part 90, the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, and Equal Employment Opportunity Commission (EEOC) implementing regulations 29 CFR part 1625. In addition, the Contractor agrees to comply with any implementing requirements that DOT, or FTA may issue.
  - d) Disabilities - The Contractor agrees to comply with Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, Section 508 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794(d), 36 CFR part 1194, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101, 49 CFR parts 27, 37, 38, and 39, and FTA Circular 4710.1, "Americans with Disabilities Act: Guidance". In addition, the Contractor agrees to comply with any implementing requirements that DOT, or FTA may issue.
4. The Contractor 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.

## **26. ADA ACCESS REQUIREMENTS**

**49 U.S.C. § 5301, 29 U.S.C. § 794, 42 U.S.C. § 12101**

**Applicability to Contracts:** The Contractor shall comply with 49 USC 5301(d), stating Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation services and facilities and that special efforts shall be made in planning and designing those services and facilities to implement that policy. Contractor shall also comply with all applicable requirements of Sec. 504 of the Rehabilitation Act (1973), as amended, 29 USC 794, which prohibits discrimination on the basis of handicaps, and the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto.

## **27. BREACHES AND DISPUTE RESOLUTION**

### **49 CFR Part 18 FTA Circular 4220.1F**

**Applicability to Contracts:** All contracts in excess of \$100,000 shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms and provide for such sanctions and penalties as may be appropriate. This may include provisions for bonding, penalties for late or inadequate performance, retained earnings, liquidated damages or other appropriate measures.

**Flow Down Requirements:** The Breaches and Dispute Resolutions requirements flow down to all tiers.

**Disputes** - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of UTA. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the UTA. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of UTA shall be binding upon the Contractor and the Contractor shall abide by the decision.

**Performance During Dispute** - Unless otherwise directed by UTA, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

**Claims for Damages** - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

**Remedies** - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the AUTHORITY and the CONTRACTOR arising out of or relating to this agreement or its breach will be decided by either party bringing the matter to a court of competent jurisdiction within the State of Utah.

**Rights and Remedies** - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the AUTHORITY or CONTRACTOR shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

**Rights and Remedies** - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by UTA or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

## **28. PATENT AND RIGHTS IN DATA**

### **37 CFR Part 401 49 CFR Parts 18 and 19**

**Applicability to Contracts:** Patent and rights in data requirements for federally assisted projects ONLY apply to research projects in which FTA finances the purpose of the grant is to finance the development of a product or information. These patent and data rights requirements do not apply to capital projects or operating projects, even though a small portion of the sales price may cover the cost of product development or writing the user's manual.

**Flow down Requirements:** The Patent and Rights in Data requirements apply to all contractors and their contracts at every tier.

#### CONTRACTS INVOLVING EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK.

A. **Rights in Data** - The following requirements apply to each contract involving experimental, developmental or research work:

(1) The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

(2) The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:

(a) Except for its own internal use, UTA or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may UTA or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.

(b) In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its federal license to any other party.

1. Any subject data developed under that contract, whether or not a copyright has been obtained; and
2. Any rights of copyright purchased by UTA or Contractor using Federal assistance in whole or in part provided by FTA.

(c) When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, UTA and the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c), however, does not apply to adaptations of automatic data processing equipment or programs for UTA or Consultant's use whose

costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

(d) Unless prohibited by state law, upon request by the Federal Government, UTA and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any negligent violation by UTA or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither UTA nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government. Nothing in the Agreement shall be construed as a waiver by any Utah Governmental Entity of any protections, rights, or defenses applicable to the respective Parties under the Governmental Immunity Act of Utah, Utah Code §§ 63G -7-101 to 904, as amended, including without limitation, the provisions of section 63G-7-604 regarding limitation of judgments.

(e) Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

(f) Data developed by UTA or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that UTA or Contractor identifies that data in writing at the time of delivery of the contract work.

(g) Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

(3) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Consultant's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), UTA and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in

U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Contractors under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(4) The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

**B. Patent Rights** - The following requirements apply to each contract involving experimental, developmental, or research work:

(1) General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, UTA and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.

