

**PROFESSIONAL SERVICES AGREEMENT**  
22-03606CG Recruitment Advertising Agency

This Professional Services Agreement (“Contract” or “Agreement”) 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 Bayard Advertising Agency, Inc. (“Contractor”).

**RECITALS**

WHEREAS UTA desires to hire professional services for recruitment advertising.

WHEREAS, On October 12,2022, UTA issued Request for Proposal Package Number 22-03606CG (“RFP”) encouraging interested parties to submit proposals to perform the services described in the RFP.

WHEREAS, upon evaluation of the proposals submitted in response to the RFP, UTA selected Contractor as the preferred entity with whom to negotiate a contract to perform the Work.

WHEREAS Contractor 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 here from, 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. Contractor shall perform all Work as set forth in a Scope of Services (the first of which is set forth in Exhibit A) . Except for items (if any) which this Contract specifically states will be UTA-provided, Contractor shall furnish all the labor, material and incidentals necessary for the Work.
- b. Contractor shall perform all Work under this Contract in a professional manner, using at least that standard of care, skill and judgment which can reasonably be expected from similarly situated professionals.
- c. Contractor shall perform all Work in compliance with applicable laws, regulations, rules, ordinances, permit constraints and other legal requirements for the Work being performed.
- d. Contractor shall furnish only qualified personnel and materials necessary for the performance of the Work.
- e. When performing Work on UTA property, Contractor shall comply with all UTA work

site rules that are provided to Contractor in advance and in writing, including, without limitation, those related to safety and environmental protection.

2. **MANAGEMENT OF WORK**

- a. Contractor's Project Manager will be the day-to-day contact person for Contractor and will be responsible for managing the Work, as well as the coordination of such Work with UTA.
- b. UTA's Project Manager will be the day-to-day contact person for UTA, and shall act as the liaison between UTA and Contractor with respect to the Work. UTA's Project Manager shall also coordinate any design reviews, approvals or other direction required from UTA with respect to the Work.

3. **PROGRESS OF WORK**

- a. Contractor shall perform 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. Contractor 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. Contractor shall deliver progress reports as requested by UTA 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 Contractor of its responsibility to comply with the Contract requirements.
- e. UTA will have the right, upon advance written notice, to inspect, monitor and review any Work performed by Contractor 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 Contractor of its responsibility to comply with the Contract requirements.
- f. UTA shall have the right to reasonably reject Work which fails to conform to the requirements within a Scope of Services. Upon receipt of notice of rejection from UTA, Contractor 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 Scope of Service requirements.
- g. If Contractor fails to promptly remedy rejected Work as provided in Section 4.6, UTA may (without limiting or waiving any rights or remedies it may have) perform necessary corrective action using other Contractor s or UTA's own forces. Contractor shall refund UTA for such non-confirming Works.

#### **4. PERIOD OF PERFORMANCE**

This Contract shall commence as of the Effective Date. This Contract shall remain in full force and effect for an initial two- year period expiring January 31<sup>st</sup>, 2025. UTA may, at its sole election and in its sole discretion, extend the initial term for up to three additional one-year option periods, for a total Contract period not to exceed five (5) years. Extension options may be exercised by UTA upon providing Contractor with notice of such election at least thirty (30) days prior to the expiration of the initial term or then-expiring option period (as applicable). This Contract may be further extended if the Contractor and UTA mutually agree to an extension evidenced in writing. The rights and obligations of UTA and Contractor under this Contract shall at all times be subject to and conditioned upon the provisions of this Contract.

