

**CONSTRUCTION SERVICE AGREEMENT  
UTA CONTRACT NO. 21-03488VW**

**UTA Mount Ogden Business Unit Bus Facility Expansion**

This Construction Services 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 R&O Construction (“Contractor”).

**RECITALS**

- A. UTA desires to hire Contractor for construction of a building expansion at the Mount Ogden Facility per the Specifications and Bid Schedule to include but not limited.
- B. On September 1, 2021, UTA issued Request for Proposal Package Number 21-03488VW (“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 Contractor as the best value alternative with whom to negotiate a contract to perform the Work.
- D. 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 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. Contractor shall perform all Work as set forth in the Scope of Services (Exhibit A) except that no work shall be performed on Option #1 until specific written notice of exercise is received from the UTA Contract Administrator. 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. All Work shall conform to generally accepted standards in the transit industry. Contractor 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. 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 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 all 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 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. 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 monthly progress reports 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 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 reject Work which fails to conform to the requirements of this Contract. 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 Contract requirements.
- g. If Contractor fails to promptly remedy rejected Work as provided in Section 3.6, UTA may (without limiting or waiving any rights or remedies it may have) perform necessary corrective action using other contractors or UTA's own forces. Any costs reasonably incurred by UTA in such corrective action shall be chargeable to Contractor.

#### **4. 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. Contractor shall substantially complete all Work no later than 12 months after notice to proceed, or December 31, 2022, whichever is later. This guaranteed completion date may be extended if Contractor and UTA mutually agree to an extension evidenced by a written Change Order. 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 Addendum 1, Supplemental Terms and Conditions for Construction.
- 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 cost-reimbursement basis, such costs shall only be reimbursable to the extent allowed under 2 CFR Part 200 Subpart E. Compliance with federal cost principles shall apply regardless of funding source for this Contract.
- c. 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.
- d. 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.

#### **6. INCORPORATED DOCUMENTS**

- a. The following documents hereinafter listed in chronological order, with most recent document taking precedence over any conflicting provisions contained in prior documents (where applicable), are hereby incorporated into the Contract by reference and made a part hereof:
  1. The terms and conditions of this Construction Services Agreement
  2. The Addendum 1 Supplemental Terms and Conditions for Construction Services. (Including any exhibits and attachments hereto).
  3. Contractor's Proposal including, without limitation, all federal certifications (as applicable); and exceptions listed in Exhibit F.
  4. 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 Construction Services;
- b. The above-referenced documents are made as fully a part of the Contract as if hereto.

## **7. ORDER OF PRECEDENCE**

The Order of Precedence for this contract is as follows:

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

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

## **8. INVOICING PROCEDURES**

- a. Contractor shall submit invoices to UTA's Project Manager for processing and payment in accordance with Addendum 1, Supplemental Terms and Conditions for Construction. Invoices shall be provided in the form specified by UTA. Reasonable supporting documentation demonstrating Contractor'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 Contractor under this Contract. 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**

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 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 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 Contractor, Contractor 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 contractors, agent, officers, directors, employees, joint owners, affiliates and Contractors.

**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 change, removal or 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, and such payments shall be made within thirty (30) days after Contractor receives corresponding payments from UTA.
- d. Contractor shall be responsible for and direct all Work performed by subcontractors.
- e. Contractor agrees that no subcontracts shall provide for payment on a cost-plus-percentage-of-cost basis. Contractor further agrees that all subcontracts shall comply with all applicable laws.

**11. KEY PERSONNEL**

Contractor shall provide the key personnel as indicated in Contractor'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.

**12. 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, 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. Contractor shall also retain other 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 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. 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.

**13. FINDINGS CONFIDENTIAL**

Any documents, reports, information, or other data and materials available to or prepared or assembled by Contractor or subcontractors 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.

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

- a. Information already in the public domain;
- 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.

**14. 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.

**15. GENERAL INDEMNIFICATION**

Contractor 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 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. If an employee of Contractor, a subcontractor, 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, Contractor’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 Contractor shall not apply to the extent that claims arise out of the sole negligence of UTA or the Indemnitees.

**16. 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 Utah Transit Authority 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 \$4,000,000
- Products – Completed Operations Aggregate \$1,000,000
- Personal and Advertising Injury \$1,000,000
- Each Occurrence \$2,000,000

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) \$2,000,000

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	\$1,000,000
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 Utah Transit Authority 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.

C. NOTICE OF CANCELLATION: Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided or canceled except after thirty (30) days prior written notice has been given to the Utah Transit Authority, except when cancellation is for non-payment of premium, then ten (10) days prior notice may be given. Such notice shall be sent directly to (Utah Transit Authority agency Representative's Name & Address).

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. The Utah Transit Authority 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 [insurancecerts@rideuta.com](mailto:insurancecerts@rideuta.com) 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.

F. SUBCONTRACTORS: Contractors' certificate(s) shall include all subcontractors as additional insureds under its policies or subcontractors shall maintain separate insurance as determined by the Contractor, however, subcontractor's limits of liability shall not be less than \$1,000,000 per occurrence / \$2,000,000 aggregate. Sub-contractors maintaining separate insurance shall name Utah Transit Authority as an additional insured on their policy. Blanket additional insured endorsements are not acceptable from sub-contractors. Utah Transit Authority must be scheduled as an additional insured on any sub-contractor policies.

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

**17. 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. 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.

- b. Contractor 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 subcontractors 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 Contractor or its subcontractors of any tier. If any lien arising out of this Contract is filed, before or after Work is completed, Contractor, 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 Contractor 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 Contractor 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 subcontractor, Contractor shall assume the defense of such claim within ten (10) calendar days after receiving from UTA written notice of such claim. If Contractor fails to do so, Contractor shall upon demand reimburse UTA for all costs incurred and expenditures made by UTA to satisfy such claim.

**18. INDEPENDENT CONTRACTOR**

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.

**19. 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 Contractor in this Contract or the proceeds thereof without specific written authorization by UTA.

**20. CLAIMS/DISPUTE RESOLUTION**

- a. "Claim" means any disputes between UTA and the Contractor 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, 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 Director/Contractor Equivalent	Five calendar days
UTA's Chief Officer/Contractor Equivalent	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, 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.

**21. 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.

**22. 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.

**23. 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.

**24. NOTICES OR DEMANDS**

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: Vicki Woodward  
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:  
R&O Construction  
ATTN: Jeff Herrick  
933 Wall Avenue  
Ogden, UT 84404

- a. 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.
- b. 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.

**25. CONTRACT ADMINISTRATOR**

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

**26. INSURANCE COVERAGE REQUIREMENTS FOR CONTRACTOR 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) Contractor has a subcontract at any tier that involves a sub-Contractor 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. 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.
- c. 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.

**27. 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

**28. 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.

**29. 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.

**30. 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.

**31. 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.

**32. 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.

**33. AMENDMENTS**

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

**34. 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.

**35. 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.

**UTAH TRANSIT AUTHORITY:**

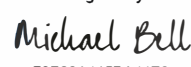
By: \_\_\_\_\_ Date: \_\_\_\_\_  
David Hancock  
Acting chief Service Development Officer

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Mary DeLoretto  
Interim Executive Director

**R&O Construction:**

DocuSigned by:  
*Frank McDonough* Date: 11/2/2021  
By: \_\_\_\_\_  
Name: Frank McDonough  
Senior Vice President  
Fed ID# 87-0357889

Approved as to Content and Form

DocuSigned by:  
By:   
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Mike Bell, AAG State of Utah  
And UTA Legal Counsel

Date 11/2/2021

DocuSigned by:  
By:   
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Reviewed & Recommended  
Andrea Pullos, UTA Project Manager

Date 11/2/2021

UTA Project Code 21-03488VW

Addendum 1- Supplemental Terms and Conditions for Construction  
Maintenance Bay Expansion Construction at the Mount Ogden Facility

**ARTICLE 1**

- 1.1 **Cooperation.** UTA and Contractor commit at all times to cooperate fully with each other, and proceed on the basis of trust and good faith, so as to permit each party to realize the benefits afforded under the Contract Documents.
- 1.2 **Professional Standards.** Contractor shall perform the Work in a good and workmanlike manner, and shall use reasonable skill, care, and diligence. If the Work includes professional services, Contractor shall perform those services in a professional manner, using at least that standard of care, skill and judgment that can reasonably be expected from similarly situated professionals.
- 1.3 **Definitions.** Terms that are defined in the Agreement have the same definition in all the Contract Documents, including in these General Conditions. Unless expressly modified by the Agreement, the following definitions shall also apply to all Contract Documents:

**“Agreement”** means the document signed by Contractor and UTA to which these General Conditions are attached as an exhibit or into which these General Conditions are incorporated by reference.

**“Application for Payment”** shall mean an invoice for a progress or final payment made in accordance with the requirements of Article 4.

**“Basis of Design Documents”** means those preliminary drawings, concept design drawings, technical requirements, performance requirements, project criteria, or other documents that are (i) included in the Contract Documents, and (ii) serve as the basis or starting point for design services to be performed by Contractor, if any.

**“Claim”** has the meaning indicated in Section 8.1 of these General Conditions.

**“Construction Documents”** means the final drawings and specifications that set forth in detail the requirements for construction of the Project.

**“Contract Documents”** means those documents designated as Contract Documents in the Agreement.

**“Contract Times”** means the guaranteed dates for Substantial Completion, Final Completion (if applicable), and any other deadlines for completion of the **Work**, or a part thereof, all as set forth in the Agreement.

**“Contractor”** means the entity that has entered into a contract with UTA to perform construction and other services as detailed in the Contract Documents. The Contractor may be a Design-Builder, general contractor, Construction Manager/General Contractor, or other type of entity.

**“Day”** means a calendar day unless otherwise specifically noted in the Contract Documents.

**“Differing Site Condition”** has the meaning indicated in Section 3.2 of these General Conditions.

**“Final Completion”** has the meaning indicated in Section 4.7 of these General Conditions.

**“Force Majeure Event”** means a delay caused by any national or general strikes, fires, riots, acts of God, acts of the public enemy, floods, acts of terrorism, unavoidable transportation accidents or embargoes, or other events: (i) which are not reasonably foreseeable as of the date the Agreement was executed; (ii) which are attributable to a cause beyond the control and without the fault or negligence of the party incurring such delay; and (iii) the effects of which cannot be avoided or mitigated by the party claiming such Force Majeure Event through the use of commercially reasonable efforts. The term Force Majeure Event does not include a delay caused by seasonal weather conditions, inadequate construction forces, general economic conditions, changes in the costs of goods, or Contractor’s failure to place orders for equipment, materials, construction equipment or other items sufficiently in advance to ensure that the **Work** is completed in accordance with the Contract Documents.

**“General Conditions”** means this document.

**“Legal Requirements”** means all applicable federal, state, and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any **Work** including, without limitation, those related to safety and environmental protection. The terms Legal Requirements shall also include any requirements or conditions included in a permit required for, or issued in conjunction with, the Project.

**“Potential Change Notice”** has the meaning indicated in Section 7.3 of these General Conditions.

**“Project”** means the construction project described in the Agreement.

**“Punchlist”** means shall mean a schedule of Work items (developed in accordance with the procedures described in Article 4) which remain to be completed prior to Final Completion, but which do not adversely affect the performance, operability, capacity, efficiency, reliability, cost effectiveness, safety or use of the Project after Substantial Completion.