(2) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Consultant's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), UTA and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Contractors Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(3) The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

## **29. TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS**

### **49 U.S.C. § 5310, § 5311, and § 5333 29 CFR Part 215**

**Applicability to Contracts:** The Transit Employee Protective Provisions apply to each contract for transit operations performed by employees of a Contractor recognized by FTA to be a transit operator. (Because transit operations involve many activities apart from directly driving or operating transit vehicles, FTA determines which activities constitute transit "operations" for purposes of this clause.)

**Flow down Requirements:** These provisions are applicable to all contracts and subcontracts at every tier.

(a) General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to UTA's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection (1), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for non-urbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.

(b) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body sub-recipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.

(c) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Nonurbanized Areas - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Non-urbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

(2) The Contractor also agrees to include the any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

## **30. DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

### **49 CFR Part 26**

#### **Section 1101(b) of MAP-21 (23 U.S.C. § 101 note)**

1. UTA encourages DBE participation in this solicitation. In order to qualify as a DBE, a Contractor, or a Contractor's sub-contractor, must be certified as a DBE under 49 CFR Part 26. As a recipient

of Federal funds, UTA must comply, and ensure that its Contractor(s) comply with 49 CFR Part 26 and Section 1101(b) of the Fixing America's Surface Transportation Act (FAST Act).

## 2. DBE Requirements/DBE Obligation:

- i. The Contract to be awarded may be funded in part by the U.S. Department of Transportation (DOT) FTA. As a condition of financial assistance agreements between UTA and the U.S. DOT, UTA has established a DBE Program and overall triennial DBE goal in accordance with Title 49 CFR, Part 26.
- ii. The Contract to be awarded may be funded in part by the U.S. DOT FTA. As a condition of financial assistance agreements between UTA and the U.S. DOT, UTA has established a DBE Program and overall triennial DBE goal in accordance with Title 49 CFR, Part 26.
- iii. Pursuant to Race-Neutral DBE policy directive issued by the U.S. DOT, UTA will strictly utilize race-neutral measures to meet its overall DBE goals and objectives. Contractors are encouraged to afford small businesses, including DBEs, an equitable opportunity to compete for and perform on a contract resulting from this solicitation.
- iv. The Contractor, and any of its sub-contractors, are to ensure that DBE as defined in 49 CFR Part 26 have equal opportunities to participate in the performance of UTA contracts. In this regard, the Contractor shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that DBEs have the equal opportunities to compete for and are awarded contracts. The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this U.S. DOT-assisted contract. Each subcontract the Contractor signs with a sub-contractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
- v. 1101(b) of the FAST Act extends the Federal statutory requirement that FTA make available at least 10 percent (10%) of its funding under that Act for contracts with small business concerns owned and controlled by socially and economically disadvantaged people. UTA and subrecipients (Contractor and its sub-contractors) of FTA-funding assists FTA in meeting this national goal. To receive FTA assistance, UTA and sub-recipients (Contractor and its sub-contractors) of FTA funding must comply with applicable requirements of DOT regulations 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs".

## 3. DBE Financial Institutions

- i. The Contractor is to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage sub-contractors to make use of these institutions also.
- ii. A list of Minority Owned Banks is on the Federal Reserve website at <http://federalreserve.gov/releases/mob/current/default.htm>. The Federal Reserve website is updated periodically.
- iii. The Contractor is encouraged to use the services offered by banks in the community which are owned and controlled by minorities or women when feasible and beneficial.

## 4. DBE Reporting and Certification

- i. Monthly reporting requires the submittal of a "Monthly Sub-contractor Payment Report", which is used by UTA to verify payments to DBE and non-DBE sub-contractors. When completing this form, the Contractor must designate DBE sub-contractors by placing an asterisk in front of their name. As Federal law requires that UTA have proof of payment to a DBE sub-contractor, the subcontractor must initial the form and verify payment received. Failure to

submit a properly executed form will result in delayed payment. Failure to submit these reports in a timely manner may result in a penalty of \$10 per day, per report.

