

## PUBLIC WAY LEASE AGREEMENT

This Public Way Lease Agreement (the “Agreement”) is entered into as of 13th day of June, 2023 (the “Execution Date”), by and between the UTAH TRANSIT AUTHORITY, a large public transit district organized pursuant to the laws of the State of Utah (hereinafter “UTA”), the MUNICIPAL BUILDING AUTHORITY OF WEST VALLEY CITY, a Utah political subdivision, and WEST VALLEY CITY CORPORATION, a Utah municipality and political subdivision (hereinafter and collectively “West Valley City”).

### RECITALS

WHEREAS, West Valley City owns and has jurisdiction over a network of streets within its municipal boundaries;

WHEREAS, UTA is engaged in a project (“Project”) to design, construct, and operate the Midvalley Bus Rapid Transit that will follow a route through West Valley City (the “BRT”), and which will serve the residents of West Valley City;

WHEREAS, West Valley City signed a Memorandum of agreement outlining the city’s understanding of and commitment to the BRT design and construction;

WHEREAS, the Parties desire to enter into this Agreement to (i) provide UTA with the right to construct and operate the BRT in West Valley City, and (ii) to define the Parties’ roles and responsibilities with respect to the design and construction of the Project, and with respect to the operation and maintenance of the completed BRT.

### AGREEMENT

NOW THEREFORE, based on the stated Recitals, which are incorporated herein by reference, and for and in consideration of the mutual covenants and agreements hereinafter set forth, the mutual benefits to the Parties to be derived herefrom, and for other valuable consideration, the receipt and sufficiency of which the Parties acknowledge, it is hereby agreed as follows:

### ARTICLE I INCORPORATED TERMS AND DEFINITIONS

For purposes of this Agreement, the following definitions shall apply:

1.1 “BRT Stations” means the designated stops along the BRT, also known as platforms, which may appear on the side of the road). The BRT Stations do not include the underlying real property.

1.2 “BRT Roadway Areas” means street improvements installed solely and exclusively for the use of the BRT System, such as concrete bus pads, but do not include the underlying real property.

1.3 “West Valley City Streets” means those public streets within West Valley City’s municipal boundaries that are not designated as State highways under Utah Code Ann. Title 72, Chapter 4.

1.4 “West Valley City Street Improvements” means the land, roadway materials, curb, gutter, sidewalks and other improvements to be acquired, installed, constructed, reconstructed, or relocated on West Valley City Streets as part of the Project, and which are not considered UTA facilities. The West

Valley City Street Improvements include relocated sidewalks, widened roadways, and traffic control devices not found on UDOT highways.

1.5 “Party” and “Parties” means UTA or West Valley City, and UTA and West Valley City, respectively.

1.6 “UTA Facilities” means: the BRT Stations and appurtenant improvements such as canopies, benches, and ticket vending machines; the BRT Roadway Areas; communications infrastructure serving the BRT Stations; and all traffic signal infrastructure or equipment dedicated to the BRT System, such as dedicated signal heads or signal lights and control devices or other equipment within signal cabinets (BRT Signal Equipment).

## **ARTICLE II ALIGNMENT AND LEASE OF WEST VALLEY CITY STREETS**

2.1 The BRT alignment is depicted on “Exhibit A” and “Exhibit A-2” (“Exhibit A and A-2” are attached hereto and hereby incorporated into and made a part of this Agreement by reference).

2.2 West Valley City leases to UTA the following portions of West Valley City Streets (collectively referred to as the “Leased Premises”) for the use of UTA Facilities as depicted in the maps attached as Exhibit “A.”

2.2.1 Such subsurface areas of West Valley City Streets along the BRT alignment as are necessary for UTA to install communications infrastructure such as duct banks, conduit, and fiber as necessary for the efficient operation of the BRT, but not to include such subsurface areas that are already occupied by existing or currently planned utilities or other subsurface areas where the location of BRT communications infrastructure would have an unreasonable negative impact on existing or currently planned utilities.