**“Schedule of Values”** means the detailed statement furnished by Contractor and approved by UTA in accordance with Section 4.1, which statement outlines the various components of the Contract Price and allocates values for all such components in a manner that can be used for preparing and reviewing invoices.

**“Site”** means the land or premises on which the Project is located, as more particularly defined and described in the Contract Documents.

**“Subcontractor”** means any person or entity (including subcontractors at any tier, design engineers, laborers, and materials suppliers) retained by Contractor or any other Subcontractor to perform a portion of Contractor’s obligations under the Contract Documents.

**“Substantial Completion”** or **“Substantially Complete”** has the meaning indicated in Section 4.6 of these General Conditions.

**“Work”** means all obligations, duties, requirements, and responsibilities for the successful completion of the Project by Contractor, including furnishing of all services and/or equipment (including obtaining all applicable licenses and permits to be acquired by Contractor) in accordance with the Contract Documents.

## **ARTICLE 2**

### **Contractor’s Services**

#### **2.1 General Services.**

- 2.1.1 Contractor’s Project Manager shall be reasonably available to UTA and shall have the necessary expertise and experience required to supervise the Work. Contractor’s Project Manager shall communicate regularly with UTA and shall be vested with the authority to act on behalf of Contractor.
- 2.1.2 Contractor shall provide UTA with a monthly status report detailing the progress of the Work, including: (i) whether the Work is proceeding according to schedule; (ii) whether discrepancies, conflicts, or ambiguities exist in the Contract Documents that require resolution; (iii) whether unusual health and safety issues exist in connection with the Work; and (iv) other items that

require resolution so as not to jeopardize Contractor's ability to complete the Work for the Contract Price and within the Contract Time(s).

2.1.3 Unless a schedule for the execution of the Work has been attached to the Agreement as an exhibit at the time the Agreement is executed, Contractor shall prepare and submit, within seven (7) Days of the execution of the Agreement, a schedule for the execution of the Work for UTA's review and response. The schedule must indicate the dates for the start and completion of the various stages of Work, including the required dates when UTA obligations must be completed to enable Contractor to achieve the Contract Time(s). Such UTA obligation dates may include (where contemplated in the Contract Documents): (i) Site availability requirements; and/or (ii) dates when UTA information or approvals are required. The schedule shall be revised as required by conditions and progress of the Work, but such revisions shall not relieve Contractor of its obligations to complete the Work within the Contract Time(s), as such dates may be adjusted in accordance with the Contract Documents. UTA's review of, and response to, the schedule shall not be construed as relieving Contractor of its complete and exclusive control over the means, methods, sequences, and techniques for executing the Work.

**2.2 Design Services.** If the Work includes any design services, provisions 2.2.1 through 2.2.8 apply.

2.2.1 Contractor shall provide the necessary design services, including architectural, engineering, and other design professional services, for the preparation of the required drawings, specifications and other design submittals to permit Contractor to complete the Work consistent with the Contract Documents. Contractor shall ensure that design services are performed by qualified, licensed design professionals employed by Contractor, or by qualified, independent licensed design Contractors procured by Contractor.

2.2.2 Contractor and UTA shall, consistent with any applicable provision of the Contract Documents, agree upon any interim design submissions that UTA may wish to review, which setting forth the Project requirements. Interim design submissions must be consistent with the Basis of Design Documents, as the Basis of Design Documents may have been changed through the design process set forth in this Section 2.2.2. On or about the time of the scheduled submissions, Contractor and UTA shall meet and confer about the submissions, with Contractor identifying during such meetings, among other things, the evolution of the design and any changes to the Basis of Design Documents, or, if applicable, previously submitted design submissions. Changes to the Basis of Design Documents shall be processed in accordance with Article 7. Minutes of the meetings, including a full listing of all changes, will be maintained by Contractor and provided to all attendees for review. Following the design review meeting, UTA will be entitled to at least ten (10) Days to review and approve the interim design submissions and meeting minutes.

2.2.3 To the extent not prohibited by the Contract Documents or Legal Requirements, and with the approval of UTA, Contractor may prepare interim design submissions and portion of the Work prior to completion of the Construction Documents for the entire Work.

- 2.2.4 Contractor shall submit proposed Construction Documents to UTA, which must be consistent with the latest set of interim design submissions, as such submissions may have been modified in a design review meeting and recorded in the meeting minutes. The parties shall have a design review meeting to discuss, and UTA shall review and approve, the Construction Documents in accordance with the procedures set forth in Section 2.2.2 above. Contractor shall submit one set of approved Construction Documents to UTA prior to commencement of construction
- 2.2.5 UTA's review and approval of interim design submissions, meeting minutes, and Construction Documents is for the purpose of mutually establishing a conformed set of Contract Documents compatible with the requirements of the Work. Neither UTA's review nor approval of any interim design submissions, meeting minutes, and Construction Documents shall be deemed to: (i) relieve Contractor from its obligations to comply with the Contract Documents; (ii) relieve Contractor from its obligations with respect to the accuracy of the design submittals; or (iii) transfer any design liability from Contractor to UTA.
- 2.2.6 Upon completion of the Work, and as a condition to receiving final payment pursuant to Section 4.7, Contractor shall prepare and provide to UTA a final set of as-built drawings, depicting the Project as completed, including all changes to the Project made subsequent to the approval of the Construction Documents.
- 2.2.7 All drawings, specifications, interim design submissions, Construction Documents, and other documents furnished by Contractor to UTA pursuant to the Contract Documents (those documents, the "Work Product") are deemed to be instruments of service and Contractor shall retain the ownership and intellectual property rights therein.
- 2.2.8 Once UTA has made a corresponding payment for the Work required for Contractor to prepare any Work Product, Contractor will be deemed to have granted to UTA a license to use that Work Product in connection with the construction, occupancy, and maintenance of the Project, or any other UTA project or facility.

### **2.3 Government Approvals, Permits, and Legal Requirements.**

- 2.3.1 Except where the Contract Documents expressly state that UTA will be responsible for a specific entitlement, Contractor shall obtain and Owner shall pay the direct out-of-pocket costs for necessary permits, approvals, licenses, government charges and inspection fees required for the prosecution of the Work by any government or quasi-government entity having jurisdiction over the Project or Site. Contractor shall provide reasonable assistance to UTA in obtaining any permits, approvals, and licenses that the Contract Documents expressly specify to be a UTA responsibility. This does not relieve Contractor of its responsibility for repair, rework or additional work required by any inspection or test.
- 2.3.2 Contractor shall perform the Work in accordance with all Legal Requirements and shall provide all notices applicable to the Work as required by the Legal Requirements.
- 2.3.2 Contractor shall file a notice of commencement, a notice of completion, and other notices required by Utah Code Title 38 (Liens). Contractor shall file such notices in the manner and within the time periods required by law.

2.3.3 The Contract Price and/or Contract Time(s) will be adjusted to compensate Contractor for the effects of any changes in the Legal Requirements provided that such changes: (i) materially increase Contractor's cost of, or time required for, the performance of the Work; and (ii) are enacted after the effective date of the Agreement.

**2.4 Construction Services.**

2.4.1 Contractor shall proceed with construction in accordance with the approved Construction Documents.

2.4.2 Except to the extent that the Contract Documents expressly identify UTA obligations related to the Work, Contractor shall provide through itself or Subcontractors the necessary supervision, labor, inspection and testing support, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other temporary facilities (whether or not expressly stated or depicted in the Contract Documents or Construction Drawings) to permit Contractor to complete construction of the Project consistent with the Contract Documents. The Contractor shall arrange for and the Owner shall pay the direct out-of-pocket costs for required tests and inspections. This does not relieve Contractor of its responsibility for repair, rework or additional work required by any inspection or test.

2.4.3 Contractor is responsible for securing the Site until UTA issues a Certificate of Substantial Completion.

2.4.4 Contractor shall perform all construction activities efficiently and with the requisite expertise, skill, and competence to satisfy the requirements of the Contract Documents. Contractor shall at all times exercise complete and exclusive control over the means, methods, sequences, techniques, and procedures of construction.

2.4.5 Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Contractor shall take necessary precautions for the safety of, and shall provide necessary protection to prevent damage, injury or loss to the following: (i) all Contractor, Subcontractor, UTA employees, the public and other persons who may be affected thereby; (ii) all Work and all equipment and materials to be incorporated into the Work; and (iii) other property at the Site or adjacent thereto. Contractor shall comply with the minimum standards imposed by UTA's Construction Safety and Security Program Manual, as updated from time to time (UTA's Construction Safety and Security Program Manual is incorporated into the Contract Documents by reference). However, Contractor shall be responsible for all additional as necessary to comply protect persons and property and comply with applicable Legal Requirements related to safety.

2.4.6 Contractor shall employ only Subcontractors who are duly licensed and qualified to perform the Work consistent with the Contract Documents. UTA may require Contractor to remove from the Project a Subcontractor or anyone employed directly or indirectly by any Subcontractor, if UTA reasonably concludes that the Subcontractor is creating safety risks at the Site or quality risks to the Project.

- 2.4.7 Contractor is responsible for the proper performance of the Work by Subcontractors and for any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between UTA and any Subcontractor, including but not limited to any third-party beneficiary rights.
- 2.4.8 Contractor shall coordinate the activities of all of its Subcontractors. If UTA performs other work on the Project or at the Site with separate contractors under UTA's control, Contractor agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.
- 2.4.9 Contractor shall keep the Site reasonably free from debris, trash, and construction wastes to permit Contractor to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Upon Substantial Completion of the Work, or a portion of the Work, Contractor shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit UTA to occupy the Project or a portion of the Project for its intended use.

2.5 **Quality Control, Quality Assurance, Inspection, Rejection and Correction of Work.**

- 2.5.1 Contractor shall develop a Project-specific construction quality control plan as contemplated in UTA's Quality Management Plan and Construction Quality Plan. The Contractor's plan shall satisfy the minimum requirement imposed by UTA's Construction Quality Plan and shall be sufficient to ensure that Work is performed in compliance with the Contract Documents. If the Work includes any design services, Contractor shall also develop and thereafter comply with a design quality plan that meets the minimum requirements set forth in the UTA Design Quality Plan. The UTA Quality Management Plan, Construction Quality Plan and Design Quality Plan are incorporated into the Contract Documents by reference. The Contractor's plans shall be subject to UTA's review and approval.
- 2.5.2 Contractor shall comply with the approved quality control plan(s). Responsibilities shall include support for inspection and testing and inspection and testing and related activities including administration, management, supervision, reports, record keeping and use of independent testing agencies and laboratories. The Contractor shall arrange for and the Owner shall pay the direct out-of-pocket costs for required tests and inspections. Contractor shall provide evidence of compliance with the Contract Documents. This does not relieve Contractor of its responsibility for repair, rework or additional work required by any inspection or test.
- 2.5.3 UTA will have the right to audit and spot check the Contractor's quality control procedures and documentation. This will include the Company's right to inspect and test all Work at reasonable times. Contractor shall cooperate with any inspection and testing performed by UTA. All contractor-furnished materials and supplies shall be subject to inspection at the point of manufacture.