#### **5. COMPENSATION**

- a. For the performance of the Work, UTA shall pay Contractor in accordance with the payments provisions described in Exhibit B. Payments shall be made in accordance with the milestones or other payment provisions detailed in Exhibit B.
- b. To the extent that Exhibit B or another provision of this Contract calls for any portion of the consideration to be paid on a time and materials or labor hour basis, then Contractor must refer to the not-to-exceed amount, maximum Contract amount, Contract budget amount or similar designation (any of these generically referred to as the “Not to Exceed Amount”) specified in Exhibit B (as applicable). Unless and until UTA has notified Contractor by written instrument designated or indicated to be a Change Order that the Not to Exceed Amount has been increased (which notice shall specify a revised Not to Exceed Amount): (i) Contractor shall not be obligated to perform services or incur costs which would cause its total compensation under this Contract to exceed the Not to Exceed Amount; and (ii) UTA shall not be obligated to make payments which would cause the total compensation paid to Contractor to exceed the Not to Exceed Amount.
- c. UTA may withhold and/or offset from payment any amounts reasonably reflecting: (i) items of Work that have been rejected by UTA in accordance with this Contract; (ii) invoiced items that are not payable under this Contract; or (iii) amounts Contractor owes to UTA under this Contract.
- d. If Contractor is purchasing media for UTA at UTA’s written direction as part of the Work or under a Scope of Services, all media shall be purchased by Contractor in accordance with the concept of sequential liability, so that Contractor shall not be required to pay the the 3 party media vendor until it receives payment from UTA. . Contractor has the right to confirm with vendors that they expressly agree to payment in accordance with the foregoing terms. Contractor’s arrangements with media vendors made on UTA’s behalf shall be in accordance with media rate cards or other standard or individual conditions and contracts which shall be binding on UTA after reviewed and approval by UTA

6. **ORDER OF PRECEDENCE**

The Order of Precedence for this contract is as follows:

1. UTA Contract including all attachments
2. UTA Terms and Conditions
3. UTA Solicitation Terms
4. Contractor 's Bid or Proposal including proposed terms or conditions

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

7. **CHANGES**

- a. UTA's Project Manager or designee may, at any time, by written order designated or indicated to be a Change Order, request 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) Contractor '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 Contractor whole with respect to the impacts of such change.

- b. A change in the Work may only be directed by UTA through a written and mutually executed Change Order or (alternatively) UTA's expressed, written authorization directing Contractor to proceed pending negotiation of a Change Order. Any changes to this Contract undertaken by Contractor without such written authority shall be at Contractor 's sole risk. Contractor shall not be entitled to rely on any other manner or method of direction.
- c. Contractor 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 Contractor based on the information included in (or referenced by) this Contract. In order to be eligible for equitable relief for "constructive" changes in Work, Contractor must give UTA's Project Manager or designee written notice stating:
- A. The date, circumstances, and source of the change; and

- B. That Contractor regards the identified item as a change in Work giving rise to an adjustment in this Contract.

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

- d. As soon as practicable, but in no event longer than 30 days after providing notice, Contractor 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 Contractor’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.

## 8. **INVOICING PROCEDURES**

- a. Contractor shall invoice UTA after achievement of contractual milestones or delivery of all Goods and satisfactory performance of all Services. Contractor shall submit invoices to [ap@rideuta.com](mailto:ap@rideuta.com) for processing and payment. In order to timely process invoices, Contractor shall include the following information on each invoice:
  - i. Contractor Name
  - ii. Unique Invoice Number
  - iii. PO Number
  - iv. Invoice Date
  - v. Detailed Description of Charges
  - vi. Total Dollar Amount Due
- b. UTA shall have the right to disapprove (and withhold from payment) specific line items of each invoice to address non-conforming Work. Approval by UTA shall not be unreasonably withheld. Payment for all invoice amounts not specifically disapproved by UTA shall be provided to Contractor within thirty (30) calendar days of invoice submittal.

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

Subject to UTA’s payment in full under the applicable Scope of Services, and excluding any Contractor Materials (as defined below) or Third Party Materials (as defined below), any final deliverables prepared or developed pursuant to the Contract and described in the Scope of Services 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 Contractor 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 Work. UTA shall have full rights and privileges to use and reproduce said items, subject to any limitations on Third Party Materials. To the extent that any deliverables include or incorporate intellectual property of Contractor (“Contractor Materials”), subject to UTA’s payment in full under the applicable Scope of Services, Contractor hereby grants UTA a fully paid, perpetual license to use such intellectual property as integrated into the deliverables 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 agent, officers, directors, employees, joint owners, affiliates and contractors. Contractor may, upon UTA’s approval, enter in to agreements with third parties for the use, creation and/or production of certain materials, rights and/or information that will be subject to third party ownership, use and/or payment obligations and/or limitations (“Third Party Materials”); provided, however, UTA shall have agreed to such obligations and/or restrictions. UTA agrees to use third party materials consistent with the restrictions, limitations, obligations and disclaimers for such third party materials as communicated to and approved in advance by UTA in writing.