- ii. In order for the Contractor to submit a properly executed "Monthly Sub-contractor Payment Report," the Contractor must verify that Sub-contractors DBE certification is current at time of payment.
- iii. Certified Contractors can be found at the UTAH UNIFIED CERTIFICATION PROGRAM (UUCP) DISADVANTAGED BUSINESS ENTERPRISE (dbe) DIRECTORY: <https://drive.google.com/file/d/1r6n4o9F14jFEqtINICrFxrfiAs9948ho/view>

5. DBE Contract Assurance (49 CFR 26.13)

- i. UTA does not discriminate on the basis of race, color, national origin, or sex in the award and performance of any U.S. DOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR Part 26. UTA takes all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of U.S. DOT assisted contracts. UTA's DBE Program as required by 49 CFR Part 26 and as approved by U.S. DOT will be incorporated by reference into the contract resulting from this solicitation.
- ii. The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the recipient deems appropriate, which may include, but is not limited to:
  - a. Withholding monthly progress payments;
  - b. Assessing sanctions;
  - c. Liquidated damages; and/or
  - d. Disqualifying the Contractor from future bidding as non-responsible.

6. DBE Prompt Payment (49 CFR 26.29)

- i. Not later than ten (10) days after receipt of each progress payment from UTA, the successful Offeror shall pay to any sub-Contractor performing any work, the respective amounts allowed to

the successful Offeror for work performed by the sub-Contractor, to the extent of each subcontractor's interest therein, unless otherwise agreed to in writing. In addition, for projects that invoice only at the completion of the project, within seven (7) days of the successful Offerors receipt of released retention from UTA upon completion of the project the successful Offeror shall pay each of its sub-Contractors from whom retention has been withheld, each sub-Contractors share of the retention received., For projects that issue progress payment invoices, upon incremental acceptance of any portion of the work by UTA, the successful Offeror shall pay each of its sub-Contractors from whom retention has been withheld, each subcontractor shares of the retention received.

- ii. Failure to comply with these provisions or delay in payment without prior written approval from UTA will constitute noncompliance, which will result in appropriate administrative sanctions, including, but not limited to a penalty of 2% of the amount due per month for every month that payment is not made.

**31. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS FTA  
Circular 4220.1F**

**Applicability to Contracts:** The incorporation of FTA terms applies to all contracts and subcontracts at every tier.

**Flow Down Requirements** The incorporation of FTA terms has unlimited flow down.

**Incorporation of Federal Transit Administration (FTA) Terms** - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in the most current FTA Circular 4220, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any UTA requests which would cause UTA to be in violation of the FTA terms and conditions.

**32. DRUG AND ALCOHOL TESTING - RESERVED**

**33. TRANSIT VEHICLE MANUFACTURER (TVM) CERTIFICATIONS - RESERVED**

**34. METRIC REQUIREMENTS**

**15 U.S.C. §§205  
2007-Pub. L. 110-69**

As required by U.S. DOT or FTA, UTA agrees to use the metric system of measurement in its Project activities, pursuant to the Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act, 15 U.S.C. §§ 205a *et seq.*; Executive Order No. 12770, "Metric Usage in Federal Government Programs," 15 U.S.C. § 205a note; and other U.S. DOT or FTA regulations, guidelines, and policies. To the extent practicable and feasible, the UTA agrees to accept products and services with dimensions expressed in the metric system of measurement.

**35. NATIONAL INTELLIGENT TRANSPORTATION SYSTEMS (ITS) ARCHITECTURE AND STANDARDS 23 U.S.C. Section 517(d)**

**23 U.S.C. §502**

Intelligent transportation system (ITS) property and services must comply with the National ITS Architecture and Standards to the extent required by 23 U.S.C. Section 517(d) and FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," 66 FR 1455 *et seq.*, January 8, 2001, and later published policies or implementing directives FTA may issue. Consequently, third party contracts involving ITS are likely to require provisions to ensure compliance with Federal requirements.

**36. CORRIDOR PRESERVATION - RESERVED**

**37. VETERANS EMPLOYMENT**

**49 U.S.C. 5325 (k)**

Veterans Employment. As provided by 49 U.S.C. § 5325(k):

- a. To the extent practicable, Contractor agrees that it:
  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 funds made available or appropriated 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, and
- b. Contractor also assures that its sub-contractor will:
  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 funds made available or appropriated for 49 U.S.C. chapter 53, to the extent practicable, 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.

38. **PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT**

In accordance with 2 CFR 200.216, contractor and its subcontractors 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.

“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.

2-7-23