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January 17, 2024

VIA FIRST CLASS MAIL

Cindy Terwilliger  
Regional Administrator  
Federal Transit Administration, Region VIII  
1961 Stout Street, Suite 13301  
Denver, CO 80294-3007

**RE: Legal Administrative Settlement Concurrence Opinion**  
Parcel 150: Goldenwest Credit Union  
3225 South Harrison Blvd., Ogden, Utah 84403  
OGDEN-WEBER STATE UNIVERSITY – BRT PROJECT (OGX)

Dear Ms. Terwilliger:

I write in my capacity as Assistant Attorney General for the Utah Attorney General's Office. I serve as in-house legal counsel to the Utah Transit Authority ("UTA") who is responsible, in conjunction with the Utah Department of Transportation ("UDOT"), for the acquisition and condemnation of the above-referenced Project. I am intimately familiar with the subject matter of this request.

Pursuant to FTA Circular 5010.1E(IV)(2)(e)(5), and to supplement the concurrence request that has been submitted to you on behalf of UTA, it is my legal opinion that the purchase of property as a total taking in the amount of \$1,787,500.00, resulting in a proposed administrative settlement of \$1,490,900.00, is reasonable, prudent, and in the public interest for the reasons set forth below.

The taking of Parcel 150 ("Property") is part of a major construction project for a bus rapid transit service in Ogden, Utah ("Project"). Ogden has a population of approximately 90,000 and is the eighth largest city in the state. This Project is necessary to serve the public and commerce in the area, including connecting Weber State University with critical transit infrastructure, such as UTA's commuter rail FrontRunner.

The Project design required the widening of Harrison Blvd., a main arterial road in the city. The property owner of parcel 150 is Goldenwest Credit Union (“Owner”), who is actively engaged in commerce at that site. With the widening of the roadway, the Project required a fee taking of 4,307 square feet and a temporary construction easement of 2,977 square feet.

The legal negotiations surrounding this particular condemnation have been ongoing for approximately the past 2.5 years due to the complexities of the taking, to wit: the commercial activities on site; the severance damages for reducing the drive aisle for the credit union’s drive-thru patrons; and limiting access due to UTA’s acquisition of the adjoining parcel.

Goldenwest Credit Union has been represented by legal counsel, Kyle Fielding, from McDonald Fielding law offices. The parties participated in mediation through the Utah Property Ombudsman Office on August 4, 2022 and were unable to reach a satisfactory resolution of the matter. The one item the parties agreed upon was to secure a third appraisal, which was performed by Chad Rigby in December 2022, and who valued the taking at \$850,000.00 (approximately \$550,000.00 more than the original appraisal performed by Eric Van Drimmelen).

Due to the wide gap in the parties’ opinion as to the value of the Property, and in light of expensive litigation as the next step, the parties began discussing a mutually-beneficial total taking of the parcel. Because UTA had acquired the adjoining parcel in full, there existed assemblage potential in performing a total take of Goldenwest’s property, which appraiser Chad Rigby had valued at \$1,750,000.00, and which had previously been appraised for \$1,825,000 by David Cook in the second appraisal.

The amount of the Administrative Settlement was arrived at after complex negotiations between the parties, by averaging the values of a total take from the second and third appraisals, and negotiating a right of first refusal and land lease to allow the Credit Union to continue its commercial activities until such time as UTA develops or divests itself of the property.

Based on the expected expense of litigation and going to trial in this matter, I believe that the risks and expenses of proceeding to trial outweigh the expense of settling the acquisition for an Administrative Settlement of \$1,490,900.00 as a total taking. In my opinion the Administrative Settlement amount is prudent and reasonable based on the fair market value of the Property reflected in the appraisals.

Should you wish to discuss any of the above, please do not hesitate to contact me at (801) 287-2147 or [timmerrill@agutah.gov](mailto:timmerrill@agutah.gov). Thank you for your consideration of UTA's concurrence request.

Sincerely,

**UTAH OFFICE  
OF THE ATTORNEY GENERAL**

*/s/ Tim Merrill*

TIMOTHY G. MERRILL  
Assistant Attorney General  
Counsel to the Utah Transit Authority