2.3 The general descriptions of the areas leased to UTA for UTA Facilities provided above are based on the final design drawings (also referred to hereafter as the “FDD” and attached hereto as Exhibit D) contained in the civil drawings for the Project, in Parties’ possession. The final, precise locations and boundaries of the areas leased to UTA for UTA Facilities are set forth in the FDD. The Project shall be constructed by UTA in accordance with the FDD.

2.4 As of the Execution Date of this Agreement, some of the area leased to UTA for UTA Facilities, as described above, may not be owned by West Valley City. UTA shall, as part of the Project, acquire those areas through voluntary transactions, or, if necessary, request that the Utah Department of Transportation (hereafter “UDOT”) acquire those areas through the use of eminent domain, as provided in Utah Code Ann. § 17B-2a-820. Following the completion of the Project, UTA will convey and dedicate those areas to West Valley City, in a manner to be determined by West Valley City. Upon such conveyance or dedication to West Valley City, the leases described above will take effect as to those areas, subject to Section 3.1.

2.5 The appraised value of the lease described above is valued at \$510,000 (inclusive of rights-of-way to be purchased by UTA from private property owners and transferred to West Valley City for inclusion under this Agreement). West Valley City is donating the rights set forth in this Agreement to UTA at no cost, as an in-kind contribution to the Project.

2.6 West Valley City shall own the West Valley City Street Improvements, and will have no ownership interest in the UTA Facilities.

2.7 Notwithstanding the use of the term “lease” in this Agreement, the Parties do not intend that UTA be deemed a “tenant” pursuant to Utah Code Ann. § 78B-6-801 *et seq.* Rather, the Parties intend that the Parties’ rights and remedies under this Agreement be determined solely by the express terms of this Agreement.

2.8 UTA shall design and construct the 8’ tall post and panel privacy/retaining wall along 2700 West as shown in Exhibit C, with associated costs shared between the parties as described below. Wall pattern and color to be determined and approved by West Valley City. Wall to be constructed per Midvalley Connector (Project #MSP253) project special provisions 02860S and 02861M. UTA shall be responsible for identifying right-of-way, easement, and utility relocation needs necessary to accommodate the wall. The City shall be responsible for acquisition of necessary right-of-way, easements, and relocation of utilities necessary to accommodate said wall. Actual costs for transfer between West Valley City and the Project will be determined once West Valley City has acquired the ROW and easements necessary for wall construction. Distribution of wall costs between West Valley City and the Project will be:

<b>As depicted in Exhibit C, on 2700 West bordering residences of</b>	<b>Costs Project is responsible for</b>	<b>Costs West Valley City is responsible for</b>
4078 S Dublin Cir 4080 S Dublin Cir	ROW and Easement Identification Utility Relocation Identification Construction Design Costs Construction Management Items not estimated (up to \$8000) Contingency (Up to \$4000)	ROW and Easement Acquisition ROW and Easement Document Preparation Utility Relocation
4084 S Dublin Cir 4072 S Dublin Cir 4068 S Dublin Cir 4058 S 2665 W 4050 S 2665 W 2679 W Westshire Dr	ROW and Easement Identification Utility Relocation Identification Design Costs Construction Management	ROW and Easement Acquisition ROW and Easement Document Preparation Utility Relocation Construction Items not estimated (up to \$26,500) Contingency (up to \$15,000)

2.9 The Project shall install a transformer on the leased property as set forth in the FDD to accommodate a high speed bus charger. UTA shall permit the City to use the excess capacity of said transformer to install vehicle charging stations at City Hall. Excess capacity available for the City is 1000 kW. UTA shall not be responsible for the cost of installing or connecting said vehicle charging stations.

### **ARTICLE III TERM**

3.1 This Agreement is executed with the anticipation UTA will be awarded a Capital Improvement grant from the Federal Transit Administration (FTA), in an amount sufficient, together with local funding, to complete the Project. This Agreement is expressly conditioned on UTA executing a Capital Improvement Grant Agreement with FTA. If UTA and FTA do not execute a Capital Improvement Grant Agreement, this Agreement shall be of no further force or effect. The FTA shall retain a federal interest in the improvements made to UTA Facilities using federal funds, for which improvements UTA shall maintain continuing control during the term of this Agreement and any renewals thereof.