## 10. USE OF SUBCONTRACTORS

- a. Contractor shall give advance written notification to UTA of any proposed subcontract (not indicated in Contractor’s Proposal) negotiated with respect to the Work. UTA shall have the right to approve all subcontractors, such approval not to be withheld unreasonably.
- b. No subsequent substitution shall be made with respect to any such subcontractor without the prior written approval of UTA.
- c. Contractor shall be solely responsible for making payments to subcontractors.
- d. Contractor shall be responsible for and direct all Work performed by subcontractors.
- e. Contractor further agrees that all subcontracts shall comply with all applicable laws.
- f. “Subcontractor” or “subcontract” as used herein means any third party under Contractor’s direction and control and engaged by Contractor to provide Work for UTA’s benefit, which Work would otherwise be provided by Contractor as part of its staffing and fee under the relevant Scope of Services. “Subcontractors” or “subcontract” as used herein, do not include third parties engaged by Contractor on UTA’s behalf at UTA’s written direction in accordance with this Contract to perform services or provide materials or rights that are ancillary or supplemental to Contractor’s Work (e.g., media vendors, production companies, technology vendors, and research vendors) (“Ancillary Vendors”). Although Contractor shall endeavor to guard against any loss to UTA as the result of the failure of Ancillary Vendors to properly execute their commitments, Contractor will not be responsible for their failure or their other acts or omissions.

## 12. KEY PERSONNEL

Contractor shall provide the key personnel as indicated in the Scope of Services and shall not change any of said key personnel without the express written consent of UTA, provided that such key

personnel remain employed with Contractor or are not on leave.

### 13. **SUSPENSION OF WORK**

- a. UTA may, on thirty (30) days' advance written order to Contractor, require Contractor 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, Contractor shall promptly 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. UTA will pay all reasonable and documented amounts UTA owes under this Agreement for Work properly performed, expenses incurred or irrevocably committed up to the date of the suspension.
- b. If a Suspension of Work Order issued under this Article is canceled, Contractor 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 as permitted in Section 14 herein, 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 Contractor's cost or time to perform the Work, UTA's Project Manager or designee shall make an equitable adjustment to compensate Contractor for the additional costs or time, and modify this Contract by Change Order.

### 14. **TERMINATION**

a. **FOR CONVENIENCE:**

Either party shall have the right to terminate the Contract at any time by providing ninety (90) days' advance written notice to Contractor. If the Contract is terminated for convenience, UTA shall pay Contractor: (i) in full for Work delivered and fully performed prior to the effective date of termination, expenses incurred or irrevocably committed; and (ii) an equitable amount to reflect costs incurred (including Contract close-out and subcontractor 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. Contractor shall promptly submit a termination claim to UTA. If Contractor has any property in its possession belonging to UTA, Contractor will account for the same, and dispose of it in the manner UTA directs.

b. **FOR DEFAULT:**

If either party (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; or (e) fails to comply with any of its material obligations under the Contract, a non-breaching party may, in its discretion, after first giving the breaching party thirty (30) days written

notice to cure such default:

1. Terminate the Contract (in whole or in part);
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.

Upon termination UTA will promptly pay all reasonable and documented amounts UTA owes under this Agreement for Work properly performed, expenses incurred or irrevocably committed up to the date of the termination.

**CONTRACTOR 'S POST TERMINATION OBLIGATIONS:**

Upon receipt of a termination notice as provided above, Contractor shall (i) promptly discontinue all work affected (unless the notice directs otherwise); and (ii) subject to UTA paying all amounts owed to Contractor, deliver to UTA all data, drawings and other deliverables, whether completed or in process. Contractor 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. All rights and remedies provided in this Article are cumulative and not exclusive. If UTA terminates the Contract for any reason, Contractor shall remain available, for a period not exceeding 90 days, to UTA to respond to any reasonable questions or concerns that UTA may have regarding the Work furnished by Contractor prior to termination.