- 2.5.2 Any inspection and testing performed by UTA shall be for the sole and exclusive benefit of UTA. Neither inspection and testing of Work, nor the lack of same nor acceptance of the Work by UTA, nor payment therefore shall relieve Contractor from any of its obligations under the Contract Documents.
- 2.5.3 At any time prior to Substantial Completion, UTA may reject Work which fails to conform to the Contract Documents. Contractor shall, at its sole expense, promptly re-perform or correct any Work so as to conform to the requirements of the Contract. Contractor shall not be entitled to an adjustment to the Contract Price and/or Contract Times with respect to any corrective action necessary to rectify non-conforming Work.
- 2.5.4 If Contractor fails to promptly remedy rejected Work, UTA may, without limiting or waiving any other rights or remedies it may have, self-perform (through its own forces or through other contractors) the necessary corrective action(s) and deduct all amounts so incurred from any amount then or thereafter due Contractor.

## 2.6 **Contractor's Warranty.**

- 2.6.1 Contractor warrants to UTA that all Work, including all materials and equipment furnished as part of the Work, shall be: (i) of good quality conforming to generally recognized industry standards; (ii) in conformance with the Contract Documents; (iii) free of defects in materials and workmanship; and (iv) consistent with applicable Legal Requirements. Without limiting the generality of the forgoing, Contractor also specifically warrants that any design, engineering or other professional services provided by Contractor shall be shall satisfy applicable professional standards of care and that all materials and that any equipment furnished as part of the construction shall be new (unless otherwise specified in the Contract Documents). This provision is not intended to limit any manufacturer's warranty that provides UTA with greater warranty rights than set forth in this Section 2.6. Contractor shall provide UTA with all manufacturers' warranties upon Substantial Completion. Similarly, nothing in this Article is intended to limit any other express warranties set forth in the Contract Documents or to limit any other warranties implied by law, custom or usage of trade.
- 2.6.2 If Contractor becomes aware of any defect in the Work, or non-conformance with the Contract Documents, Contractor shall give prompt written notice of that defect or non-conformance to UTA.
- 2.6.3 Except as otherwise stated in the Agreement, Contractor shall correct any Work that does not comply with the warranties provided above for a period of two years following the date of Substantial Completion.
- 2.6.4 Contractor shall, within seven (7) Days of receipt of written notice from UTA that the Work does not comply with the warranties provided above, take meaningful steps to commence corrective action, including the correction, removal, replacement or re-performance of the nonconforming Work and the repair of any damage to other property caused the warranty failure. If Contractor fails to commence the necessary corrective action within such seven (7) Day period (or thereafter fails to continuously and diligently pursue such corrective action to completion), UTA may (in addition to any other remedies provided under the Contract Documents) provide Contractor with written notice that UTA will self-perform (through its own forces or through other contractors) correction of the warranty failure at Contractor's expense. If UTA performs (or causes to be

performed) such corrective action, UTA may collect from Contractor all amounts so incurred. If the nonconforming Work creates an emergency requiring an immediate response, the seven (7) Day period identified above shall be deemed inapplicable.

- 2.6.5 The ~~two-year~~ period referenced in Section 2.6.3 above only applies to Contractor's obligation to correct nonconforming Work and is not intended to constitute a period of limitations for any other rights or remedies UTA may have regarding Contractor's other obligations under the Contract Documents.

### **ARTICLE 3** **Site Conditions**

#### **3.1 Hazardous Materials.**

- 3.1.1 Unless otherwise expressly provided in the Contract Documents to be part of the Contractor's Work, Contractor is not responsible for any Hazardous Materials encountered at the Site. "Hazardous Materials" means any substance that: (i) is deemed a hazardous waste or substance under any environmental law; or (ii) might endanger the health of people exposed to it.
- 3.1.2 If Contractor discovers at the Site any substance the Contractor reasonably believes to be a Hazardous Material, Contractor shall immediately stop Work in the area of the discovery and immediately report the discovery to the UTA Project Manager. UTA shall determine how to deal with the Hazardous Material, and Contractor shall resume Work in the area when directed to do so by the UTA Project Manager.
- 3.1.3 Contractor will be entitled to an adjustment to the Contract Price and/or Contract Time(s) to the extent Contractor's cost and/or time of performance have been adversely impacted by the presence of Hazardous Materials.
- 3.1.4 The risk allocation and change provisions of Sections 3.1.1 through 3.1.3 do not apply to any Hazardous Materials introduced to the Site by Contractor, its Subcontractors, or anyone for whose acts Contractor is responsible. Those provisions also exclude Hazardous Materials that were properly stored and/or contained at the Site but thereafter released as a result of the Contractor's negligent performance of the Work. To the extent that Hazardous Materials are introduced and/or released at the Site by Contractor as described above in this Section 3.1.4, then: (i) to the fullest extent permitted by law, Contractor shall defend and indemnify UTA from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from such Hazardous Materials; and (ii) Contractor shall not be entitled to an extension of Contract Price and/or Contract Time(s).

#### **3.2 Differing Site Conditions.**

- 3.2.1 If Contractor encounters a Differing Site Condition, Contractor will be entitled to an adjustment to the Contract Price and/or Contract Time(s) to the extent Contractor's cost and/or time of performance have been adversely impacted by the Differing Site Condition. "Differing Site Condition" means concealed or latent physical conditions at the Site that: (i) materially differ

from the conditions indicated in the Contract Documents; and (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work.

- 3.2.2 Upon encountering a Differing Site Condition, Contractor shall provide prompt written notice to UTA of such condition, which notice shall not be later than five (5) Days after such condition has been encountered. Contractor shall, to the extent reasonably possible, provide such notice before the Differing Site Condition has been substantially disturbed or altered.

#### **ARTICLE 4** **Payment**

##### **4.1 Schedule of Values.**

- 4.1.1 Unless required by UTA upon execution of this Agreement, within ten (10) Days of execution of the Agreement, Contractor shall submit for UTA's review and approval a Schedule of Values for all of the Work. The Schedule of Values will: (i) subdivide the Work into its respective parts; (ii) include values for all items comprising the Work; and (iii) serve as the basis for monthly progress payments made to Contractor throughout the Work.
- 4.1.2 UTA will timely review and approve the Schedule of Values so as not to delay the submission of the Contractor's first application for payment. UTA and Contractor shall timely resolve any differences so as not to delay the Contractor's submission of its first application for payment.

##### **4.2 Application for Payment.**

- 4.2.1 To receive payment, Contractor shall submit to UTA an Application for Payment requesting payment for all Work performed as of the date of the Application for Payment. Contractor shall not submit Applications for Payment more often than once per month. The Application for Payment must be accompanied by supporting documentation sufficient to establish, to UTA's reasonable satisfaction, Contractor's entitlement to receive payment.
- 4.2.2 The Application for Payment may request payment for equipment and materials not yet incorporated into the Project, provided that: (i) UTA is satisfied that the equipment and materials are suitably stored at either the Site or another acceptable location; (ii) the equipment and materials are protected by suitable insurance; and (iii) upon payment, UTA will receive the equipment and materials free and clear of all liens and encumbrances.
- 4.2.3 The Application for Payment will constitute Contractor's representation that the Work described therein has been performed consistent with the Contract Documents, has progressed to the point indicated in the Application for Payment, and that title to all materials and equipment will pass to UTA free and clear of all claims, liens, encumbrances, and security interests upon the incorporation of the materials and equipment into the Project, or upon Contractor's receipt of payment, whichever occurs earlier.

##### **4.3 Sales Tax Exemption**

4.3.1 Purchases of all materials are exempt from Utah sales tax. UTA will provide a sales tax exemption certificate to Contractor upon request. UTA will not pay Contractor for sales taxes for exempt purchases, and such taxes should not be included in Contractor's Application for Payment.

4.4 **UTA's Payment Obligations.**

4.4.1 UTA shall pay Contractor all amounts properly requested and documented within thirty (30) Days of receipt of an Application for Payment.

4.4.2 Notwithstanding Section 4.4.1, UTA may withhold up to 5% of each payment as retention in accordance with Utah Code Ann. § 13-8-5.

4.4.3 Notwithstanding Section 4.4.1, UTA may offset from such Application for Payment amounts any owed to UTA by Contractor pursuant to the Contract Documents.

4.4.4 If UTA determines that Contractor is not entitled to all or part of an Application for Payment as a result of Contractor's failure to meet its obligations under the Contract Documents, UTA will notify Contractor of the specific amounts UTA has withheld (or intends to withhold), the reasons and contractual basis for the withholding, and the specific actions Contractor must take to qualify for payment under the Contract Documents. If the Contractor disputes UTA's bases for withholding, Contractor may pursue its rights under the Contract Documents, including those under Article 8.

4.5 **Contractor's Payment Obligations.**

4.5.1 Contractor shall pay Subcontractors, in accordance with its contractual obligations to such parties, all the amounts Contractor has received from UTA on account of their work. Contractor shall indemnify and defend UTA against any claims for payment and mechanic's liens as set forth in Section 5.2 hereof.

4.5.2 If the Contract Documents include Federal Clauses, the terms of those Federal Clauses pertaining to payment of Subcontractors supersede any conflicting terms of this Article 4.

4.6 **Substantial Completion.**

4.6.1 Contractor shall notify UTA when it believes the entire Work is Substantially Complete. As used in the Contract Documents, "Substantially Complete" or "Substantial Completion" refers to the Contractor's satisfactory completion of all Work in accordance with the Contract Documents (excluding Punchlist items) to point such that UTA may safely start-up, occupy or otherwise fully use the Project for its intended purposes in compliance with applicable Legal Requirements. The terms "Substantially Complete" or "Substantial Completion" also require the completion of any items of Work specifically set forth as conditions precedent to Substantial Completion in the Agreement. Within five (5) Days of UTA's receipt of Contractor's notice, UTA and Contractor will jointly inspect such Work to verify that it is Substantially Complete in accordance with the requirements of the Contract Documents. If such Work is Substantially Complete, UTA shall prepare and issue a Certificate of

Substantial Completion that will set forth: (i) the date of Substantial Completion of the Work or portion thereof; (ii) the remaining Punchlist items that have to be completed before Final Completion and final payment; and (iii) provisions (to the extent not already provided in the Contract Documents) establishing UTA's and Contractor's responsibility for the Project's security, maintenance, utilities and insurance pending Final Completion and final payment.

- 4.6.2 Promptly after issuing the Certificate of Substantial Completion, UTA shall release to Contractor all retained amounts, less an amount equal to two times the reasonable value of all remaining Punchlist items noted in the Certificate of Substantial Completion.
- 4.6.3 Upon Contractor's request or upon UTA's own initiative, UTA may, in its sole discretion, deem a discrete segment of the Project to be Substantially Complete. The provisions of Sections 4.6.1 and 4.6.2 will apply to that discrete segment of the Project. In addition, before UTA may take possession of a discrete segment of the Project, UTA and Contractor shall obtain the consent of their sureties, insurers, and any government authorities having jurisdiction over the Project.
- 4.6.4 Following Substantial Completion, UTA may restrict Contractor's access to the Site. UTA shall allow Contractor reasonable access to the Site in order for the Contractor to achieve Final Completion.

