



**UTA CONTRACT NO. 20-03323BM**

**FrontRunner Next Steps Strategy: On Call Operations Planning and Simulation Assistance**

This Task Ordering Agreement (TOA) is entered into and made effective as of the date of last signature below (the "Effective Date") by and between UTAH TRANSIT AUTHORITY, a public transit district organized under the laws of the State of Utah ("UTA"), and DB ENGINEERING & CONSULTING USA INC. ("Consultant").

**RECITALS**

- A. UTA desires to award a task ordering contract for professional consulting services per the Statement of Services contained at Exhibit A.
- B. On September 30, 2020, UTA issued Request for Proposal Package Number 20-03323BM ("RFP") encouraging interested parties to submit proposals to perform the services described in the RFP.
- C. Upon evaluation of the proposals submitted in response to the RFP, UTA selected Consultant as the preferred entity with whom to negotiate a contract to perform the Work.
- D. Consultant is qualified and willing to perform the Work as set forth in the Scope of Services.

**AGREEMENT**

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

**1. SERVICES TO BE PROVIDED**

- a. Consultant shall perform all Tasks issued under this TOA as set forth in the Scope of Services (Exhibit A). Except for items (if any) which this Contract specifically states will be UTA-provided, Consultant shall furnish all the labor, material and incidentals necessary for the Work.

- b. Consultant shall perform all Work under this TOA in a professional manner, using at least that standard of care, skill and judgment which can reasonably be expected from similarly situated professionals.
- c. All Work shall conform to generally accepted standards in the transit industry. Consultant shall perform all Work in compliance with applicable laws, regulations, rules, ordinances, permit constraints and other legal requirements including, without limitation, those related to safety and environmental protection.
- d. Consultant shall furnish only qualified personnel and materials necessary for the performance of the Work.
- e. When performing Work on UTA property, Consultant shall comply with all UTA work site rules including, without limitation, those related to safety and environmental protection.

## **2. TASK ORDER ISSUANCE**

- a. The Consultant's shall perform services with respect to a wide variety of tasks, as described in Exhibit A at the request of UTA.
- b. Each discrete planning and simulation item is referred to as a "Task." UTA and the Consultant will negotiate scope, schedule, and lump sum price for each Task, and document those and other terms, as necessary, in a written "Task Order" in substantively the same format as that attached as Exhibit A. The lump sum price for each Task shall be developed in accordance with Section 5 of this Contract and Exhibit B. Upon the execution of a Task Order, the Consultant shall perform services for that Task, including furnishing all the materials, appliances, tools, and labor of every kind required, and constructing and completing in the most substantial and skillful manner, the work identified in the scope of work attached as an Exhibit to that Task Order.
- c. If UTA and the Consultant are unable to agree on the price, scope, or other terms of a Task Order, UTA shall retain the right to remove the Task from the scope of the on-call Consultant and procure the item outside this Contract.

## **3. PROGRESS OF WORK**

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

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

#### **4. FINAL ACCEPTANCE OF TASKS**

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

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

#### **5. PERIOD OF PERFORMANCE**

This Contract shall commence as of the Effective Date. This Contract shall remain in full force and effect until all Work is completed in accordance with this Contract, as reasonably determined by UTA. Consultant shall complete all Work no later than three (3) years after a Notice To Proceed. (This contract contains two additional option years which may be exercised in the sole discretion of UTA with 60 days

advance written notice. The option period will be subject to the same terms and conditions which are contained in this TOA. This guaranteed completion date may be extended if Consultant and UTA mutually agree to an extension evidenced by a written Change Order. The rights and obligations of UTA and Consultant under this Contract shall at all times be subject to and conditioned upon the provisions of this Contract.)

## **6. COMPENSATION**

UTA agrees to pay Consultant for services rendered hereunder in accordance with the applicable hourly rates for Consultant's Managers as set forth in Exhibit B. Payment will be based on actual hours expended plus appropriate and authorized direct expenses.

Unless otherwise agreed in a Task Order, payment for the completion of Tasks will be in the form of a lump sum price negotiated between UTA and the Consultant and set forth in an executed Task Order. The lump sum price will be negotiated through an open-book cost estimating process based on the pricing elements set forth in Exhibit B. The lump sum price will be paid to the Consultant for satisfactory completion of all work identified in the applicable Task Order. Except as amended by UTA-issued change orders, the amount to be paid to the Consultant for all costs necessary to manage and complete the work, whether stated or reasonably implied in the Task Order or other contract documents, will not exceed the lump sum price, including all labor, materials, equipment, supplies, tools, incidental expenses, and any other direct or indirect associated costs.