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

Contractor 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, cost documentation related to the performance as well as subcontracts, purchase orders, other contract documents, invoices, receipts or other documentation supporting non-labor costs. Contractor shall also retain other financial books and records related to the performance, quality, or management of this Contract and/or Contractor's compliance with this Contract. Records shall be retained by Contractor for a period of at least four (4) years after completion of the Work. During the Term hereof, financial records shall, upon at least thirty (30) days advance written notice, once per year, be made available at reasonable business hours, for UTA's Auditor (as defined below) to audit and inspect such financial records. Copies of requested records shall be furnished to Auditor upon request. Contractor agrees that it shall flow-down (as a matter of written contract) these records requirements to all subcontractors utilized in the performance of the Work at any tier. "Auditor" shall be defined as a suitably qualified independent third-party auditor from a certified public accounting firm, who is not compensated on a contingency fee or other similar basis or providing cost consulting services to UTA, and has signed a mutually agreeable non-disclosure agreement. Auditor shall not be provided with access to individual payroll and personnel files; any information relating to Contractor's other clients; any of Contractor's overhead or other non-billable costs or related information; underlying elements of fixed pricing arrangements; non-disclosed media sales; any information subject to restrictions in contracts with third parties; Contractor's IT infrastructure, servers and systems; any information relating to agreements entered into by Contractor as principal (excluding those entered into by Contractor on behalf of UTA); or any information that is subject

to legal restrictions.

**16. FINDINGS CONFIDENTIAL**

Any documents, reports, information, or other data and materials delivered or made available to or prepared or assembled by Contractor or subcontractor under this Contract are considered confidential and shall not be made available to any person, organization, or entity by Contractor without consent in writing from UTA. If confidential information is released to any third party without UTA’s written consent as described above, contractor shall notify UTA of the data breach within 10 days and provide its plan for immediate mitigation of the breach for review and approval by UTA.

- a. It is hereby agreed that the following information is not considered to be confidential:
  - A. Information known or that becomes known to the public.
  - B. Information disclosed to Contractor by a third party who is not under a confidentiality obligation.
  - C. Information developed by or in the custody of Contractor before entering into this Contract.
  - D. Information developed by Contractor through its work with other clients; and
  - E. Information required to be disclosed by law or regulation including, but not limited to, subpoena, court order or administrative order.

Subject to Paragraph 17 below, the obligations of Contractor herein with respect to the confidential information of UTA shall apply to UTA with respect to the Contractor Confidential Information, mutatis mutandis, as if fully set forth herein. “Contractor Confidential Information,” for purposes of this Contract, means any information the Contractor identifies as confidential or which, or based on the nature of the information and the circumstances of disclosure, reasonably be understood to be confidential, including, but not limited to, Contractor’s fees, any information about Contractor’s clients or competitors, and the rates and other terms negotiated by Contractor with third parties providing goods or services in connection with this Contract.

**17. PUBLIC INFORMATION.**

Contractor acknowledges that the Contract and related materials (invoices, orders, etc.) will be public documents under the Utah Government Records Access and Management Act (GRAMA). Contractor’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.

**18. GENERAL INDEMNIFICATION**

Contractor shall indemnify, hold harmless and defend UTA, its officers, trustees, agents, and employees (hereinafter collectively referred to as “UTA Indemnitees”) from and against all third party 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

Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any Claim or amount arising out of the failure of such Contractor to conform to federal, state, and local laws and regulations. The indemnity obligations of Contractor shall not apply to the extent that claims arise out of the sole negligence of UTA or the UTA Indemnitees.

UTA will be responsible for all information that it furnishes to Contractor, including but not limited to information concerning UTA's organization, industry, or services. UTA shall indemnify, hold harmless and defend Contractor, including its parents, subsidiaries, sisters and other affiliated companies and each of their respective directors, officers, employees, and agents (hereinafter collectively referred to as "Contractor Indemnitees") from and against all third party Claims related to: (i) a breach or alleged breach of UTA's representations, warranties, covenants or obligations under this Agreement; (ii) any job posting, advertising or other forms of communication provided by or approved prior to release by UTA; (iii) UTA's hiring practices, employment or job interviewing practices, programs or services; (iv) UTA's sale and provisioning of its products and services, (v) acts by Contractor taken with UTA's approval, except where such claim results from an action or a failure to act by Contractor that constitutes negligence or intentional misconduct of Contractor; or (vi) any investigation of the acts or practices of UTA including, without limitation, any costs or expenses related to compliance with any third party subpoena or other discovery request. No settlement or compromise that imposes any liability or obligation on any Contractor Indemnitees will be made without the Contractor Indemnitees' prior written consent (not to be unreasonably withheld, conditioned or delayed, it being acknowledged that a Contractor Indemnitees' consent to any settlement or compromise that does not include a full and complete release of Contractor Indemnitees may be withheld). Notwithstanding the foregoing, Contractor shall have the right, but not the obligation, to participate in the defense and/or settlement of any losses at its own cost and expense, and UTA shall cooperate in the defense of any losses and provide such assistance and information as is reasonably requested for such defense.