#### 4.7 **Final Payment.**

- 4.7.1 When Contractor has achieved Final Completion of the Work, Contractor shall submit a Final Application for Payment. As used in the Contract Documents, "Final Completion" refers to the Contractor's satisfactory completion of all Work in accordance with the Contract Documents including completion of Punchlist items, demobilization from the Site and the transmittal of all deliverables required by the Contract Documents. The Final Application for Payment shall include (at a minimum) the items set forth below.
  - 4.7.1.1 An affidavit that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, materials, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work which will in any way affect UTA's interests;
  - 4.7.1.2 A general release executed by Contractor waiving, upon receipt of final payment, all claims, except those claims previously made in writing to UTA and remaining unsettled at the time of final payment;
  - 4.7.1.3 All as-built drawings, redlined drawings, operating manuals, warranty assignments and other deliverables required by the Contract Documents; and
  - 4.7.1.4 Certificates of insurance confirming that required coverages will remain in effect consistent with the requirements of the Contract Documents.
- 4.7.2 Deficiencies in the Work discovered after Substantial Completion, whether or not such deficiencies would have been included on the Punchlist if discovered earlier, will be deemed warranty Work. Contractor shall correct such deficiencies pursuant to Section 2.6, and UTA may withhold from the final payment the reasonable value of completion of the deficient work until that work is completed.

**ARTICLE 5**  
**Indemnification and Loss**

- 5.1 **Patent and Copyright Infringement.** If the Work includes any design services, provisions 5.1.1 through 5.1.3 apply.
- 5.1.1 Contractor shall defend any action or proceeding brought against UTA based on any claim that the Work, or any part thereof, or the operation or use of the Work or any part thereof, constitutes infringement of any United States patent or copyright, now or hereafter issued. UTA shall give prompt written notice to Contractor of any such action or proceeding and will reasonably provide authority, information, and assistance in the defense of same. Contractor shall indemnify UTA from and against all damages and costs, including but not limited to attorneys' fees and expenses awarded against UTA or Contractor in any such action or proceeding. Contractor shall keep UTA informed of all developments in the defense of such actions.
- 5.1.2 If UTA is enjoined from the operation or use of the Work, or any part thereof, as the result of any patent or copyright suit, claim, or proceeding, Contractor shall at its sole expense take reasonable steps to procure the right to operate or use the Work. If Contractor cannot so procure such right within a reasonable time, Contractor shall promptly, at Contractor's expense, either: (i) modify the Work so as to avoid infringement of any such patent or copyright; or (ii) replace said Work with Work that does not infringe or violate any such patent or copyright.
- 5.1.3 Sections 5.1.1 and 5.1.2 above shall not be applicable to any suit, claim or proceeding based on infringement or violation of a patent or copyright: (i) relating solely to a particular process or product of a particular manufacturer specified by UTA and not offered or recommended by Contractor to UTA; or (ii) arising from modifications to the Work by UTA or its agents after acceptance of the Work
- 5.2 **Payment Claim Indemnification.** Provided that UTA is not in breach of its contractual obligation to make payments to Contractor for the Work, Contractor shall indemnify, defend and hold harmless UTA from any claims or mechanic's liens brought against UTA or against the Project as a result of the failure of Contractor, its Subcontractors, or others for whose acts Contractor is responsible, to pay for any services, materials, labor, equipment, taxes or other items or obligations furnished or incurred for or in connection with the Work. Within three (3) Days of receiving written notice from UTA that such a claim or mechanic's lien has been filed, Contractor shall commence to take the steps necessary to discharge said claim or lien, including, if necessary, the furnishing of a mechanic's lien bond. If Contractor fails to do so, UTA will have the right to discharge the claim or lien and hold Contractor liable for costs and expenses incurred, including attorneys' fees.
- 5.3 **Contractor's General Indemnification.**
- 5.3.1 Contractor, to the fullest extent permitted by law, shall indemnify, hold harmless and defend UTA, its officers, trustees, and employees from and against claims, losses, damages, liabilities, including attorneys' fees and expenses, for bodily injury,

sickness or death, and property damage or destruction resulting from or arising out of the negligent acts or omissions of Contractor, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable.

5.3.2 If an employee of Contractor, a Subcontractor, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable has a claim against UTA, its officers, directors, employees, or agents, Contractor's indemnity obligation set forth in Section 5.3.1 above will not be limited by any limitation on the amount of damages, compensation or benefits payable by or for Contractor, Subcontractors, or other entity under any employee benefit acts, including workers' compensation or disability acts.

5.4 **Risk of Loss.** Contractor bears all risk of loss to the Project, including materials and equipment not yet incorporated into the Project, until final payment is made by UTA.

## **ARTICLE 6**

### **Time**

6.1 **Obligation to Achieve the Contract Times.** Contractor shall commence performance of the Work and achieve the Contract Time(s) in accordance with the Contract Documents. The Contract Documents specify critical completion milestones with which Contractor must comply. All time and schedule requirements included within the Contract Documents are of the essence. By executing the Agreement, Contractor confirms that the completion milestones in the Contract Documents are reasonable for the performance of the Work. Unless otherwise excused by the terms of the Contract Documents, Contractor's failure to timely perform the Work in accordance with the completion milestones shall result in the assessment of liquidated damages. Liquidated damages will be \$1,000.00 per day for each day that the Contractor fails to achieve Substantial Completion as stated in the Contract Documents and as extended by Change Order.

6.2 **Excusable Delays.** The Contract Time(s) for performance shall be equitably adjusted by Change Order to the extent that Contractor is actually and demonstrably delayed in the performance of the Work because of: (i) Differing Site Conditions (as provided in Section 3.2); (ii) Hazardous Materials (as provided in Section 3.1); (iii) Force Majeure Events (as defined in Section 1.3); (iv) changes in the Work directed by UTA (as provided in Section 7.2); (v) constructive changes (as provided in Section 7.3); (vi) changes in Legal Requirements (as provided in Section 2.3.3); (vii) a suspension without cause (as provided in Section 9.1); or (viii) UTA's unexcused delay in performing any UTA obligation specified in the Contract Documents in accordance with the completion milestones indicated in the approved schedule.

- 6.3 **Excusable and Compensable Delays.** In addition to Contractor's right to a time extension for those events set forth in Section 6.2 above, Contractor will also be entitled to an appropriate adjustment of the Contract Price provided, however, that the Contract Price will not be adjusted for delays caused by Force Majeure Events.

## **ARTICLE 7** **Changes**

### **7.1 Change Orders.**

- 7.1.1 Contractor shall not undertake any activity that materially changes the Work, or materially deviates from the requirements of the Contract Documents, except as authorized in this Article 7. Any costs incurred by Contractor without authorization as provided in this Article 7 will be considered non-compensable.
- 7.1.2 A Change Order is a written instrument, signed by UTA and Contractor, issued after execution of the Agreement, stating their agreement on a change in: (i) the scope of the Work; (ii) the Contract Price; and/or (iii) the Contract Time(s).
- 7.1.3 All changes in the Work authorized by applicable Change Order shall be performed under the applicable conditions of the Contract Documents. UTA and Contractor shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for such changes.

- 7.2 **UTA-Directed Changes.** UTA may direct changes in the Work. Upon receipt of such direction, Contractor shall prepare an estimate of the cost and schedule impact of the change (if any). Upon agreement between UTA and Contractor on the scope of the change to the Work, and the adjustment, if any, to the Contract Price and/or Contract Times, UTA and Contractor shall execute a written Change Order.

### **7.3 Constructive Changes.**

- 7.3.1 To the extent that Contractor: (i) receives a written or verbal direction or proceeding from UTA that Contractor believes to constitute a material change to the nature, character or schedule of the Work; and/or (ii) becomes aware of any circumstance or condition that expressly provides Contractor a right to a Change Order under the terms of the Contract Documents, then (in either case) Contractor shall deliver to UTA's Project Manager written notice (hereinafter a "Potential Change Notice") within ten (10) Days after Contractor becomes aware of (or should have reasonably become aware) the facts and circumstances which Contractor believes to give rise to a Change Order.
- 7.3.2 Contractor's failure to deliver a Potential Change Notice in a timely manner shall constitute a waiver of all of Contractor's rights to a Change Order.
- 7.3.3 In conjunction with the Potential Change Notice (or as soon as reasonably possible thereafter), Contractor shall submit to UTA all supporting information and documentation necessary for UTA to evaluate the contractual basis for the Potential Change

Notice and to also evaluate the relief claimed by Contractor. Contractor shall promptly respond to all UTA inquiries about the Potential Change Notice and the supporting information and documentation.

7.3.4 To the extent UTA concludes that the Potential Change Notice demonstrates Contractor's entitlement to a Contract adjustment, and provided that the parties are able to negotiate mutually agreeable adjustments to the Contract Documents, then UTA and Contractor shall execute a written Change Order.

**7.4 Direction or Authorization to Proceed.**

7.4.1 Prior to final agreement with respect to a Change Order, UTA may issue a Direction or Authorization to Proceed ("DAP"). A DAP is a written order unilaterally prepared and signed by UTA directing the Contractor to proceed with specified Work while Change Order negotiations or Claim resolution discussions continue. UTA may issue a DAP at any time, and Contractor shall undertake the Work as set forth in the DAP, and in accordance with the Contract Documents.

7.4.2 After issuance of a DAP, UTA and Contractor shall continue to negotiate in good faith to resolve outstanding issues expeditiously.

**7.5 Requests for Information.** UTA shall have the right, from time to time, to issue clarifications to the Work of a non-material nature at any time. Contractor shall have the corresponding right to seek clarification with respect to ambiguous or conflicting provisions of the Contract Documents. Such clarifications or conflicts shall be confirmed, implemented and documented through a Request for Information ("RFI") process to be developed for the Project. The RFI process may also be used to document minor changes in the Work do not involve an adjustment in the Contract Price and/or Contract Time(s) and do not materially and adversely affect the Work, including the design, quality, performance and workmanship required by the Contract Documents.

**7.6 Contract Price Adjustments.**

7.6.1 The increase or decrease in Contract Price resulting from a change in the Work will be determined by one or more of the following methods:

7.6.1.1 Unit prices set forth in the Agreement or as subsequently agreed to between the parties;

7.6.1.2 A mutually accepted lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation by UTA;

7.6.1.3 Costs, fees and any other markup rates set forth in the Agreement; or

7.6.1.4 If an increase or decrease cannot be agreed to as set forth in items 7.6.1.1 through

7.6.1.3 above and UTA issues a DAP, the cost of the change of the Work shall be determined by the reasonable expense and savings in the performance of the Work resulting from the change, including a reasonable overhead and profit rate, as may be set forth in the Agreement.

- 7.6.2 If unit prices are set forth in the Contract Documents or are subsequently agreed to by the parties, but application of such unit prices will cause substantial inequity to UTA or Contractor because of differences in the character or quantity of such unit items as originally contemplated, such unit prices shall be equitably adjusted.
- 7.6.3 Negotiations over changes in the Contract Price will be conducted using an open-book cost-estimating process. UTA defines “open-book” to include all elements of Contractor’s costs, including labor hours and rates, units and estimated quantities, unit prices, equipment estimates, material costs, and subcontractor costs. Contractor shall openly share its detailed cost estimate, material and subcontractor quotations and any other information used to compile its cost estimate.
- 7.7 **Disputes Regarding Change Orders.** If the parties are not able to agree as to whether a Change Order is warranted under the Contract Documents, or cannot agree upon the extent of relief to be granted under a Change Order after good faith negotiations, either party may refer the dispute to the Claim resolution provisions of Article 8. Pending resolution of such Claim, Contractor shall proceed with the Work as directed by UTA under a reservation of rights. UTA shall continue to pay any undisputed payments related to such Claim.
- 7.8 **Emergencies.** In any emergency affecting the safety of persons and/or property, Contractor shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Contract Price and/or Contract Time(s) on account of emergency work shall be determined as provided in this Article 7.