3.2 The rights set forth above are for an initial term of fifty (50) years from Execution Date of this Agreement, and will automatically renew for an additional term of twenty five (25) years unless either Party provides notice at least one hundred and eighty (180) days prior to the expiration of the initial term that it does not intend to renew the Agreement.

3.2.1 Notwithstanding section 3.1, West Valley City may terminate this Agreement prior to the expiration of the initial term if (i) UTA permanently terminates or abandons transit service on the Lease Premises, (ii) UTA does not provide transit service on the Leased Premises for a period of one (1) year, except when due to a force majeure event and any time necessary to reconstruct UTA Facilities, or (iii) UTA commits a material, continuing breach of this Agreement that subjects West Valley City to irreparable harm for which monetary damage are inadequate compensation.

3.2.2 Prior to terminating the Agreement for one of the reasons stated in section 3.3.1, West Valley City shall provide UTA with written notice of its intent to terminate and its basis for doing so. If UTA does not recommence transit service or cure the breach, as applicable, within six (6) months from the date of West Valley City's notice, the right granted in the Agreement will terminate and UTA shall, upon West Valley City's request and at UTA's sole cost, remove all UTA Facilities within six (6) months of said termination.

#### **ARTICLE IV OPERATION AND MAINTENANCE**

4.1 UTA shall operate the BRT and provide regular service to the general public in accordance with applicable Federal and State law.

4.1.1 In recognition of the safety concerns associated with potentially crowded station platforms, substantial foot traffic, street traffic and system vehicle traffic, and the resulting need for crowd control and attention to surroundings, the Parties intend that no part of the BRT Stations or BRT Roadway Areas will be considered public forums.

4.1.2 Without the prior written approval of West Valley City, no commercial advertising shall be allowed on the BRT Station or other UTA Facilities except that advertising for the BRT itself shall be allowed to the extent it conforms to the West Valley City code, subject to UTA approval of any advertising thereupon.

4.1.3 As part of the Project, traffic signal systems along the BRT alignment will be programmed to give priority to BRT vehicles (except that the highest priority will always be given to emergency vehicles) where the Parties deem appropriate, with the intent of striking an appropriate balance between BRT efficiency and other local and regional traffic needs. The initial signal timing will be determined by the Parties as part of the design process. Once the BRT is operational, upon the request of one Party, the Parties shall meet to assess system performance and discuss potential adjustments to the traffic signal priority system. The Parties agree to work together to attempt to implement a solution that meets each Party's needs to the greatest extent possible and to take advantage of technologies to improve system performance for both the BRT and general traffic. The Parties acknowledge that ideally, BRT buses need to be able to jump traffic queues in order to re-enter mixed traffic and that the BRT needs to operate with regular, predictable headways. However, the parties further acknowledge that UDOT (working in coordination with West

Valley City) reserves the right, in its sole discretion, to adjust signal timing to address competing needs and UDOT shall at times retain ultimate control of timing and signalization priority on State highways.

4.2 UTA shall be responsible for all routine maintenance and long-term maintenance of the UTA Facilities and BRT Stations, except for routine maintenance of, and snow removal from, the BRT Roadway Areas.

4.2.1 West Valley City shall be responsible for all routine and long-term maintenance of the West Valley City Street Improvements.

4.2.2 Long term maintenance of West Valley City Streets includes surface treatment such as slurry sealing, micro-surfacing, asphalt mill and overlay, as well as more comprehensive pavement replacement. Any such maintenance within the BRT System will be coordinated between the Parties to minimize disruption to the BRT and other traffic.

4.2.4 To coordinate maintenance responsibilities, the Parties shall exchange routine and emergency contact information and keep such information current marked "Exhibit "B", which exhibit is intended by the Parties to be a living document updated at least on a quarterly basis. ("Exhibit B" is attached hereto and hereby incorporated into and made a part of this Agreement by reference).