NEITHER PARTY WILL BE LIABLE FOR ANY CONSEQUENTIAL, PUNITIVE, SPECIAL, INCIDENTAL OR INDIRECT DAMAGES, INCLUDING ALL LOST PROFITS OR LOST BUSINESS OPPORTUNITIES, HOWEVER ARISING, WHETHER FROM THIS AGREEMENT OR OTHERWISE. EXCEPT FOR INDEMNITY OBLIGATIONS ARISING UNDER PARAGRAPH 18 ABOVE, CONTRACTOR'S LIABILITY UNDER THIS AGREEMENT SHALL NOT EXCEED THE AMOUNTS ACTUALLY PAID TO CONTRACTOR BY UTA AS ITS FEE (EXCLUDING ALL THIRD PARTY EXPENSES AND MEDIA COSTS) IN THE 12 MONTHS PRIOR TO THE CLAIM ARISING.

19. **INSURANCE REQUIREMENTS**

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The UTA in no way warrants that the

minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this contract by the Contractor, his agents, representatives, employees or subcontractors and Contractor is free to purchase additional insurance as may be determined necessary.

A. MINIMUM SCOPE AND LIMITS OF INSURANCE: Contractor 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.

1. Commercial General Liability – Occurrence Form

Policy shall include bodily injury, property damage and broad form contractual liability coverage.

- General Aggregate \$2,000,000
- Products – Completed Operations Aggregate \$1,000,000
- Personal and Advertising Injury \$1,000,000
- Each Occurrence \$1,000,000

a. 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 Contractor".

2. Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and non-owned vehicles used in the performance of this Contract.

- Combined Single Limit (CSL) \$1,000,000

a. 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 Contractor, including automobiles owned, leased, hired or borrowed by the Contractor".

3. Worker's Compensation and Employers' Liability

- Workers' Compensation Statutory
- Employers' Liability
- Each Accident \$100,000
- Disease – Each Employee \$100,000
- Disease – Policy Limit \$500,000

a. Policy shall contain a waiver of subrogation against the Utah Transit Authority.  
 b. This requirement shall not apply when a Contractor or subcontractor is exempt under UCA, AND when such Contractor or subcontractor executes the appropriate waiver form.

4. Professional Liability (Errors and Omissions Liability)

The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Services of this contract.

Each Claim	\$75,000
Annual Aggregate	\$2,000,000

- a. In the event that the professional liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of three (3) years beginning at the time work under this Contract is completed.

**B. ADDITIONAL INSURANCE REQUIREMENTS:** The policies shall include, or be endorsed to include the following provisions:

- 1. On insurance policies where the UTA is named as an additional insured, the Utah Transit Authority shall be an additional insured to the full limits of liability purchased by the Contractor. Insurance limits indicated in this agreement are minimum limits. Larger limits may be indicated after the Contractor's assessment of the exposure for this contract; for their own protection and the protection of UTA.
- 2. The Contractor's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.
- 3. Contractor and their insurers shall endorse the required insurance policy(ies) to waive their right of subrogation against UTA. Contractor's insurance shall be primary with respect to any insurance carried by UTA. Contractor will furnish UTA at least thirty (30) days advance written notice of any cancellation or non-renewal of any required coverage that is not replaced.

**D. ACCEPTABILITY OF INSURERS:** Insurance is to be placed with insurers duly licensed or authorized to do business in the State and with an "A.M. Best" rating of not less than A-VII. UTA in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

**E. VERIFICATION OF COVERAGE:** Contractor shall furnish the Utah Transit Authority with certificates of insurance (on standard ACORD form) 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 sent to contract specialist and received and approved by the Utah Transit Authority 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.

All certificates required by this Contract shall be emailed directly to Utah Transit Authority's insurance email address at [insurancecerts@rideuta.com](mailto:insurancecerts@rideuta.com). The Utah Transit Authority project/contract number and project description shall be noted on the certificate of insurance. The Utah Transit Authority reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time. **DO NOT SEND CERTIFICATES**

OF INSURANCE TO THE UTAH TRANSIT AUTHORITY'S CLAIMS AND INSURANCE DEPARTMENT.

- G. APPROVAL: Any modification or variation from the insurance requirements in this Contract shall be made by Claims and Insurance Department or the Office of General Counsel, whose decision shall be final. Such action will not require a formal Contract amendment, but may be made by administrative action.

