

PASS THROUGH FUNDS AGREEMENT

THIS PASS THROUGH FUNDS AGREEMENT (“Agreement”) is entered into as of March 31, 2023 between the Utah Department of Transportation (“UDOT”), an agency of the State of Utah, and the Utah Transit Authority (“UTA”), a large public transit district.

RECITALS

WHEREAS, under 2022 H.B. 3, Item 169 (the “**Funding Item**”), the Utah State Legislature allocated (for UDOT’s administration) a one-time total of three million eight hundred thousand dollars (\$3,800,000) (the “**Funds**”) from the General Fund, One-Time Schedule of Programs for fiscal year 2022-2023 (the “**Fiscal Year**”), intending that the Funds be passed through to UTA and used for the completion of the Depot District; and

WHEREAS, UTA desires to perform the work to fulfill the legislative intent for the Funds, and UDOT is willing to pass through the Funds to UTA for that purpose; and

WHEREAS, Utah Code Section 63J-1-220(2) mandates that UDOT may not provide UTA with state pass through funding unless an agreement is executed. In addition, such agreement must require UTA to provide a written description and itemized report at least annually detailing the expenditure of the Funds, or the intended expenditure of any Funds that have not been spent, and a final written itemized report when all the Funds are spent; and

WHEREAS, Utah Code Sections 63J-1-902 and 63J-1-903 require UTA to establish and meet performance measures in connection with the Funds to address UDOT’s reporting obligations to the Governor’s Office of Management and Budget and the Office of Legislative Fiscal Analyst.

AGREEMENT

THEREFORE, in consideration of the foregoing recitals (which by this reference are incorporated herein) and the mutual promises set forth herein, the parties hereto agree as follows:

1. Objective and Payment Schedule. UTA will use the transferred Funds for the purposes stated in the Funding Item. UDOT will transfer the Funds to UTA in the following manner: UDOT will pay the Funds to UTA in one lump sum payment of three million eight hundred thousand dollars (\$3,800,000) on or before June 1, 2023.

2. Key Activities. UTA will use the Funds as described in this Agreement to meet the following performance measures:

- a. UTA will spend 100% of the Funds by no later than June 30, 2023.
- b. The Funds will be used for the completion of the Depot District. The scope of work includes construction of a bus maintenance and operations administration building with additional utility and site work to support the building. The project will replace the 45-

year-old Central Bus Garage, which is fast approaching the end of its useful life. The project includes a new bus maintenance shop, bus wash, administrative offices, and bus parking, and canopies.

- c. The Depot District Facility will be in use by June 30, 2023.
- d. UTA will provide to UDOT a Final Report and Certification of Expenditures no later than 30 days after all of the funds have been expended.

3. Budget and Deliverables. UTA will maintain documents that show all projected and actual spending for the activities described herein, including all funding sources and itemized project costs. UTA agrees that from time-to-time UTA (and UDOT) may be responsible to submit reports or respond to inquiries for the Utah State Legislature and the Utah Governor's Office, and to comply with other reporting rules or audit requirements in connection with the Funds. UTA will promptly respond to UDOT's reasonable requests for information concerning the Funds. Upon spending all of the Funds, UTA will provide UDOT with a final written itemized report detailing where the Funds have been spent and also showing all funding sources and total project costs. For all Funds that are not spent during the Fiscal Year, UTA will provide a written description and an itemized report at least annually detailing the expenditure of the Funds, or the intended expenditure of any Funds that have not been spent, and will provide the final written itemized report described above upon exhausting the Funds. Reporting requirements are further described in Exhibit A attached hereto and made a part hereof.

4. Limitation. UTA agrees that it will only spend the Funds for the purposes and activities that are expressly described this Agreement, and that no additional monies will be provided by UDOT. If UTA misapplies any Funds, it shall promptly notify UDOT and remove such expenditure from the budget so such expenditure is not paid by the Funds. If UTA fails to correct any misapplication of the Funds within thirty (30) days of discovering such misapplication, UTA agrees that it shall no longer have the right to possess the Funds and that all unspent and misapplied Funds shall at that time be immediately due and payable to UDOT so UDOT can direct them in a manner authorized by law.

5. UDOT's Role. UTA agrees that UDOT is a pass-through administrator only for the Funds and that UDOT does not have any role in the use of the Funds. UTA agrees that UDOT shall not be liable for any claim or cost, of any kind whatsoever, in connection with the Funds, and UTA hereby releases UDOT from all of the same (including, but not limited to, matters involving negligence), regardless of when the same may arise. UTA further agrees to indemnify, hold harmless and defend UDOT from any claim or cost, of any kind whatsoever (including, but not limited to, matters involving negligence), in connection with the Funds, except when caused by UDOT's sole negligence or malfeasance. This indemnity obligation shall not be construed to violate Utah's Governmental Immunity Act to the extent that such Act is applicable to a claim or cost. UDOT has all remedies available by law in addition to those stated in this Agreement, and UDOT's remedies are not limited by the terms of this Agreement.