## **ARTICLE 8**

### **Claims and Claim Resolution**

#### **8.1 Claims.**

8.1.1 “Claim” means any disputes between UTA and the Contractor 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 8. Claims must be made by written notice. The responsibility to substantiate claims rests with the party making the claim.

8.1.2 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.

#### **8.2 Claim Resolution.**

8.2.1 The parties shall attempt in good faith to resolve promptly through negotiation any Claim arising out of or relating to the Contract Documents. If a Claim should arise, UTA’s Project Manager and Contractor’s Project Manager will meet at least once to attempt to resolve the Claim. For such purpose, either may request the other to meet within seven (7) Days of the date the Claim is made, at a mutually agreed upon time and place.

8.2.2 If UTA’s Project Manager and Contractor’s Project Manager are not able to resolve the Claim within fourteen (14) Days after their first meeting (or such longer period of time as may be mutually agreed upon), either party may request that UTA’s Senior

Representative and the Contractor's management representative ("Contractor's Management Representative") meet at least once to attempt to resolve the Claim.

- 8.2.3 If the Claim has not been resolved within sixty (60) Days of the date the Claim is made, either party may refer the Claim to non-binding mediation by sending a written mediation request to the other party. In the event that such a request is made, the Parties agree to participate in the mediation process. Non-binding mediation of claims or controversies under the Contract Documents shall be conducted by a professional mediator that is mutually acceptable to and agreed upon by both parties (the "Mediator"). The parties and the Mediator may join in the mediation any other party necessary for a mutually acceptable resolution of the Claim. The mediation procedure shall be determined by the Mediator in consultation with the parties. The fees and expenses of the Mediator shall be borne equally by the parties.
- 8.2.4 If the Claim is not resolved within thirty (30) days after the commencement of mediation, or if no mediation has been commenced within one hundred and twenty (120) days of the date the Claim is made, either party may commence litigation to resolve the Claim. The exclusive forum for any such litigation is the Third District Court in and for Salt Lake County, Utah.

## **ARTICLE 9**

### **Suspension and Termination**

#### **9.1 UTA's Right to Stop Work.**

- 9.1.1 UTA may, without cause and for its convenience, order Contractor in writing to stop and suspend the Work. Such suspension shall not exceed one hundred and twenty (120) consecutive Days or aggregate more than two hundred and forty (240) Days during the duration of the Project. In the event a suspension continues longer than the above-referenced periods, Contractor shall have the right to terminate the Agreement. Any such termination shall be considered to be a termination for convenience by UTA.
- 9.1.2 If a suspension is directed by UTA without cause, Contractor shall be entitled to seek an adjustment of the Contract Price and/or Contract Time(s) if its cost or time to perform the Work has been adversely impacted by any suspension or stoppage of the Work by UTA.
- 9.1.3 In addition to its rights under Section 9.3, UTA shall have the right to order a suspension for cause if the Work at any time ceases to comply with the workmanship, safety, quality or other requirements of the Contract Documents or any Legal Requirements. Contractor shall not be entitled to seek an adjustment the Contract Price and/or Contract Time(s) with regard to any such suspension.

#### **9.2 UTA's Right to Terminate for Convenience.** Upon written notice to Contractor, UTA may, for its convenience and without cause, elect to terminate this Agreement. In such event, UTA shall pay Contractor for the following:

- 9.2.1 All Work satisfactorily completed or commenced and in process as of the effective date of termination;

- 9.2.2 The reasonable and demonstrable costs and expenses attributable to such termination, including demobilization costs and amounts due in settlement of terminated contracts with Subcontractors; and
- 9.2.3 The fair and reasonable sums for overhead and profit on the sum of items 9.2.1.1 and 9.2.1.2 above. UTA shall not be liable for anticipated profits, costs or overhead based upon Work not yet performed as of the date of termination.

**9.3 UTA's Right to Terminate for Cause; Other Remedies for Default.**

- 9.3.1 Subject to the cure provision of Section 9.3.2 below and other limitations set forth in these General Conditions, Contractor shall be in default of its obligations under the Contract Documents if Contractor: (i) fails to provide a sufficient number of skilled workers; (ii) fails to supply the materials required by the Contract Documents; (iii) fails to comply with applicable Legal Requirements; (iv) fails to timely pay its Subcontractors without proper cause; (v) makes a materially false or misleading representation or certification in conjunction with the Contract Documents; (vi) fails to prosecute the Work with promptness and diligence to ensure that the Work is completed by the Contract Time(s), as such times may be adjusted; (vii) fails to satisfy any guaranteed interim or completion milestone set forth in the Contract Documents; or (viii) fails to perform any other material obligations under the Contract Documents. In any such event, UTA (in addition to any other rights and remedies provided in the Contract Documents or by law) shall have the rights set forth in Sections 9.3.2 through 9.3.5 below.
- 9.3.2 Upon the occurrence of an event of default set forth in Section 9.3.1 above, UTA may provide written notice to Contractor that it intends to terminate the Agreement (in whole or in part) or pursue other available remedies unless the grounds for default are cured within ten (10) Days of Contractor's receipt of such notice. If Contractor fails to cure the grounds for default within such period, then UTA may declare the Agreement, or portions of the Agreement, terminated for default by providing written notice to Contractor of such declaration; provided, however, that to the extent that an item included is the notice of default and demand for cure is capable of cure, but not within the ten-Day cure period, then the Agreement shall not be terminated so long as Contractor commences actions to reasonably cure such breach within the 10-Day cure period and thereafter continuously and diligently proceeds with such curative actions until completion (such additional period not to exceed 45 Days). UTA may terminate the Agreement without opportunity to cure if the breach involves the Contractor's material failure to comply with any Legal Requirements pertaining to safety or environmental compliance.
- 9.3.3 Upon the continuance of a breach described in Section 9.3.1 for more than ten (10) Days following delivery of written notice to Contractor (and regardless of whether the Agreement, or any portion hereof, has been terminated as provided above), UTA shall be entitled to self-perform (through its own forces or through other contractors) the corrective action necessary to cure Contractor's event of default and deduct all costs so incurred from any amount then or thereafter due to Contractor.
- 9.3.4 Upon the continuance of a breach described in Section 9.3.1 for more than ten (10) Days following delivery of written notice to Contractor (and regardless of whether the Agreement, or any portion hereof, has been terminated as provided above), UTA shall be entitled to seek performance by any guarantor of Contractor's obligations hereunder or draw upon any surety or security provided for in the Contract Documents.

- 9.3.5 Upon declaring the Agreement terminated pursuant to Section 9.3.2 above, UTA may enter upon the premises and take possession, for the purpose of completing the Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon, which have been purchased or provided for the performance of the Work, all of which Contractor hereby transfers, assigns and sets over to UTA for such purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items. In the event of such termination, Contractor shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. At such time, if the unpaid balance of the Contract Price exceeds the cost and expense incurred by UTA in completing the Work, such excess shall be paid by UTA to Contractor. If UTA's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then Contractor shall pay the difference to UTA. Such costs and expenses include not only the cost of completing the Work, but also losses, damages, costs and expenses, including attorneys' fees and expenses, incurred by UTA in connection with the reprocurement and defense of claims arising from Contractor's default.
- 9.3.6 All rights and remedies set forth in the Contract Documents are cumulative, and unless otherwise specifically provided in the Contract Documents are not exclusive of any other rights or remedies that may be available, whether provided by law, equity, statute, in any other agreement between the Parties or otherwise. Upon the occurrence of any such default, following the applicable process described in this Article, UTA shall be entitled to pursue any and all other rights and remedies, including without limitation damages, that UTA may have against Contractor under the Contract Documents or at law or in equity.
- 9.3.7 If UTA improperly terminates the Agreement for cause, the termination for cause will be converted to a termination for convenience in accordance with the provisions of Section 9.2 above.

#### 9.4 **Bankruptcy of Contractor.**

- 9.4.1 If Contractor institutes or has instituted against it a case under the United States Bankruptcy Code, such event may impair or frustrate the Contractor's ability to perform its obligations under the Contract Documents. Accordingly, should such event occur:
- 9.4.1.1 Contractor, its trustee or other successor, shall furnish, upon request of UTA, adequate assurance of the ability of the Contractor to perform all future material obligations under the Contract Documents, which assurances shall be provided within ten (10) Days after receiving notice of the request; and
- 9.4.1.2 Contractor shall file an appropriate action within the bankruptcy court to seek assumption or rejection of the Agreement within sixty (60) Days of the institution of the bankruptcy filing and shall diligently prosecute such action. If Contractor fails to comply with its foregoing obligations, UTA shall be entitled to request the bankruptcy court to reject the Agreement, declare the Agreement terminated and pursue any other recourse available to the UTA under this Article 9.

9.4.2 The rights and remedies under Section 9.4.1 above shall not be deemed to limit the ability of UTA to seek any other rights and remedies provided by the Contract Documents or by law, including its ability to seek relief from any automatic stays under the United States Bankruptcy Code.

## **ARTICLE 10** **Value Engineering**

### **10.1 Value Engineering Change Proposals.**

10.1.1 A Value Engineering Change Proposal (“VECP”) is a proposal developed, prepared, and submitted to UTA by the Contractor, which reduces the cost of the Work without impairing essential functions or characteristics of the Project, as determined by UTA in its sole discretion. UTA encourages Contractor to submit VECPs whenever it identifies potential savings or improvements. UTA may also request the Contractor to develop and submit a specific VECP.

10.1.2 In determining whether a VECP will impair essential functions or characteristics of the Project, UTA may consider: (i) relative service life; (ii) maintenance effort and frequency; (iii) environmental and aesthetic impacts; (iv) system service; (v) effect of other system components; and (vi) other issues as UTA deems relevant. A VECP must not be based solely on a change in quantities.

10.1.3 Contractor must include the following information in any VECP:

10.1.3.1 A narrative description of the proposed change,

10.1.3.2 A discussion of differences between existing requirements and the proposed change, together with advantages and disadvantages of each changed item;

10.1.3.3 A complete cost analysis, including the cost estimate of any additional rights-of-way or easements required for implementation of the VECP;

10.1.3.4 Justification for changes in function or characteristics of each item and effect of the change on the performance on the end item;

10.1.3.5 A description of any previous use or testing of the proposed approach and the conditions and results. If the VECP was previously submitted on another UTA project, the Contractor shall indicate the date, contract number, and the action taken by UTA;

10.1.3.6 Costs of development and implementation; and

10.1.3.7 Any additional information requested by UTA, which must be provided in a timely manner.

### **10.2 Review and Approval of VECPs**

10.2.1 Upon receipt of a VECP, UTA shall process it expeditiously, but will not be liable for any delay in acting upon any VECP. Contractor may withdraw all or part of any VECP at any time prior to approval by UTA, but shall, in any case, be liable for costs

incurred by UTA in reviewing the withdrawn VECP, or part thereof. In all other situations, each party will bear its own costs in connection with preparation and review of VECPs.