20. **OTHER INDEMNITIES**

- a. Contractor 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 Contractor's performance under this Contract, provided that all Work is used by UTA as provided by Contractor and without modification, and provided further that the infringement does not result from any materials provided by the UTA. If notified promptly in writing and given authority, information and assistance, Contractor shall defend, or may settle at its expense, any suit or proceeding against UTA so far as based on a claimed infringement and Contractor 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, Contractor shall, at its expense and through mutual agreement between the UTA and Contractor, either procure for UTA any necessary intellectual property rights, or modify Contractor's services or deliverables such that the claimed infringement is eliminated.

21. **REPRESENTATIONS**

UTA represents and warrants to Contractor that it: (i) shall use commercially reasonable efforts to perform and promptly complete the obligations it is responsible for and shall make payment for all Work rendered according to the terms and conditions hereof and as set forth within a Scope of Services, (ii) is responsible for the accuracy, completeness and propriety of information concerning its organization, products, services, industry, or competitors, including any information, disclosures or requirements which are imposed upon UTA as a result of its business activities by any governmental, regulatory or oversight agency, body, tribunal or proceeding; (iii) all of the materials, job postings, content, marks, trademarks, logos or other materials provided to Contractor will not infringe or violate the rights of any third party; and (iv) it shall at all times be in compliance with all applicable laws and regulations.

22. **INDEPENDENT CONTRACTOR**

Contractor shall have the right to enter in to agreements with Ancillary Vendors, which have been approved by UTA in accordance with this Agreement, as a limited agent for a disclosed principal. Except as agreed to herein, Contractor is an independent contractor 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. Contractor is responsible to provide and pay the cost of all its employees' benefits.

23. **PROHIBITED INTEREST**

During the Term and for a period of one (1) year thereafter, neither party will solicit, recruit, hire or engage, directly or indirectly, any employee of the other party with whom such party has had contact in connection with the relationship arising under this Agreement. It shall not be a violation of this Section for either party, as applicable, to advertise for personnel in generally available media, including through newspaper advertising, the internet, job fairs, recruiters and similar methods, and to hire any personnel of the other that contact them as a consequence of such advertising.

24. **CLAIMS/DISPUTE RESOLUTION**

a. "Claim" means any disputes between UTA and the Contractor arising out of or relating to the Contract 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, Contractor 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/Contractor's Project Manager	Five calendar days
UTA's Chief People Officer/Contractor's Colin Whitaker	Five calendar days
UTA's Executive Director/Contractor's Colin Whitaker	Five calendar days

Unless otherwise directed by UTA's Project Manager, Contractor 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, then 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 Contractor consents to the jurisdiction of such courts.

26. **ASSIGNMENT OF CONTRACT**

Contractor 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, provided, however, that Contractor may assign its complete rights and obligations under this Contract, upon notice without such consent, in connection with the sale of Contractor's business, whether by merger, sale of stock or sales of substantially all of Contractor's assets.

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: Chad Gonzales  
669 West 200 South  
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 Contractor:  
Bayard Advertising Agency, Inc.  
Louis Naviasky  
1430 Broadway  
New York, NY 10018

- 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 27, 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 Chad Gonzales, 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 CONTRACTOR EMPLOYEES AND SUBCONTRACTORS UNDER DESIGN AND CONSTRUCTION CONTRACTS**

- a. Contractor shall, prior to the effective date of this Contract, demonstrate to UTA that Contractor has and will maintain an offer of qualified health insurance coverage (as defined by Utah Code Ann. § 17B-2a-818.5) for the Contractor's employees and the employee's dependents during the duration of this Contract.
- b. Contractor shall also demonstrate to UTA that subcontractors 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 subcontractor's employees and the employee's dependents during the duration of the subcontract.

31. **COSTS AND ATTORNEYS' FEES**

32. INTENTIONALLY OMITTED **NO THIRD-PARTY BENEFICIARY**

The parties enter into 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, pandemic, epidemic, network outage, or any other extreme event which are beyond that party's reasonable control. Notwithstanding the foregoing, if the inability of either party to perform continues for a period greater than sixty (60) days from written notice to the other, the affected party shall have the option of terminating the Agreement immediately, provided that UTA will pay all reasonable and documented amounts UTA owes under this Contract for Work properly performed, expenses incurred or irrevocably committed up to the date of the termination.