## **7. INCORPORATED DOCUMENTS**

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

## **8. ORDER OF PRECEDENCE**

The Order of Precedence for this contract is as follows:

- UTA Contract including all attachments and terms and conditions
- UTA Solicitation Terms
- Consultant's Bid or Proposal including proposed terms or conditions

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

## **9. CHANGES**

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

To the extent that any change in Work directed by UTA causes an actual and demonstrable impact to: (i) Consultant's cost of performing the work; or (ii) the time required for the Work, then (in either case) the Change Order shall include an equitable adjustment to this Contract to make Consultant whole with respect to the impacts of such change.
- b. A change in the Work may only be directed by UTA through a written Change Order or (alternatively) UTA's expressed, written authorization directing Consultant to proceed pending negotiation of a Change Order. Any changes to this Contract undertaken by Consultant without such written authority shall be at Consultant's sole risk. Consultant shall not be entitled to rely on any other manner or method of direction.
- c. Consultant shall also be entitled to an equitable adjustment to address the actual and demonstrable impacts of "constructive" changes in the Work if: (i) subsequent to the Effective Date of this Contract, there is a material change with respect to any requirement set forth in this Contract; or (ii) other conditions exist or actions are taken by UTA which materially modify the magnitude, character or complexity of the Work from what should have been reasonably assumed by Consultant based on the information included in (or referenced by) this Contract. In order to be eligible for equitable relief for "constructive" changes in Work, Consultant must give UTA's Project Manager or designee written notice stating:
  1. The date, circumstances, and source of the change; and
  2. That Consultant regards the identified item as a change in Work giving rise to an adjustment in this Contract.

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

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

## **10. INVOICING PROCEDURES**

- a. Consultant shall submit invoices to UTA’s Project Manager for processing and payment in accordance with Exhibit B. If Exhibit B does not specify invoice instructions, then Consultant shall invoice UTA after completion of all Work and final acceptance thereof by UTA. Invoices shall be provided in the form specified by UTA. Reasonable supporting documentation demonstrating Consultant’s entitlement to the requested payment must be submitted with each invoice.
- b. UTA shall have the right to disapprove (and withhold from payment) specific line items of each invoice to address non-conforming Work or invoicing deficiencies. Approval by UTA shall not be unreasonably withheld. UTA shall have the right to offset from payment amounts reasonably reflecting the value of any claim which UTA has against Consultant under this Contract. Payment for all invoice amounts not specifically disapproved by UTA shall be provided to Consultant within thirty (30) calendar days of invoice submittal.

## **11. OWNERSHIP OF DESIGNS, DRAWINGS, AND WORK PRODUCT**

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

right to share same with UTA's Consultants, agent, officers, directors, employees, joint owners, affiliates and consultants.

## **12. USE OF SUBCONSULTANTS**

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

## **13. KEY PERSONNEL**

Consultant shall provide the key personnel as indicated in Consultant's Proposal (or other applicable provisions of this Contract), and shall not change any of said key personnel without the express written consent of UTA.

## **14. SUSPENSION OF WORK**

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

## **15. TERMINATION**

- a. **FOR CONVENIENCE:** UTA shall have the right to terminate the Contract at any time by providing written notice to Consultant. If the Contract is terminated for convenience, UTA shall pay Consultant: (i) in full for Goods delivered and Services fully performed prior to the effective date of termination; and (ii) an equitable amount to reflect costs incurred (including Contract close-out and sub Consultant termination costs that cannot be reasonably mitigated) and profit on work-in-progress as of to the effective date of the termination notice. UTA shall not be responsible for anticipated profits based on the terminated portion of the Contract. Consultant shall promptly submit a termination claim to UTA. If Consultant has any property in its possession belonging to UTA, Consultant will account for the same, and dispose of it in the manner UTA directs.
- b. **FOR DEFAULT:** If Consultant (a) becomes insolvent; (b) files a petition under any chapter of the bankruptcy laws or is the subject of an involuntary petition; (c) makes a general assignment for the benefit of its creditors; (d) has a receiver appointed; (e) should fail to make prompt payment to any sub Consultants or suppliers; or (f) fails to comply with any of its material obligations under the Contract, UTA may, in its discretion, after first giving Consultant seven (7) days written notice to cure such default:
1. Terminate the Contract (in whole or in part) for default and obtain the Goods and Services using other Consultants or UTA's own forces, in which event Consultant shall be liable for all incremental costs so incurred by UTA;
  2. Pursue other remedies available under the Contract (regardless of whether the termination remedy is invoked); and/or
  3. Except to the extent limited by the Contract, pursue other remedies available at law.
- c. **CONSULTANT'S POST TERMINATION OBLIGATIONS:** Upon receipt of a termination notice as provided above, Consultant shall (i) immediately discontinue all work affected (unless the notice directs otherwise); and (ii) deliver to UTA all data, drawings and other deliverables, whether completed or in process. Consultant shall also remit a final invoice for all services performed and expenses incurred in full accordance with the terms and conditions of the Contract up to the effective date of termination. UTA shall calculate termination damages payable under the Contract, shall offset such damages against Consultant's final invoice, and shall invoice Consultant for any additional amounts payable by Consultant (to the extent termination damages exceed the invoice). All rights and remedies provided in this Article are cumulative and not exclusive. If UTA terminates the Contract for any reason, Consultant shall remain available, for a period not exceeding 90 days, to UTA to respond to any questions or concerns that UTA may have regarding the Goods and Services furnished by Consultant prior to termination.
- d. **TERMINATION OF TASKS OR TOA:** UTA's termination rights under this Article shall apply, in UTA's discretion, to either an individual task order or the entire TOA. Where the TOA is