4.3 UTA acknowledges the existence of public and private utility facilities under the BRT Stations. West Valley City reserves the right to enter the BRT Stations, and authorize other utility owners to do the same, as and when reasonably necessary to inspect, maintain, repair, or replace facilities located on, under, or adjacent to the BRT Stations. To the extent reasonably possible, West Valley City shall coordinate such work with UTA in advance, in order to ensure safety and to minimize disruption of BRT operations. Following completion of the BRT, UTA will not disapprove of West Valley City's request to make minor realignments of the BRT Lanes if West Valley City pays for the realignment and the realignment of the lane does not have significant impact to the BRT route or operation.

4.3.1 West Valley City may grant additional franchises and permits in the future for utility facilities under or over BRT Stations, so long as such facilities do not unreasonably interfere with operations of the BRT. West Valley City shall notify UTA of (i) any requests for new permits under or over the BRT Stations, and (ii) any applications for street cut permits within the BRT stations. UTA shall have two (2) weeks to review and object to such requests or applications prior to work commencing. The Parties shall cooperate to minimize disruption to BRT service caused by the granting of any new permits for new utility facilities.

4.4 UTA will select and engage a qualified firm to construct the BRT System.

4.4.1 UTA and the construction firm shall obtain a right of way permit from West Valley City for the work performed in West Valley City Streets. West Valley City shall, as an in-kind contribution to the project, waive all fees typically charged for right of way permits and inspections within the right of way.

4.4.2 All construction within West Valley City Streets together with construction on State Highways in areas located behind the back of curb shall comply with West Valley City's currently adopted engineering standards.

4.4.3 Throughout the construction process, West Valley City will have continuous access to the project site to monitor project construction and to ensure the construction meets applicable city specifications and is performed in accordance with the final design documents.

## **ARTICLE V INDEMNITY**

5.1 UTA shall use the Leased Premises at its own risk and agrees to indemnify, defend, and hold harmless West Valley City and West Valley City's officers, officials, employees, and representatives for, from, and against all liabilities, claims, damages, losses, suits, judgments, causes of action and costs (including court costs and attorneys' fees.), of any nature, kind or description ("Losses") resulting from: (a) negligence or fault on the part of UTA or any employees, officials, agents or contractors of UTA related to the design, construction, maintenance or other work performed by or on behalf of UTA on the BRT within the Leased Premises; and (b) negligence or fault on the part of UTA or any employees, officials, agents, or contractors of UTA in the use or operation of the BRT within the Leased Premises, or (c) UTA's breach of any provision of this Agreement. In the event any Losses are caused by the joint or concurrent negligence of UTA and West Valley City, UTA shall indemnify West Valley City only in proportion to UTA's own negligence and/or fault. Likewise, West Valley City agrees to indemnify, defend, and hold harmless UTA and UTA's officers, officials, employees, and representatives for, from, and against all liabilities, claims, damages, losses, suits, judgments, causes of action and costs (including court costs and attorneys' fees.), of any nature, kind or description ("Losses") resulting from negligence or fault on the part of West Valley City or any employees, officials, agents related to its involvement with the Project. In the event any Losses are caused by the joint or concurrent negligence of UTA and West Valley City, West Valley City shall indemnify UTA only in proportion to West Valley City's own negligence.

5.2 Governmental Immunity: UTA and City are governmental entities under the Governmental Immunity Act, Section 63G-7-101 *et seq.* 1953 of the Utah Code (as amended) (the "Governmental Immunity Act"). Notwithstanding any provision to the contrary in this Agreement, (i) the obligations to indemnify, defend and/or hold harmless in this Agreement are limited to the dollar amounts set forth in the Governmental Immunity Act and are further limited only to the claims that arise from the negligent acts or omissions of the parties, and (ii) nothing in this Agreement shall be construed to be a waiver of either party of any defenses or limits of liability available under the Government Immunity Act.

## **ARTICLE VI ENTIRE AGREEMENT – COUNTERPARTS**

This Agreement shall constitute the entire agreement and understanding of the Parties with respect to the subject matter hereof, and shall supersede all offers, negotiations and other agreements with respect thereto. Any amendment to this Agreement must be in writing and executed by the authorized representatives of each Party. This Agreement may be executed in any number of counterparts and by each of the Parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument. Any signature page of this

Agreement may be detached from any counterpart and reattached to any other counterpart hereof. The facsimile transmission of a signed original of this Agreement or any counterpart hereof and the retransmission of any signed facsimile transmission hereof shall be the same as delivery of an original. To facilitate execution of this Agreement, the parties may execute and exchange and sign this agreement through electronic or digital signatures, electronic mail or mailed counterparts of the signature pages, which shall be valid, binding and admissible as though original.