34. **UTAH ANTI-BOYCOTT OF ISRAEL ACT**

Contractor agrees it will not engage in a boycott of the State of Israel for the duration of this contract.

**35. TRAVEL COSTS**

Any travel costs charged against this contract and paid for with contract funds must be in compliance with UTA's Travel Policy (UTA .02.XX) and the U.S. General Services Administration (GSA) per diem rates

**36. 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.

**37. 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 Contractor's work plans, cost estimate forms, receiving tickets, invoices, or any other related standard forms or documents of Contractor 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:**

**CONTRACTOR :**

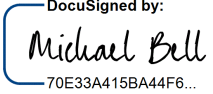
By: Date:  
Greg Gerber  
Director Talent Acquisition

By: Date:

By: Date:  
Kimberly Shanklin  
Chief People Officer

By: Date:  
Jay Fox  
Executive Director

Approved as to Content and Form

By:  Date: 12/23/2022  
70E33A415BA44F6...  
Mike Bell, AAG State of Utah  
And UTA Legal Counsel

## **Exhibit A – scope of work**

The Contractor is expected to perform and fulfill the following activities and requirements for Utah Transit Authority and is also required to utilize the current set of Employment Brand and Employee Value Proposition Assets owned by UTA.

### **Recruitment Advertising & Marketing Campaigns**

Each year, the Contractor will provide expertise and assist UTA in the development and implementation of several campaigns and activities that achieve the campaign objectives while maintaining UTA's brand identity. These typically include, but may not be limited to, the following:

- Corporate Branding and Recruiting Campaigns: one (4) main campaigns each year.
- Change Day occurs three times per year (April, August & November). Depending on the size and scope of the change day, UTA may implement a paid media campaign to create awareness about the job openings.
- Targeted Campaigns: Identified paid media campaigns for specific recruitment needs as defined throughout the year. Examples include:
  - o Bus Operator Hiring Open House
  - o Maintenance Hiring Open House.

### **Special Events & Collateral Materials**

- Special Events: The Contractor shall provide support in planning and producing collateral materials for special events (invitations, banners, programs, etc.) Average 2-3 events per year.
- Collaterals: The Contractor shall provide design and production of collaterals for various projects and programs. Averages 3-5 pieces per year. Examples include the Year in Review, the Federal Priorities document and the Fast Facts booklet.

### **Research**

- Tracking Candidate Experience

#### **Contractor to perform the following services for UTA:**

- A. Employ on behalf of UTA, Contractor's knowledge of recruitment marketing, advertising, public relations, branding, image and reputation building, graphics, production, special event planning and market research.
- B. Employ on behalf of UTA, Contractor's knowledge of market research and analysis. Consult and coordinate with UTA on analyzing its candidate experience, analyzing present and potential markets, conducting market research, analyzing job seeker trends, and Talent Acquisition products and services strategies.
- C. Contractor shall provide services to UTA through an account team generally consisting of the following functions:

- 1) Account Manager
- 2) Account Supervisor
- 3) Account Coordinator
- 4) Creative Director
- 5) Senior Copywriter
- 6) Copywriter
- 7) Art Director
- 8) Designer
- 9) Production Artist
- 10) Traffic/Production Manager
- 11) Media Buying/Planning
- 12) Secretarial
- 13) Delivery
- 14) Other Agency personnel as required

- D. Employ on behalf of UTA, Contractor's knowledge of the available media and means which can be effectively used to advertise UTA's Job openings and to assist UTA in executing the agency's various recruitment advertising/marketing campaigns and programs.
- E. Identify recommended message and creative strategies for campaigns. Develop recommended strategies based on analysis of relevant brand, labor market statistics, market and other current conditions affecting UTA and its ability to meet the agency's hiring goals and objectives.
- F. Coordinate the development, writing, design, illustration and production of UTA's recruitment advertisements and marketing materials, as approved by UTA.
- G. Perform media planning for advertising and marketing campaigns. Prepare a recommended media plan and present to UTA for approval. Upon approval of the media plan, order the space, time or other means to be used, endeavoring to secure the most advantageous rates available in the market.
- H. Coordinate the production and trafficking of electronic or printed materials used in UTA's advertising and marketing campaigns.
- I. Check and verify insertions, displays, broadcasts or other means used.
- J. Audit invoices for space, time preparations and services used. Provide media delivery recaps.
- K. Pay media and suppliers.
- L. Provide monthly budget spreadsheets.
- M. Contractor shall devote its best efforts to UTA's interests, and endeavor in every

way to make UTA's recruitment advertising program successful. UTA shall aid Contractor by making available to Contractor information pertaining to UTA's business and to cooperate with Contractor in expediting Contractor's work.