terminated for convenience, the Consultant shall be entitled to payment in full for all tasks satisfactorily completed prior to the termination date. Where a task is terminated prior to acceptance by UTA, Consultant shall be entitled to its actual allowable and allocable costs expended to the date of termination for the terminated task.

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

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

**17. FINDINGS CONFIDENTIAL**

Any documents, reports, information, or other data and materials available to or prepared or assembled by Consultant or sub Consultants under this Contract are considered confidential and shall not be made available to any person, organization, or entity by Consultant without consent in writing from UTA.

A. It is hereby agreed that the following information is not considered to be confidential:

1. Information already in the public domain;
2. Information disclosed to Consultant by a third party who is not under a confidentiality obligation;
3. Information developed by or in the custody of Consultant before entering into this Contract;
4. Information developed by Consultant through its work with other clients; and
5. Information required to be disclosed by law or regulation including, but not limited to, subpoena, court order or administrative order.

## **18. PUBLIC INFORMATION.**

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

## **19. GENERAL INDEMNIFICATION**

Consultant shall indemnify, hold harmless and defend UTA, its officers, trustees, agents, and employees (hereinafter collectively referred to as "Indemnitees") from and against all liabilities, claims, actions, damages, losses, and expenses including without limitation reasonable attorneys' fees and costs (hereinafter referred to collectively as "claims") related to bodily injury, including death, or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the acts or omissions of Consultant or any of its owners, officers, directors, agents, employees or sub Consultants. This indemnity includes any claim or amount arising out of the failure of such Consultant to conform to federal, state, and local laws and regulations. If an employee of Consultant, a sub Consultant, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable brings a claim against UTA or another Indemnatee, Consultant's indemnity obligation set forth above will not be limited by any limitation on the amount of damages, compensation or benefits payable under any employee benefit acts, including workers' compensation or disability acts. The indemnity obligations of Consultant shall not apply to the extent that claims arise out of the sole negligence of UTA or the Indemnitees.

## **20. INSURANCE REQUIREMENTS**

- a. Consultant and sub Consultants shall procure and maintain until all of its obligations have been discharged insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, employees or sub Consultants.
- b. The insurance requirements herein are minimum requirements for the Contract and in no way limit the indemnity covenants contained in the Contract. UTA in no way warrants that the minimum limits contained herein are sufficient to protect the Consultant from liabilities that might arise out of the performance of the work under the Contract by the Consultant, its agents, representatives, employees or sub Consultants and Consultant is free to purchase additional insurance as may be determined necessary.

- c. Consultant shall provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the minimum liability requirements, provided that the coverage is written on a “following form” basis.

- i. Professional Liability insurance with the following limits and coverages:

Minimum Limits:

\$1,000,000 each claim

\$2,000,000 annual aggregate

Coverages:

1. Insured's interest in joint ventures
2. Punitive damages coverage (where not prohibited by law)
3. Limited contractual liability
4. Retroactive date prior to date
5. Extended reporting period of 36 months

Coverage which meets or exceeds the minimum requirements will be maintained, purchased annually in full force and effect until 3 years past completion of the Work unless such coverage becomes unavailable to the market on a commercially reasonable basis, in which case Consultant will notify UTA. If UTA agrees that such coverage is not reasonably available in the commercial market, Consultant may elect not to provide such coverage.

- ii. Automobile insurance covering owned, if any, non-owned, and hired automobile with limits not less than \$1,000,000 combined single limit of coverage. The policy shall be endorsed to include the following additional insured language: “The Utah Transit Authority shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Consultant, including automobiles owned, leased, hired or borrowed by the Consultant.”
    - iii. Workers' Compensation insurance conforming to the appropriate states' statutory requirements covering all employees of Consultant, and any employees of its sub Consultants, representatives, or agents as long as they are engaged in the work covered by this Contract or such sub Consultants, representatives, or agents shall provide evidence of their own Worker's Compensation insurance. The policy shall also cover Employers Liability with limits no less than \$500,000 each accident, and each employee for disease. The policy shall contain a waiver of subrogation against UTA.