This Agreement is binding upon all of the assigns, grantees and successors in interested to each of the Parties, and shall remain in full force and effect until amended as provided herein.

**ARTICLE VII  
FORUM SELECTION AND CHOICE OF LAW**

This Agreement shall be construed and interpreted under the laws of the State of Utah and the parties agree that any action or proceeding brought concerning this Agreement may be brought only in the courts of Weber County, Utah, and each party hereto hereby consents to the jurisdiction of such courts.

**ARTICLE VIII  
NONWAIVER**

No covenant or condition of this Agreement may be waived by any party, unless done so in writing. Forbearance or indulgence by any party in any regard whatsoever shall not constitute a waiver of the covenants or conditions to be performed by the other.

**ARTICLE IX  
SEVERABILITY**

This Agreement is executed by the Parties under current interpretation of any and all applicable federal, state, county, municipal, or other local statutes, ordinances, or laws. Furthermore, each and every separate division hereof shall have independent and severable status from each other division, or combination thereof, for the determination of legality, so that if any separate division herein is determined to be unconstitutional, illegal, violative of trade or commerce, in contravention of public policy, void, invalid or unenforceable for any reason, that separate division shall be treated as a nullity but such holding or determination shall have no effect upon the validity or enforceability of each and every other division, or other combination thereof.

[Section Intentionally Left Blank]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in duplicate as of the date first herein written.

APPROVED AS TO FORM:

DocuSigned by:  
Tim Merrill  
56A03BC7C491482...  
Timothy G. Merrill  
Assistant Attorney General

**UTAH TRANSIT AUTHORITY**

By: \_\_\_\_\_  
Jay Fox  
Executive Director

By: \_\_\_\_\_  
Mary DeLoretto  
Chief Capital Services Officer

ATTEST AND COUNTERSIGN:

Mikahle Corrao  
City Recorder



APPROVED AS TO FORM

Brandon Hill  
Attorney

**WEST VALLEY CITY**

By: Karen Lang  
Karen Lang  
Mayor

**MUNICIPAL BUILDING AUTHORITY OF WEST VALLEY CITY**

By: William Whetstone  
William Whetstone  
Chair/President

ATTEST AND COUNTERSIGN:

Mikahle Corrao  
Secretary

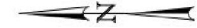




### EXHIBIT A-2 BRT ALIGNMENT

## WEST VALLEY CITY

MIDVALLEY CONNECTOR BRT  
DEDICATED BRT ROW FIGURE 1  
WEST VALLEY CITY - 2700 WEST  
6/16/2022



2700 WEST



2700 WEST



2700 WEST



2700 WEST  
TOTAL DEDICATED BRT AREA = 3,396 SF  
NO PROPERTIES WITH FEDERAL INTERESTS  
ARE INCLUDED.

**EXHIBIT B**

**EMERGENCY CONTACTS**

**WEST VALLEY CITY**

West Valley City Public Works Director  
Daniel Johnson  
801-963-3228  
[daniel.johnson@wvc-ut.gov](mailto:daniel.johnson@wvc-ut.gov)

West Valley City Engineer  
Coby Wilson  
801 963 3204  
[Coby.wilson@wvc-ut.gov](mailto:Coby.wilson@wvc-ut.gov)