- N. Contractor shall purchase the materials and services required to produce advertising for the once the appropriate and necessary approvals have been obtained. All such materials and services, including copyrights, will become UTA's property upon payment by UTA.
- O. Contractor shall provide to UTA creative, production, media, special events and research cost estimates covering out-of-pocket and time costs for signature approval prior to action being taken on any and all jobs Contractor performs. In the event that time and circumstances do not permit signature approval by UTA's designated representative(s), the General Manager or designee may grant verbal approval for the Contractor to act without written approval. After UTA approves the production estimates, any material change, or variance will be reported to UTA immediately for approval as to said change or variance.
- P. Title to all creative materials shall be and remain with the Contractor until payment is made by UTA pursuant to the terms of this RFP and the final agreement thereto, at which time title shall pass to UTA.
- Q. Contractor shall use its best knowledge and ability to guard against any loss to UTA through failure of media or suppliers to properly execute their commitments, but Contractor shall not be held responsible for any failure on the part of the media entity. This RFP and the final agreement thereto shall not be construed as committing Contractor to violate any lawful contractual agreements to any media entity.
- R. Contractor shall obtain all necessary releases, licenses, permits or other authorization to use photographs, copyrighted materials, artwork or any other property or rights belonging to third parties obtained by Contractor for use in performing services for UTA, and shall indemnify and hold harmless UTA from any misuse of or violation of same.
- S. UTA shall not be asked to approve, nor shall Contractor be required to undertake any campaign, prepare any advertising material or publicity or cause publication of any advertisement or article which, in either UTA's judgment or the Contractor's judgment would be misleading, indecent, libelous, unlawful, or otherwise prejudicial to UTA's or Contractor's interests.
- T. Contractor will use its best efforts to protect UTA from use of any form of advertising which could be construed as infringing on the rights or copyrights of third parties.

## Exhibit B – Cost

Contractor will charge UTA 10% media service markup for the below services requested by UTA.

### **Reporting**

- Expertise in Pixel/Javascript & Tracking Placement (vital)
- Tagging/tracking of all media
- Vanity URL creation
- Landing page analytics
- Career page/website analytics
- Data scrubbing/organization
- Real-Time Data visualization and performance analytics
- Monthly reporting call with analyst team

### **Job Distribution (Programmatic)**

- 50+ Years of Programmatic Experience (Avg tenure 6 years)
- Job distribution to performance media publishers via AppFeeder
- Job distribution to contracts for better tracking/management

### **Acumen Market Research**

- Market research portal
- Salary comparison
- Migration patterns
- Competitor analysis
- New market exploration
- Relocation recommendations

### **Media Research & Campaign Development**

- Industry Exclusive Google Premier Partner
- FB Certified - Social (FB,IG, Snap, etc)
- Media analysis and audience targeting
- ROI/CPA based media Management across industry and non-industry High Traffic Publishers
- Annual and one-off campaign creation
- SWOT analysis for market penetration/opportunity

### **Account Management**

- Dedicated Account Manager
- Dedicated Media Specialist
- Dedicated Programmatic Trader

### **ATS/CRM/Chat & Schedule Tool Consultation**

- Pixel/Javascript management
- Pixel/Javascript optimization
- Source code assessments (ongoing)
- Candidate Flow/Apply Process/Conversion workshops
- New ATS/upgrade assessment and support for transition

### **Vendor Summits**

- On-site vendor summits 1-2x annually
- Review of key products, new product roadmap
- Media utilization and optimization review for TA staff

### **Business Reviews**

- Quarterly
- Annual planning

### **Google Site**

- Forms, example site here
- Planning and tracking of media including all contracts

### **Company Page Maintenance**

- Quarterly recommendations for changes/optimization on company pages (includes copywriting/creative for updates)

In the event UTA asks contractor for design services to assist UTA's recruitment campaigns, contractor's hourly rate will be billed to UTA at \$225 per hour.

The base contract will hold a not-to-exceed \$1,000,000. If all options are exercised the total contract value will be \$2,500,000.

Billing to be monthly.