6. Further Assurances. Each party to this Agreement agrees to undertake and perform all further acts that are reasonably necessary to carry out the intent and purposes of this Agreement,

and to provide for a party's compliance with the laws or federal obligations that apply to it if an obligation under this Agreement makes such compliance impossible, and either party may notify the other party of a need for such further acts.

7. Modifications. The failure of either party to insist upon strict compliance with any of the terms and conditions of this Agreement, or failure or delay by either party to exercise any rights or remedies provided in this Agreement or by law, will not release either party from any obligations arising under this Agreement. This Agreement may not be modified except by a written document signed by an authorized individual representing each of the respective parties.

8. Miscellaneous. This Agreement is binding upon and inures to the benefit of the parties and it does not inure to the benefit of any third party. No party shall assign or transfer any rights, or delegate any duties hereunder, without the other party's prior written consent, and any such attempted assignment, transfer or delegation is void. The parties agree to work cooperatively and in good faith. Before taking any legal action in connection with this Agreement, each party agrees to first advise the other of a dispute and to meet in good faith in an effort to resolve it. If any notice is required in connection with this Agreement, each party shall send a written notice to the other party's chief financial officer using a manner that can reasonably assure a timely and accurate delivery. This Agreement does not create any partnership, joint venture, agency or other relationship.

9. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes any prior understandings, agreements, or representations, verbal or written.

10. Signatures. Each party represents that it has the authority to enter into this Agreement and has signed below by an authorized representative. This Agreement may be signed electronically and in counterparts.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

UTAH TRANSIT AUTHORITY, a large public transit district

By: _____
Title: _____
Date: _____

By: _____
Title: _____
Date: _____

Legal Approval

By: **Michael L Bell** Digitally signed by Michael L Bell
Date: 2023.03.20 12:08:22 -06'00'

Title: _____

Date: _____

UTAH DEPARTMENT OF TRANSPORTATION, an agency of the State of Utah

By: _____

Title: _____

Date: _____

By: _____

Title: _____

Date: _____

Date: _____

EXHIBIT A

1. **Performance Measures.** The Parties agree that Funds will be applied to an approved scope of work for the project described in this Agreement and that the work will meet the performance measures provided by the recipient of the Funds.
2. **Public Funds Compliance.** The recipient of the Funds shall comply with applicable state statutes on the reporting and expenditure of public funds. In particular, Utah Code § 63J-1-220(2)(b) requires recipients to provide UDOT with reports as provided therein and in this Agreement. The recipient of the Funds shall provide regular update reports to UDOT as frequently as UDOT may reasonably direct (but not more frequently than once each quarter). Each year, on the Friday at the end of the last full week of April, the recipient of the Funds will provide an annual report to UDOT that includes, at a minimum, the following (in the order specified):
 - a. An itemized account of amounts spent and the dates when spent (noting any items outside the approved scope of work, if any). The account will include all sources of funding and a statement of all remaining unspent Funds. This information is used to assess accuracy.
 - b. The projected spending that will be incurred before the applicable fiscal year's end (June 30 of each year).
 - c. The difference between the appropriated amount of Funds and the actual amount used.
 - d. A brief explanation of why the Funds were requested or granted, and how Fund expenditures solved or were expected to solve or ameliorate an issue.
 - e. An assessment of implementation which includes: (i) what month and year the project, program, or bill was fully implemented; (ii) whether the project or program encountered any factors that caused a delay in implementation and an explanation of those factors; and (iii) whether the project or program encountered any factors that caused a change in scope and an explanation of those factors.
 - f. An assessment of performance which includes: (i) how the success of the project or program is being measured, and (ii) how successful the project or program has been according to those metrics.
 - g. Upcoming project milestone dates and the anticipated date of project completion.
3. **Final Report.** Within thirty (30) days after all Funds have been expended, the recipient of the Funds shall submit a Final Report to UDOT. The Final Report must address the following:
 - a. Each topic outlined in the scope of work.
 - b. The information required under Exhibit A, paragraph 2.
 - c. The date when the project or program was completed.
4. **Certification.** For all information submitted, the recipient of the Funds must certify that it has provided accurate information and used the funds as required by this Agreement.