**UTA**

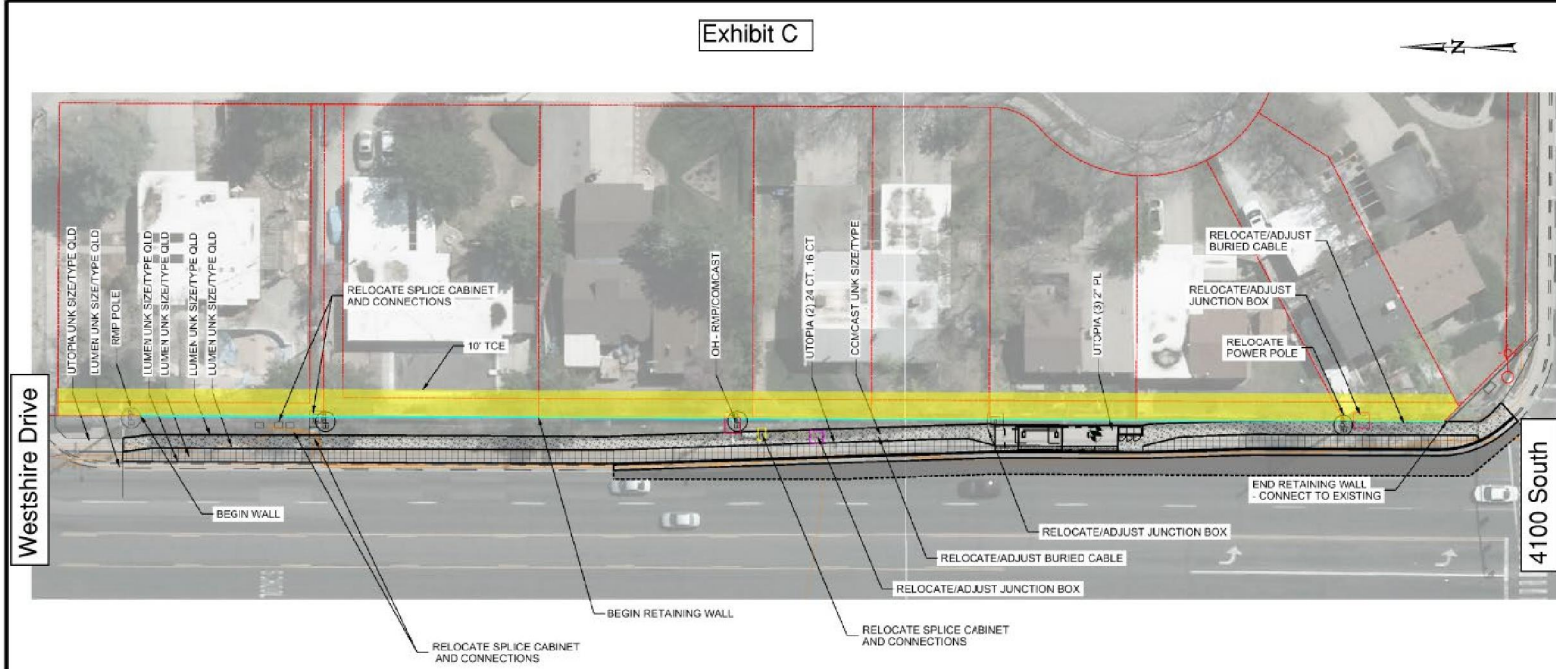
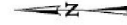
MAINTENANCE OF Facilities

Guy Miner  
(801) 448-2696  
[gminer@rideuta.com](mailto:gminer@rideuta.com)

BUS OPERATIONS

Robert Brothersen, Bus Stop Administrator  
(801) 287-2325  
[RBrothersen@rideuta.com](mailto:RBrothersen@rideuta.com)

Exhibit C



Westshire Drive

4100 South

4100 SOUTH NB STATION - FULL BUILD

**PRELIMINARY**  
NOT FOR CONSTRUCTION



UTAH TRANSIT AUTHORITY  
AVENUE CONSULTANTS

APPROVED	8/28/2022	CC	DRAWN BY
			CHEKED BY
			DATE
			PROFESSIONAL ENGINEER

MIDVALLEY CONNECTOR

PROJECT NUMBER	17842
PROJECT NAME	MSP235

**NOTES:**  
1. RIGHT OF WAY DOCUMENTS AND ACQUISITION OF PROPERTY TO BE COMPLETED BY WEST VALLEY CITY.

SHEET NO.

EXHIBIT D  
FINAL DESIGN DRAWINGS