- 10.2.2 UTA may approve in whole or in part any VECP submitted. The decision of UTA regarding rejection or approval of any VECP will be at the sole discretion of UTA and will be final and not subject to appeal. Contractor will have no claim for any additional costs or delays resulting from the rejection of a VECP, including development costs, loss of anticipated profits, or increased material or labor costs
- 10.3 **Cost Savings.** Except as otherwise stated in the Agreement, any savings resulting from an approved VECP will accrue to the benefit of UTA and Contractor on a 50/50 cost sharing basis.
- 10.4 **Ownership of VECPs.** All approved or disapproved VECPs will become the property of UTA and must contain no restrictions imposed by Contractor on their use or disclosure. UTA retains the right to use, duplicate, and disclose, in whole or in part, any data necessary for the utilization of the VECP on any other projects without any obligation to Contractor. This provision is not intended to deny rights provided by law with respect to patented materials or processes.

## **ARTICLE 11**

### **Health Insurance**

#### **11.1 Insurance Coverage for Employees.**

- 11.1.1 If the Contract Price is \$2,000,000 or more, Contractor shall, prior to the effective date of the Agreement, 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 the Contract.
- 11.2.1 If the Contractor enters into any subcontracts under the Contract Documents in an amount of \$1,000,000 or more, then Contractor shall also demonstrate to UTA that such subcontractor(s) have and will maintain an offer of qualified health insurance coverage for the subcontractor's employees and the employee's dependents during the duration of the subcontract

## **ARTICLE 12**

### **Miscellaneous**

- 12.1 **Confidential Information.** "Confidential Information" means information that is determined by the transmitting party to be of a confidential or proprietary nature and: (i) the transmitting party identifies in writing as either confidential or proprietary; (ii) the transmitting party takes steps to maintain the confidential or proprietary nature of the information; and (iii) the document is not otherwise available in or considered to be in the public domain. To the extent permitted by law (including specifically UCA Title 63G Chapter 2), the receiving party shall maintain the confidentiality of the Confidential Information and shall use the Confidential

Information solely in connection with the Project. The parties agree that the Agreement itself (including all incorporated Contract Documents) does not constitute Confidential Information.

- 12.2 **PUBLIC INFORMATION:** Vendor acknowledges that the Contract and related materials (invoices, orders, etc.) will be public documents under the Utah Government Records Access and Management Act (GRAMA). Vendor'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.
- 12.3 **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, Contractor or the proceeds under the Contract Documents without specific written authorization by UTA.
- 12.4 **Assignment.** Contractor acknowledges that the Work to be performed by Contractor is considered personal by UTA. Contractor shall not assign or transfer its interest in the Contract Documents without prior written approval by UTA.
- 12.5 **Successors.** Contractor and UTA intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors and permitted assigns.
- 12.6 **Governing Law.** The Agreement and all Contract Documents are governed by the laws of the State of Utah, without giving effect to its conflict of law principles. Actions to enforce the terms of this Agreement may only be brought in the Third District Court for Salt Lake County, Utah.
- 12.7 **Attorneys Fees and Costs.** 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.
- 12.8 **Severability.** If any provision or any part of a provision of the Contract Documents is finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable Legal Requirements, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Contract Documents, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

- 12.9 **No Waiver.** The failure of either Contractor or UTA to insist, in any one or more instances, on the performance of any of the obligations required by the other under the Contract Documents shall not be construed as a waiver or relinquishment of such obligation or right with respect to future performance.
- 12.10 **Headings.** The headings used in these General Conditions, or any other Contract Document, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.
- 12.11 **Amendments.** The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.
- 12.12 **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.

**U T A**   
**REQUEST FOR PROPOSALS**

**Exhibit A**  
**Scope of Work**

**GENERAL OVERVIEW**

Contractor shall provide labor and material to meet the specifications in Exhibit C to expand the existing maintenance building at the Mount Ogden Business Unit Bus Facility in a safe, timely, quality and efficient manner with coordination and minimal disruption to existing maintenance services. Expansion to include four (4) additional bays with bus lifts and noted equipment

The Contractor is to expand the existing building to include all 4 new maintenance bays including lifts and all work to make it fully functional. The Contractor will, with the assistance of sub-contractors, make changes to the building as called out in the plans to accommodate the expansion. Operations of the Mount Ogden Bus Facility will be ongoing and must stay in operations during construction. The Contractor will also coordinate with the contractor procured by UTA to install electronic charging equipment under the existing canopies to charge the buses.

**Exhibit B- Cost Form Not to Exceed**General Contractor **R&O Construction****Total Project Cost (from below)** \$ 3,723,287.00

Instructions: Fill in the Total Cost for each Bid Item. The Subtotal, Total and Total Project Cost will sum automatically.

<b>Bid Item No.</b>	<b>Division</b>	<b>Specification Section- Description **</b>	<b>Unit</b>	<b>Quantity</b>	<b>Total Cost</b>
		DIVISION 02 - EXISTING CONDITIONS			
1		SECTION 02 41 19 - SELECTIVE DEMOLITION	1	LS	\$ 2,701.00
		DIVISION 03 - CONCRETE			
2		SECTION 03 30 00 - CAST-IN-PLACE CONCRETE	1	LS	\$ 182,221.00
3		SECTION 03 35 16.14 - HD POLISHED, SEALED-DENSIFIED-HARDENED CONCRETE FLOOR FINISHING	1	LS	\$ 24,550.00
4		SECTION 03 41 00 - PRECAST STRUCTURAL CONCRETE	1	LS	\$ 439,818.00
		DIVISION 05 - METALS			
5		SECTION 05 12 00 - STRUCTURAL STEEL FRAMING	1	LS	\$ 182,090.00
6		SECTION 05 21 00 - STEEL JOIST FRAMING	1	LS	\$ 161,896.00
7		SECTION 05 31 00 - STEEL DECKING	1	LS	Included
8		SECTION 05 50 00 - METAL FABRICATIONS	1	LS	Included
9		SECTION 05 53 13 - BAR GRATINGS	1	LS	Included
		DIVISION 06 - WOOD, PLASTICS, AND COMPOSITES			
10		SECTION 06 10 53 - MISCELLANEOUS ROUGH CARPENTRY	1	LS	\$ 17,901.00
		DIVISION 07 - THERMAL AND MOISTURE PROTECTION			
11		SECTION 07 11 13 - BITUMINOUS DAMPPROOFING	1	LS	\$ 3,000.00
12		SECTION 07 16 16 - CRYSTALLINE WATERPROOFING	1	LS	\$ 7,239.00

13		SECTION 07 21 00 - THERMAL INSULATION	1	LS	\$ 10,600.00
14		SECTION 07 54 19 - POLYVINYL-CHLORIDE (PVC) ROOFING	1	LS	\$ 117,500.00
15		SECTION 07 62 00 - SHEET METAL FLASHING AND TRIM	1	LS	Included
16		SECTION 07 92 00 - JOINT SEALANTS	1	LS	\$ 8,440.00
DIVISION 08 - OPENINGS					
17		SECTION 08 11 13 - HOLLOW METAL DOORS AND FRAME]	1	LS	\$ 14,866.00
18		SECTION 08 36 13 - SECTIONAL DOORS	1	LS	\$ 35,995.00
19		SECTION 08 51 13 - ALUMINUM WINDOWS - W01	1	LS	\$ 25,601.00
20		SECTION 08 62 23 - TUBULAR SKYLIGHTS	1	LS	\$ 14,899.00
21		SECTION 08 71 00 - DOOR HARDWARE	1	LS	Included
DIVISION 09 - FINISHES					
22		SECTION 09 91 13 - EXTERIOR PAINTING - P1	1	LS	Included
23		SECTION 09 91 23 - INTERIOR PAINTING - P1	1	LS	\$ 26,053.00
24		SECTION 09 91 26.16 - EPOXY MARKINGS FOR STRUCTURE PAVEMENTS - P2	1	LS	Included
DIVISION 10 - SPECIALTIES					
25		SECTION 10 44 16 - FIRE EXTINGUISHERS	1	LS	\$ 1,392.00
26		SECTION 10 56 00 - STORAGE EQUIPMENT	1	LS	\$ 32,478.00
DIVISION 11 - EQUIPMENT					
27		SECTION 11 11 00 - VEHICLE SERVICE EQUIPMENT	1	LS	\$ 128,759.00
28		SECTION 11 11 29 - VEHICLE SHOP EQUIPMENT	1	LS	\$ 70,164.00
29		SECTION 11 24 19 - VACUUM EQUIPMENT	1	LS	\$ 54,050.00
DIVISION 14 - CONVEYING EQUIPMENT					
30		SECTION 14 45 00 - VEHICLE LIFTS	1	LS	\$ 534,800.00
31	DIVISION 21 - FIRE SUPPRESSION				
32		SECTION 21 10 00 - FIRE PROTECTION	1	LS	\$ 44,995.00
DIVISION 22 - PLUMBING					
33		SECTION 22 14 10 - PLUMBING PIPING	1	LS	\$ 90,541.00
34		SECTION 22 14 11 - DISINFECTING WATER SUPPLY SYSTEM	1	LS	Included
35		SECTION 22 14 30 - PLUMBING SPECIALTIES	1	LS	Included
DIVISION 23 - HEATING, VENTILATING, AND AIR-CONDITIONING (HVAC)					

36		SECTION 23 05 00 - BASIC MECHANICAL REQUIREMENTS	1	LS	\$ 373,850.00
37		SECTION 23 05 29 - BASIC MECHANICAL MATERIALS AND METHODS	1	LS	Included
38		SECTION 23 05 40 - MECHANICAL SOUND AND VIBRATION CONTROL	1	LS	Included
39		SECTION 23 05 48 - MECHANICAL SEISMIC CONTROL	1	LS	Included
40		SECTION 23 05 93 - TESTING, ADJUSTING, AND BALANCING	1	LS	Included
41		SECTION 23 07 00 - MECHANICAL INSULATION	1	LS	Included
42		SECTION 23 09 00 - ELECTRONIC CONTROLS	1	LS	Included
43		SECTION 23 11 23 - NATURAL GAS SYSTEMS	1	LS	Included
44		SECTION 23 33 00 - DUCTWORK AND ACCESSORIES	1	LS	Included
45		SECTION 23 57 00 - HEAT TRANSFER	1	LS	Included
46		SECTION 23 74 00 - AIR HANDLING SYSTEMS ON ROOF	1	LS	Included
<b>DIVISION 26 - ELECTRICAL</b>					
<b>Bid Item No.</b>	<b>Division</b>	<b>Specification Section- Description **</b>	<b>Unit</b>	<b>Quantity</b>	<b>Total Cost</b>
47		SECTION 26 05 19 - LOW-VOLTAGE ELECTRICAL POWER CONDUCTORS AND CABLES	1	LS	\$ 252,966.00
48		SECTION 26 05 26 - GROUNDING AND BONDING FOR ELECTRICAL SYSTEMS	1	LS	Included
49		SECTION 26 05 29 - HANGERS AND SUPPORTS FOR ELECTRICAL SYSTEMS	1	LS	Included
50		SECTION 26 05 33 - RACEWAY AND BOXES FOR ELECTRICAL SYSTEMS	1	LS	Included
51		SECTION 26 05 43 - UNDERGROUND DUCTS AND RACEWAYS FOR ELECTRICAL SYSTEMS	1	LS	Included
52		SECTION 26 05 48 - VIBRATION AND SEISMIC CONTROLS FOR ELECTRICAL SYSTEMS	1	LS	Included
53		SECTION 26 05 53 - IDENTIFICATION FOR ELECTRICAL SYSTEMS	1	LS	Included
54		SECTION 26 05 73.19 - ARC-FLASH HAZARD ANALYSIS	1	LS	Included
55		SECTION 26 09 23 - DISTRIBUTED DIGITAL LIGHTING CONTROLS	1	LS	Included
56		SECTION 26 22 00 - LOW-VOLTAGE TRANSFORMERS	1	LS	Included
57		SECTION 26 24 16 - PANELBOARDS	1	LS	Included
58		SECTION 26 27 13 - ELECTRICITY METERING	1	LS	Included
59		SECTION 26 27 26 - WIRING DEVICES	1	LS	Included