- d. On insurance policies where UTA is named as an additional insured, UTA shall be an additional insured to the full limits of liability purchased by the Consultant. Insurance limits indicated in this agreement are minimum limits. Larger limits may be indicated after Consultant's assessment of the exposure for this contract; for its own protection and the protection of UTA. Consultant's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.
- e. The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. UTA is no way warrants that the minimum limits contained herein are sufficient to protect the Consultant from liabilities that might arise out of the performance of the work under this contract by the Consultant, his agents, representatives, employees, or sub Consultants and Consultant is free to purchase additional insurance as may be determined necessary.
- f. Consultant warrants that this Contract has been thoroughly reviewed by its insurance agent, broker or consultant, and that said agent/broker/ consultant has been instructed to procure for Consultant the insurance coverage and endorsements required herein.
- g. Consultant shall furnish UTA with certificates of insurance (ACORD form or equivalent approved by UTA) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and any required endorsements are to be received and approved by UTA before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.
- h. UTA, as a self-insured governmental entity, shall not be required to provide insurance coverage for the risk of loss to UTA premises and improvements or equipment owned by UTA.

## **21. OTHER INDEMNITIES**

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

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

## **22. INDEPENDENT CONSULTANT**

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

## **23. PROHIBITED INTEREST**

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

## **24. CLAIMS/DISPUTE RESOLUTION**

- a. "Claim" means any disputes between UTA and the Consultant arising out of or relating to the Contract Documents including any disputed claims for Contract adjustments that cannot be resolved in accordance with the Change Order negotiation process set forth in Article 6. Claims must be made by written notice. The responsibility to substantiate claims rests with the party making the claim.
- b. Unless otherwise directed by UTA in writing, Consultant shall proceed diligently with performance of the Work pending final resolution of a Claim, including litigation. UTA shall

continue to pay any undisputed payments related to such Claim.

- c. The parties shall attempt to informally resolve all claims, counterclaims and other disputes through the escalation process described below. No party may bring a legal action to enforce any term of this Contract without first having exhausted such process.
- d. The time schedule for escalation of disputes, including disputed requests for change order, shall be as follows:

<b>Level of Authority</b>	<b>Time Limit</b>
UTA's Project Manager/Consultant's Project Manager	Five calendar days
UTA's Program Director/Consultant's	Five calendar days
UTA's Chief Service Development Officer/Consultant's	Five calendar days

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

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

**25. GOVERNING LAW**

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

**26. ASSIGNMENT OF CONTRACT**

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

**27. NONWAIVER**

No failure or waiver or successive failures or waivers on the part of either party in the enforcement of any condition, covenant, or article of this Contract shall operate as a discharge of any such condition,

covenant, or article nor render the same invalid, nor impair the right of either party to enforce the same in the event of any subsequent breaches by the other party.

**28. NOTICES OR DEMANDS**

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

If to UTA:

Utah Transit Authority  
ATTN: Brian Motes, Contract Administrator  
669 West 200 South, SLC, UT 84101  
Salt Lake City, UT 84101

with a required copy to:

Utah Transit Authority  
ATTN: Legal Counsel  
669 West 200 South  
Salt Lake City, UT 84101

If to Consultant:

DB Engineering & Consulting USA Inc.  
ATTN: Yoav Hagler, Principal Consultant  
770 L Street, Suite 1240  
Sacramento, CA 95814

With a required copy to:

DB Engineering & Consulting USA Inc.  
ATTN: David Hüffmeier, CFO  
770 L Street, Suite 1240  
Sacramento, CA 95814

- b. Any such notice shall be deemed to have been given, and shall be effective, on delivery to the notice address then applicable for the party to which the notice is directed; provided, however, that refusal to accept delivery of a notice or the inability to deliver a notice because of an address change which was not properly communicated shall not defeat or delay the giving of a notice. Either party may change the address at which such party desires to receive written notice by providing written notice of such change to any other party.
- c. Notwithstanding Section 23.1, the parties may, through mutual agreement, develop alternative communication protocols to address change notices, requests for information and similar categories of communications. Communications provided pursuant to such agreed means shall be recognized as valid notices under this Contract.