60		SECTION 26 28 13 - FUSES	1	LS	Included
61		SECTION 26 28 16 - ENCLOSED SWITCHES AND CIRCUIT BREAKERS	1	LS	Included
62		SECTION 26 43 13 - SURGE PROTECTION FOR LOW-VOLTAGE ELECTRICAL POWER CIRCUITS	1	LS	Included
63		SECTION 26 51 00 - INTERIOR LIGHTING	1	LS	Included
64		SECTION 26 56 00 - EXTERIOR LIGHTING	1	LS	Included
DIVISION 27 - COMMUNICATIONS					
65		SECTION 27 13 00 - COMMUNICATIONS BACKBONE CABLING	1	LS	Included
66		SECTION 27 15 00 - COMMUNICATIONS HORIZONTAL CABLING	1	LS	Included
DIVISION 28 - ELECTRONIC SAFETY AND SECURITY					
67		SECTION 28 31 11 - DIGITAL, ADDRESSABLE FIRE-ALARM SYSTEM	1	LS	By Owner
DIVISION 31 - EARTHWORK					
68		SECTION 31 10 00 - SITE CLEARING	1	LS	\$ 269,264.00
69		SECTION 31 20 00 - EARTH MOVING	1	LS	Included
69		SECTION 31 23 19 - DEWATERING	1	LS	Included
70		SECTION 31 50 00 - EXCAVATION SUPPORT AND PROTECTION	1	LS	Included
DIVISION 32 - EXTERIOR IMPROVEMENTS					
71		SECTION 32 13 13 - CONCRETE PAVING	1	LS	\$ 79,100.00
72		SECTION 32 13 73 - CONCRETE PAVING JOINT SEALANTS	1	LS	Included
DIVISION 33 - UTILITIES					
73		SECTION 33 05 00 - COMMON WORK RESULTS FOR UTILITIES	1	LS	Included
74		SECTION 33 41 00 - STORM UTILITY DRAINAGE PIPING	1	LS	Included
DIVISION 40 - PROCESS INTEGRATION					
75		40 22 16 - LUBRICATING OILS PROCESS PIPING	1	LS	Included
DIVISION 41 - MATERIAL PROCESSING AND HANDLING EQUIPMENT					
76		SECTION 41 22 00 - CRANES AND HOISTS	1	LS	\$ 79,150.00
DIVISION 45 - INDUSTRY-SPECIFIC MANUFACTURING EQUIPMENT					
77		SECTION 45 39 00 - FABRICATED EQUIPMENT	1	LS	\$ 40,000.00
<b>Subtotal Bid Items</b>					<b>\$ 3,326,879.00</b>

	General Conditions and Mobilization	Lump	1	\$	214,540.00
	Bonding	Lump	1	\$	22,504.00
	Profit and Overhead	Lump	1	\$	159,364.00
<b>Total (including Subtotal Bid Items, GCs,</b>					
<b>Mobilization, Bonding, Profit and Overhead)</b>				\$	3,723,287.00

## **Exhibit C**

Plans and Specifications from RFP's Appendix V UTA Mount Ogden Business Unit Bus Facility Expansion Plans, Appendix VI UTA Mount Ogden Business Unit Project Manual Volume 1 and Appendix VII UTA Mount Ogden Business Unit Project Manual Volume 2.

## **Exhibit D Federal Clauses**

### **ACCESS TO RECORDS AND REPORTS**

The Contractor agrees to provide the Authority, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts and transcriptions. The Contractor also agrees, pursuant to 49 CFR 633.17 to provide the FTA Administrator or his authorized representatives including any project management oversight auditor access to the Contractor's records and construction sites pertaining to a major capital project (defined at 49 USC §5302(a)(1)), which is receiving federal financial assistance through the programs described at 49 USC §§5307, 5309 or 5311. The Contractor further agrees to include in all of its subcontracts and purchase orders under the Contract a provision to the effect that the Subcontractor or Supplier agrees that the Authority, the United States Department of Transportation and the Comptroller General of the United States, the project management oversight auditor, or any of their duly authorized representatives shall, until the expiration of three (3) years after final payment under the subcontract, have access to and the right to examine any directly pertinent books, documents, papers, and other records of the Subcontractor or Supplier.

### **INCORPORATION OF FTA TERMS**

All contractual provisions required by the United States Department of Transportation, as set forth in the most recent edition and revisions of FTA Circular 4220.1F, "Third Party Contracting Guidance," are incorporated by reference into the Contract Documents. All FTA mandated terms shall take precedence over other conflicting terms, if any in the Contract Documents. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Authority requests that would cause the Authority to be in violation of any FTA terms and conditions.

### **FEDERAL CHANGES**

The Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the Authority and the FTA, as they may be amended or promulgated from time to time during the term of the Contract. The Contractor's failure to so comply shall constitute a material breach of the Contract.

### **ENERGY CONSERVATION REQUIREMENTS**

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

### **NO GOVERNMENT OBLIGATION TO THIRD PARTIES**

The Authority and the Contractor acknowledge and agree that, notwithstanding any concurrence by the federal government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the federal government, the federal government is not a party to this Contract and shall not be subject to any obligations or liabilities to the Authority, the Contractor or any other party (whether or not a party to the Contract) pertaining to any matter resulting from the Contract. The Contractor agrees to include the above clause in each subcontract or purchase order financed in whole or in part with federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the Subcontractor or Supplier who will be subject to its provisions.

### **PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS**

The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC §3801, et seq. and United States Department of Transportation regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to the Contract. Upon execution of the underlying Contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying Contract or the FTA assisted project for which the Work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious or fraudulent claim, statement, submission, or certification, the federal government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the federal government deems appropriate. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission or certification to the federal government under a contract connected with a project that is financed in whole or in part with federal assistance originally awarded by FTA under the authority of 49 USC §5307, the federal government reserves the right to impose the penalties of 18 USC §1001 and 49 USC §5307(n)(1) on the Contractor, to the extent the federal government deems appropriate. The Contractor agrees to include the above two clauses in each subcontract or purchase order financed in whole or in part with federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the Subcontractor or Supplier who will be subject to the provisions.

### **GOVERNMENT-WIDE DEBARMENT AND SUSPENSION**

The Contract is a covered transaction for purposes of 49 CFR Part 29. As such, the Contractor is required to verify that none of the Contractor, its principals (as defined at 49 CFR 29.995) or affiliates (as defined at 49 CFR 29.905) are excluded or disqualified as defined at 49 CFR 29.940 and 29.945. The Contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any subcontract or purchase order that it enters into. *(A certification is to be submitted with each bid or offer of \$25,000 or more.)*

### **BUY AMERICA CERTIFICATION**

[Applicable Only to Contracts valued at more than \$100,000].

Contractor shall comply with 49 USC 5323(j) and 49 CFR 661, as amended by MAP-21 stating that federal funds may not be obligated unless steel, iron and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7. Separate requirements for rolling stock are set out at 49 USC §5323(j)(2)(C) and 49 CFR §661.11. Rolling stock must be assembled in the United States and have the applicable percentage of domestic content required by 49 USC 5323(j) and 49 CFR 661. Contractor shall be responsible for ensuring that lower tier contractors and subcontractors are in compliance with these requirements. All respondents to the UTA solicitation for the Contract must include the appropriate Buy America certification with their responses and any response that is not accompanied by a completed Buy America Certification will be rejected as nonresponsive.

### **FLY AMERICA REQUIREMENTS**

The Contractor agrees to comply with 49 USC §40118 and 41 CFR Part 301-10, which provide that contractors are required to use United States -Flag air carriers for federally financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by 49 USC §40118 and CFR Part 301-10.

### **CIVIL RIGHTS REQUIREMENTS**

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color,

creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties

#### **DISADVANTAGED BUSINESS ENTERPRISES (DBE)**

a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is **10%**. The agency's overall goal for DBE participation is **7%**. A separate contract goal **9 %** DBE participation has been established for this procurement.

b. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as **{insert agency name}** deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

c. Bidders/offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53. Award of this contract is

conditioned on submission of the following concurrent with and accompanying proposal.

1. The names and addresses of DBE firms that will participate in this contract;
2. A description of the work each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written documentation of the bidder/offeree's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;
5. Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
6. If the contract goal is not met, evidence of good faith efforts to do so.

**Offerors** must present the information required above with initial proposals. (see 49 CFR 26.53(3)).

d. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the **Utah Transit Authority**. In addition, [the contractor may not hold retainage from its subcontractors

e. The contractor must promptly notify **Utah Transit Authority**, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of **Utah Transit Authority**.

#### **TERMINATION**

*(For contracts over \$10,000.00)*

**a. Termination for Convenience (General Provision)** The (Recipient) may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to (Recipient) to be paid the Contractor. If the Contractor has any property in its possession belonging to the (Recipient), the Contractor will account for the same, and dispose of it in the manner the (Recipient) directs.

**b. Termination for Default [Breach or Cause] (General Provision)** If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the (Recipient) may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the (Recipient) that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the (Recipient), after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

**c. Opportunity to Cure (General Provision)** The (Recipient) in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the

defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to (Recipient)'s satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by Contractor of written notice from (Recipient) setting forth the nature of said breach or default, (Recipient) shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude (Recipient) from also pursuing all available remedies against Contractor and its sureties for said breach or default.

**d. Waiver of Remedies for any Breach** In the event that (Recipient) elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by (Recipient) shall not limit (Recipient)'s remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

**e. Termination for Default (Construction)** If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Recipient may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Recipient resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Recipient in completing the work.

The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause if-

1. the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of the Recipient, acts of another Contractor in the performance of a contract with the Recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and
2. the contractor, within [10] days from the beginning of any delay, notifies the (Recipient) in writing of the causes of delay. If in the judgment of the (Recipient), the delay is excusable, the time for completing the work shall be extended. The judgment of the (Recipient) shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Recipient.

#### **DEBARMENT AND SUSPENSION**

[Applicable Only to Contracts valued at more than \$25,000]

Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 CFR Part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 CFR Part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the Contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the Contract amount. As such, Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not

presently declared by any federal department or agency to be: (i) debarred from participation in any federally assisted award; (ii) suspended from participation in any federally assisted award; (iii) proposed for debarment from participation in any federally assisted award; (iv) declared ineligible to participate in any federally assisted award; (v) voluntarily excluded from participation in any federally assisted award; and/or (vi) disqualified from participation in any federally assisted award. By submitting a response to UTA's solicitation for the Contract, Contractor has certified that the foregoing items (i) through (vi) are true. The certification in this clause is a material representation of fact relied upon by UTA. If it is later determined by UTA that Contractor knowingly rendered an erroneous certification, in addition to other remedies available that may be available to UTA, the federal government may pursue available remedies, including but not limited to suspension and/or debarment. Contractor agrees to comply with the requirements of 2 CFR Part 180, subpart C, as supplemented by 2 CFR Part 1200, during the Contract term. Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

#### **ADA ACCESS**

**ADA Access for Individuals with Disabilities** – The Contractor agrees to comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The Recipient also agrees to comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of programs or activities receiving Federal financial assistance; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities; with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities; and with other laws and amendments thereto pertaining to access for individuals with disabilities that may be applicable. In addition, the Recipient agrees to comply with applicable implementing Federal regulations, and any later amendments thereto, and agrees to follow applicable Federal implementing directives, except to the extent FTA approves otherwise in writing.