### **29. CONTRACT ADMINISTRATOR**

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

### **30. INSURANCE COVERAGE REQUIREMENTS FOR CONSULTANT EMPLOYEES**

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

### **31. COSTS AND ATTORNEYS FEES**

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

### **32. NO THIRD PARTY BENEFICIARY**

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

### **33. FORCE MAJEURE**

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

**34. SEVERABILITY**

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

**35. ENTIRE AGREEMENT**

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

**36. AMENDMENTS**

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

**37. COUNTERPARTS**

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

**38. SURVIVAL**

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

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

**UTAH TRANSIT AUTHORITY:**

DocuSigned by:  
By   
0C1EDCBAD5D7410...  
Name Carolyn M. Gonot  
Title Executive Director  
Date 1/12/2021

DocuSigned by:  
By   
9B93AEE62284418...  
Name Mary DeLoretto  
Title Chief Service Development officer  
Date 1/4/2021

DocuSigned by:  
By   
70E33A415BA44F6...  
Name Michael L. Bell  
Title Utah Attorney General  
Date 1/4/2021

**UTA Legal Counsel**

DocuSigned by:  
  
6A9D11455293495...  
Kerry Doane  
Mgr of Long Range and Strategic Planning  
1/4/2021

**DB ENGINEERING & CONSULTING USA INC.:**

By  David Hüffmeier  
2020.12.17 17:00:00  
-08'00'  
Name David Hüffmeier  
Title CFO  
Date \_\_\_\_\_

By  Mark Evans  
C=US CN=Mark Evans OU=President &  
CEO E=mark.evans@deutschebahn.com  
O=DB Engineering and Consulting USA  
Inc.  
2020.12.17 18:26:04 -08'00'  
Name Mark Evans  
Title CEO  
Date \_\_\_\_\_

Exhibit A**FRONTRUNNER NEXT STEPS****FrontRunner Next Steps Strategy**

The Wasatch Front is growing at a rapid pace, and its geography – bounded on both east and west sides by mountains and lakes – constrains this growth to a linear corridor with Interstate 15 and UTA’s FrontRunner commuter rail line as a dual spine providing the principal, continuous north-south travel corridors for the region. Recognizing the need to get out ahead of increasing demands on this corridor and the need to provide mobility choices, UTA and its stakeholders are preparing for the next phase of investment in the FrontRunner system.

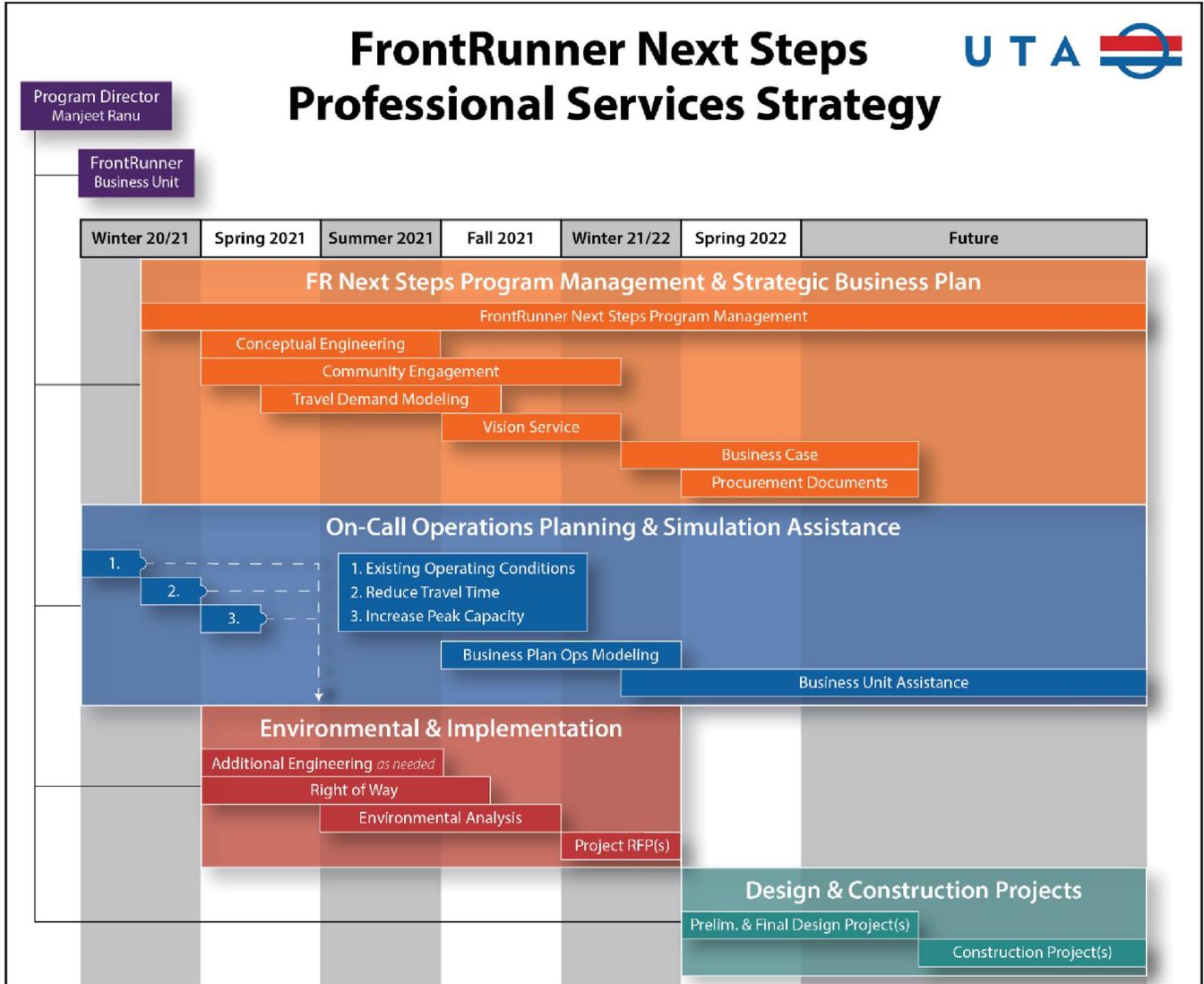
UTA’s goals for the FrontRunner system, which align with regional goals established in other transit-related recent studies, include:

- Increasing transit usage overall
- Reducing congestion in the I-15 corridor
- Improving air quality
- Providing additional options to connect jobs and employees
- Enhanced safety at grade crossings
- Supporting real estate and economic development consistent with local government plans required by SB 34 (2019 General Session)

The FrontRunner Next Steps Strategy is a multi-pronged effort to advance these goals. The Strategy requires multiple professional services at various steps in the process.

1. On-call Operations Planning and Simulation Assistance
  - Existing operating conditions analysis
  - Identify scenarios to reduce travel time and increase peak capacity
  - Additional model and scenario runs as determined by the findings of other contracts in the overall strategy
  - FrontRunner Business Unit operations support
2. Program Management, Project Definition, and Strategic Business Plan
  - Provide program management to forward projects through to implementation
  - Define project(s) required to achieve desired service and infrastructure enhancements
  - Define a vision for the FrontRunner system
  - Develop a Strategic Business Plan that makes a business case for further investment
3. Project Environmental and Implementation
  - Advance the projects through the next phases of project development toward implementation
4. Design, and Construction Projects
  - Design, engineering and construction of project packages
  - Estimation of project package costs and potential funding sources

The following graphic shows a revised format for the program than was used in the RFP for this contract, however the role of the On-call Operations Planning and Simulation Assistance remains the same.



**Background**

UTA’s transit network has continued to grow and expand since the first service was delivered in 1970. As part of this growth, UTA has added hundreds of miles of new service and several different modes of transit to the portfolio of services they provide, including a series of rail and bus-rapid-transit (BRT) lines throughout the service area.

A key component to the success of this ever-growing network is UTA’s FrontRunner commuter rail service. Construction on UTA’s commuter rail north segment began in 2005 and was completed in 2008. FrontRunner began operation in April of that year with service from Ogden to Salt Lake City, and by 2012 service was

extended south to Provo in Utah County for a total of 84 miles of commuter rail. For a time, UTA provided limited service north of Ogden to Pleasant View, along track owned by Union Pacific, but ended this service in August 2018.

FrontRunner is one of five rail lines operated by UTA and is the agency's only commuter rail line. FrontRunner stations often connect to multiple modes of transit, have direct access to bus routes and a park-and-ride lot, and provide onsite bike storage allowing transfer to first/last mile transportation modes.

The existing FrontRunner fleet includes Motive Power International diesel-powered locomotives, Bombardier Bi-level VII Commuter Car coaches, as well as Comet I coaches dating to 1971-73 purchased from New Jersey Transit to expand seat capacity. All trains in regular service include one locomotive, one Comet I coach, and three Bombardier Commuter Car coaches (2 trailers and 1 cab car) and run in a push pull operation.

Most of the existing FrontRunner corridor is UTA-owned and is adjacent to, but exclusive from, freight rail operated by the Union Pacific Railroad. Currently, FrontRunner has 21.8 miles of double track and 61.4 miles of single track. Single track presents logistic challenges for the passing of northbound and southbound trains that can slow service. A delay at one point can cause delays throughout the system.

FrontRunner enhancements are a prominent feature in local and regional transportation plans. There are two Regional Transportation Plans (RTPs) in UTA's transit service district, one from each of the metropolitan planning organizations (MPOs), which include improvements to FrontRunner commuter rail. Using fiscal constraints with a set of assumed new revenue sources, double-tracking and electrifying FrontRunner was determined to be needed in Phase 2 (2031-2040), but only ten miles of new double-track and slightly longer trains were affordable. The MAG 2019-2050 RTP also includes an extension of the system into Payson, south of Provo. All other proposed improvements to FrontRunner were unfunded.

State Legislative leaders have identified the need to enhance FrontRunner Service to help improve mobility and regional economic competitiveness, mitigate air pollution, and reduce congestion on the I-15 corridor. Specifically, local leaders would like to see peak hour express service developed in the corridor. In response to this interest, UTA investigated some preliminary operations modeling to improve and or increase service. These ideas are examples and represent only the beginning of the analyses expected to be undertaken in this contract.

Descriptions of some of the ideas, as well as the Future of FrontRunner Study, and some engineering drawings are available on a flash drive and can be picked up in person at UTA's Frontline Headquarters at 669 West 200 South in Salt Lake City. Additional information is available in the report to and presentation/discussion during the Board of Trustees meeting of September 2, 2020. The Board report and presentation are attached to this RFP as Appendix A.

## **CURRENT AND PAST STUDIES**

### **Future of FrontRunner**

In September 2018, the Future of FrontRunner Study operational analysis prepared for UTA evaluated how the commuter rail system can improve. Dynamic simulation software was used to analyze six scenarios for FrontRunner operations in 2050:

- 1) Baseline Calibration – simulation of existing operations prior to implementation of Positive Train Control (PTC);
- 2) Future PTC Baseline – existing conditions plus Positive Train Control (PTC);
- 3) Low Investment Scenario – PTC and new double-tracking needed to help with reliability issues, plus an extension to Payson;
- 4) Medium Investment Scenario – PTC, new double-tracking needed to allow 15 minute headways between Ogden and Provo, and diesel locomotives pulling coaches;
- 5) High Investment Scenario – PTC, double-tracking to allow 15 minute headways between Ogden and Provo, and electrification of the corridor using electric multiple units consists; and
- 6) High Investment Scenario with Infill Stations –the High Investment Scenario plus infill stations in Sunset, Centerville, and Bluffdale.

Shortly after the completion of the study, UTA’s FrontRunner business unit determined it would be necessary to revise the existing operating schedule by changing the locations of where trains meet in order for the system to operate reliably under the newly implemented PTC measures and restrictions. These meets were not the scheduled meets that were analyzed in the Future of FrontRunner Study. Therefore, the double-track locations determined in that study’s results may not produce the same benefits as if the schedule had not changed.

### **Box Elder Feasibility Study**

UTA recently completed a feasibility study to explore the possibility of extending FrontRunner Service to Box Elder County. The study found that until the population grows, a FrontRunner service connection is not merited. The study also noted that the future system would like use smaller vehicles. Single DMU or other technology. The FrontRunner terminus would continue to be Ogden or Pleasant View.

### **South Utah County Transit Analysis**

UTA is just embarking on a study to explore potential short-, mid- and long-term transit solutions to connect the communities of Springville, Spanish Fork, Payson, and Santaquin with UTA’s network via transit. While the study will explore multiple modes and alignments, this study was initiated by the MAG Regional Transportation Plan, which identifies extension of FrontRunner to Payson as a Phase I project.

## **ON-CALL OPERATIONS PLANNING AND SIMULATION ASSISTANCE**

### **SCOPE OF WORK**

#### **General Overview**

UTA and the project partners are seeking to provide improved reliability for the current FrontRunner service, reduce typical travel times, and increase service offered on the system during peak hours. The consultant will help UTA and the project partners plan, define, analyze, and simulate commuter rail service that builds on the work completed in the Future of FrontRunner study and other interim analyses that have been completed.

UTA desires to engage a Consultant to support UTA's planning and operations personnel by performing operations planning and simulation for UTA's commuter rail system. The work will be on an on-call basis during the term of the contract. The work may include such items as:

- Developing operating scenarios
- Analyzing alternative schedule feasibility
- Building precise model of existing commuter rail system and service
- Performing dynamic operations simulations
- Modeling realistic operating experiences
- Developing draft scheduling alternatives
- Considering and recommending for additional double-track locations
- Modeling various vehicle technologies and consist sizes
- Coordinating and communicating results to UTA and others

This list is not intended to be all-inclusive; the contract is intended to include any and all planning and simulation work as deemed appropriate by UTA. Each discrete request item will be referred to as a "Task Order." UTA and the FrontRunner Next Steps: On-Call Operations Planning and Simulation Assistance Consultant ("Consultant") will negotiate scope, schedule, and price for each Task Order.

#### **Project Management**

The UTA project manager from UTA's Service Development Office will manage the Task Orders for the benefit of other business units within the agency. Representatives from these other business units will provide input and guidance on each Task Order to achieve the desired result.

The Consultant will provide overall direction and control for the Task Orders as requested within the Scope of Work during the timeframe of the contract. The Consultant project manager will be responsible for team coordination, implementation of quality-control measures, project reporting to UTA, results, documentation, and overall performance of the analysis.

#### **Negotiating Tasks**

The UTA Project Manager (PM) will oversee the negotiation of the Task Order for each task with the selected Consultant. Each Task Order will be negotiated separately through an open-book cost estimating process, using the unit prices proposed in response to this RFP, and (as applicable) negotiating reasonable adjustments to such units based on the specific resources associated with the tasks and UTA's independent cost estimates. The profit and administrative overhead fee rate proposed in response to this RFP shall also be issued to develop the cost estimate. If UTA and the Consultant are unable to agree on the price, scope, or other terms of a Task Order, UTA shall retain the right to advertise any study publicly and remove it from the scope of the on-call Consultant. The UTA PM will oversee all pre-study, study and closeout activities on each agreed upon Task Order.

The consultant is expected to provide models for scenario planning as well as dynamic operational simulations specifically designed to simulate passenger railroad operations. It is expected that the scenario planning tool can produce results quickly and at a much reduced level of effort than a full simulation. Dynamic simulations are expected to provide a randomized occurrence of realistic operational events with respect to any or all of the following aspects of railroad operations: infrastructure, civil design, signaling, fleet, operating rules, schedule, and any other perturbations determined to be present. Consultant proposers should describe the tools intended to be used in detail.

Each Task Order will be negotiated to complete a clearly defined scope of work. UTA-generated change orders will be added to the lump sum cost. Consultant changes to facilitate analysis or other undetermined work items will not be considered for change to the lump sum price unless requested as an official change order prior to completion of the work and agreed upon in writing by both parties. Payment frequency and type will be negotiated in the Task Order, but in no event will UTA make advance payments. Some tasks will have a short duration and will lend themselves to a single payment for all work including delivery of results and documentation.

### **Contract Term**

This contract is being advertised as a three (3) year contract with an exclusive owner option to extend the contract for two (2) additional terms of one (1) year each.

### **Project Budget**

It is anticipated that this project will receive a maximum of \$500,000 over the five years and an anticipated minimum amount of \$100,000. This, however, is only an estimate; the actual amount budgeted will be set annually by the UTA Board of Trustees.

### **Task Order Schedules**

Each Task Order will be accompanied with a comprehensive schedule that will include milestones, hold points, stakeholder buy-off, and documentation of results. The schedule submitted in conjunction with each Task Order shall become part of the contract with respect to completion dates. Due to the short nature of most Task Orders, modification or extensions to agreed-upon schedules will be rare. The Consultant should include in each

Task Order negotiation, specific information on required levels of effort for work items and adjust the schedule accordingly to ensure completion of the Task Order is accomplished at the time indicated in the schedule.

### **Documentation**

Results for each Task Order will be delivered to UTA using an agreed upon format for each task. This format may change with each Task Order depending on the intended audience and subsequent use of the results. Consultant proposers should provide the types of graphics and presentation abilities that the team has in the proposal.

**Exhibit B**

**Pricing and Payment**

All payments will be made as work is completed and invoices sent to UTA’s Project Manager for approval of payment.

**PROJECT MANAGEMENT MODULE HEADER INFORMATION**

(Update or change only those items shown in blue on the screen.)

FIRM DB Engineering & Consulting USA Inc.

**Owner:** UTA  
**Project:** FrontRunner On-call Operations Simulation  
**Description:** Modeling Support

**Project Mgr.:** UTA  
**Start Date:** 10/15/20 [Change as needed]  
 44119  
 Base Rate Multiplier (OH and profit): 3.30 [Change as needed]  
 Other Direct Costs Multiplier: 1.15 [Change as needed]  
 Time Period: Weeks

Date File Setup: 15-Oct-20  
 Date (Now):  
 Time (Now):  
 Filename: See footer  
 Beginning Month: 10  
 Beginning Year: 2020

**End Date:** 10/31/2023  
 45230

**ESTIMATED PERSONNEL RATES:**

Personnel Category	Name	Base Rate	Labor Charge
1 Principal Consultant	Yoav Hagler	\$89.26	\$294.56
2 Principal Consultant	Clayton Johanson	\$78.29	\$258.36
3 Subject Matter Expert	Andreas Hoffrichter	\$89.13	\$294.13
4 Subject Matter Expert	Tom Altman	\$83.00	\$273.90
5 Subject Matter Expert	Marc-Andre Klemenz	\$89.26	\$294.56
6 Managing Consultant	Hamish Pollock Fraser	\$69.32	\$228.76
7 Project Engineer	Darkhan Musanov	\$49.52	\$163.42
8 Project Engineer	Stan Chang	\$44.56	\$147.05
9 Project Admin		\$35.00	\$115.50
10			\$0.00

Note: Personnel rates are the price proposal and used for cost estimation.  
 Feel free to revise titles as desired.  
 If more than 10 titles are needed then additional adjustment is required on the Cost Report