#### **Domestic Preference**

In accordance with 2 CFR 200.322 all contractors shall, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products).

For purposes of this clause:

- a. "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through application of coatings, occurred in the United States.
- b. "Manufacturing products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

This requirement must be included in all subcontracts awarded under this award.

#### **Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment**

In accordance with 2 CFR 200.216, contractor and its subcontractors are prohibited from expending funds under this contract for the procurement of equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

- a. "covered telecommunications equipment or services" is telecommunications or video surveillance equipment or services produced by:

- a. Huawei Technologies Company
- b. ZTE Corporation
- c. Hytera Communications Corporation
- d. Hangzhou Hikvision Digital Technology Company
- e. Dahua Technology Company
- f. Any subsidiary of the above listed entities.

### **Federal Clauses Applicable only to Construction Contracts**

#### **CLEAN AIR REQUIREMENTS**

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 USC §§ 7401, et seq. The Contractor agrees to report each violation to the Authority and understands and agrees that the Authority will, in turn, report each violation as required to assure notification to the FTA and the appropriate EPA Regional Office. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with federal assistance provided by FTA.

#### **CLEAN WATER REQUIREMENTS**

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC §1251, et seq. The Contractor agrees to report each violation to the Authority and understands and agrees that the Authority will, in turn, report each violation as required to assure notification to FTA and the appropriate Regional Office of the United States Environmental Protection Agency. The Contractor also agrees to include these requirements in each subcontract or purchase order exceeding \$100,000 financed in whole or in part with federal assistance provided by FTA.

#### **FLY AMERICA REQUIREMENTS**

The Contractor agrees to comply with 49 USC §40118 and 41 CFR Part 301-10, which provide that contractors are required to use United States -Flag air carriers for federally financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by 49 USC §40118 and CFR Part 301-10.

#### **SEISMIC SAFETY REQUIREMENTS**

The Contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The Contractor also agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

### **DAVIS-BACON ACT PREVAILING WAGE AND COPELAND ACT ANTI-KICKBACK REQUIREMENTS**

(1) **Minimum wages** – (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics,

subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) UTA's Civil Rights Compliance Office shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. UTA's Civil Rights Compliance Office shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and

(1) The classification is utilized in the area by the construction industry; and

(2) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(3) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and UTA's Civil Rights Compliance Office agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by UTA's Civil Rights Compliance Office to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise UTA's Civil Rights Compliance Office or will notify UTA's Civil Rights Compliance Office within the 30-day period that additional time is necessary.

(C) In the event Contractor, the laborers or mechanics to be employed in the classification or their representatives, and UTA's Civil Rights Compliance Office do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), UTA's Civil Rights Compliance Office shall refer the questions, including the views of all interested parties and the recommendation of UTA's Civil Rights Compliance Office, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise UTA's Civil Rights Compliance Office or will notify UTA's Civil Rights Compliance Office within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph (1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under the Contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, Contractor shall either pay the benefit as stated in the wage

determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If Contractor does not make payments to a trustee or other third person, Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(v)(A) UTA's Civil Rights Compliance Office shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. UTA's Civil Rights Compliance Office shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and UTA's Civil Rights Compliance Office agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by UTA's Civil Rights Compliance Office to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise UTA's Civil Rights Compliance Office or will notify UTA's Civil Rights Compliance Office within the 30-day period that additional time is necessary.

(C) In the event Contractor, the laborers or mechanics to be employed in the classification or their representatives, and UTA's Civil Rights Compliance Office do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), UTA's Civil Rights Compliance Office shall refer the questions, including the views of all interested parties and the recommendation of UTA's Civil Rights Compliance Office, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise UTA's Civil Rights Compliance Office or will notify UTA's Civil Rights Compliance Office within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under the Contract from the first day on which work is performed in the classification.

(2) **Withholding** – UTA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from Contractor under the Contract or any other federal contract for which Contractor is the prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by Contractor or any subcontractor the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the Contract, UTA may, after written notice to Contractor,

sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) **Payrolls and basic records** – (i) Payrolls and basic records relating thereto shall be maintained by Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1 (b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. If Contractor employs apprentices or trainees under approved programs, Contractor shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) Contractor shall submit weekly for each week in which any work under the Contract is performed a copy of all payrolls to UTA for transmission to the FTA. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under Section 5.5(a)(3)(i) of Regulations, 29 CFR Part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. Contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract and shall certify the following: That the payroll for the payroll period contains the information required to be maintained under Section 5.5(a)(3)(i) of Regulations, 29 CFR Part 5 and that such information is correct and complete:

(1) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR Part 3; and

(2) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject Contractor or subcontractor to civil or criminal prosecution under Section 1001 of title 18 and Section 231 of title 31 of the United States Code.

(iii) Contractor and any subcontractor shall make the records required under paragraph (3) of this section available for inspection, copying, or transcription by authorized representatives of the FTA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If Contractor or

subcontractor fails to submit the required records or to make them available, the federal agency may, after written notice to Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR §5.12.

**(4) Apprentices and trainees** – (i) Apprentices – Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees – Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable

program is approved.

(iii) Equal employment opportunity – The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

**(5) Compliance with Copeland “Anti-Kickback” Act Requirements** – Contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in the Contract. Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

**(6) Subcontracts** – Contractor and any subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the FTA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

### **BONDING REQUIREMENTS**

(Applicable Only to Contracts valued at more than \$150,000]

Unless a different requirement is set forth in the Contract, Contractor shall maintain the following bonds:

A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.

A performance bond in the amount of **100%** of the Contract value is required by the Recipient to ensure faithful performance of the Contract. The performance bond shall be provided by Contractor and shall remain in full force for the term of the Contract. Contractor will provide the performance bond to UTA within ten (10) business days from execution of the Contract. The performance bond must be provided by a fully qualified surety company acceptable to the UTA and listed as a company currently authorized under 31 CFR Part 22 as possessing a certificate of authority as described thereunder. UTA may require additional performance bond protection if the Contract price is increased. The increase in protection shall generally equal 100 percent of the increase in Contract price. UTA may secure additional protection by directing Contractor to increase the amount of the existing bond or to obtain an additional bond.

A labor and materials payment bond equal to the full value of the Contract must be furnished by Contractor to UTA as security for payment by Contractor and subcontractors for labor, materials, and rental of equipment. The bond may be issued by a fully qualified surety company acceptable to UTA and listed as a company currently authorized under 31 CFR Part 223 as possessing a certificate of authority as described thereunder.

# EXHIBIT E

## FEDERAL FORMS

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Disadvantaged Business Enterprises (DBE)

**REQUIRED BID DOCUMENTS  
CIVIL RIGHTS AND FTA MASTER AGREEMENT  
CERTIFICATES AND ASSURANCES SECTION**

**INSTRUCTIONS FOR READER**

The following section contains documents that are **REQUIRED** with the submittal of the bid / proposal. Failure to complete and submit these forms may result in rejection of the bid/proposal as non-responsive. Please read the following information carefully and complete the documents as it applies to your bid / proposal. This section is divided into the following areas:

Definition of Terms,  
Disadvantaged Business Enterprise (DBE) Program,  
Instructions to Bidders / Proposers,  
Requirements, Terms and Conditions,  
Instructions to Contractors,  
Certifications and Assurances

- Equal Employment Opportunity and Disadvantaged Business Enterprise Statement
- Disadvantaged Business Enterprise Participation Form
- Sample Letter of Intent to Subcontract with DBE Firm
- Good Faith Efforts Documentation Form
- Buy America
- Debarment, Suspension and Other Ineligibility and Voluntary Exclusion From Transactions Financed In Part By The U.S. Government
- Restrictions on Lobbying
- Cargo Preference – Use of United States Flag Vessels
- Solicitation Statistics Form
- Requirement for Written Subcontracts

**DEFINITION OF TERMS**

- **Bidder / Proposer** – identifies an entity that is responding to a bid or proposal.
- **Disadvantaged Business Enterprise (DBE)** – firms that meet the criteria specified in 49 CFR Part 26 and are certified by the Utah Uniform Certification Program (UUCP). Utah Transit Authority's DBE webpage is located at <http://www.rideuta.com/mc/?page=DoingBusiness-DisadvantagedBusinessEnterprises>
- **Good Faith Efforts** means efforts to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

- **Race conscious DBE participation** includes any time a DBE wins a prime contract through customary competitive procurement procedures, is awarded a subcontract on a prime contract that carries a DBE goal.
- **Race neutral DBE participation** Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE participation, providing assistance in overcoming limitations such as inability to obtain bonding or financing, providing technical assistance and other services. A race neutral contract DOES NOT mean the contract goal is 0%.
- **UTA** - Utah Transit Authority.
- **UUCP** – Utah Uniform Certification Program. The UUCP is the only certifying entity for the U.S. Department of Transportation Disadvantaged Business Enterprise (DBE) Program in the State of Utah. Current DBE firms are found on the UUCP DBE directory, which is located at <http://www.udot.utah.gov/main/P?p=100:pg:883653018429668:::1:T,V:2252>.

## **FEDERAL REGULATIONS TO IMPLEMENT THE DBE PROGRAM**

Utah Transit Authority (Authority) shall not discriminate in the administration of its Disadvantaged Business Enterprise Program, or the requirements of 49 CFR Part 26. The Authority will take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of Department of Transportation (DOT) assisted contracts. The Authority's DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement.

It is the responsibility of each Bidder / Proposer to read, understand and comply with the Authority's DBE program and 49 CFR Part 26. The Authority's DBE Liaison Officer is available to help answer questions concerning the Authority's DBE program.

Implementation of the DBE program is a legal obligation and failure to carry out its terms will be treated as a violation of this agreement. Failure by the Authority to carry out the Authority's approved program may result in DOT-imposed sanctions as provided for under Part 26 and may, in appropriate cases, result in enforcement actions under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.) Bidders/ Proposers agree to indemnify the Authority for any such sanctions received as a result of the actions and omissions of Contractor or its subcontractors.

## **INSTRUCTIONS TO BIDDERS/ PROPOSERS**

Bidders/ Proposers are required to complete and return Attachments A, A-1, A-2, A-3, and A-5 which obligates the Bidders/ Proposers to assert a good faith effort to attain the specified goal for DBE participation. A Bidder may satisfy the requirements of this section by having DBE status, by subcontracting portions of the work to DBEs, by entering into a joint venture with DBEs, or by submitting adequate documentation that a good faith effort to meet the goal was explored.

The attachments are defined as follows;

- **Attachment A – Equal Employment Opportunity and Disadvantaged Business Enterprise Statement**
  - o **Attachment A-1 – Disadvantaged Business Enterprise Participation Form**
  - o **Attachment A-2 – Sample Letter of Intent to Subcontract with a DBE Firm**
  - o **Attachment A-3 – Good Faith Efforts Documentation form**
  - o **Attachment A-5 – Employment Practices / Equal Employment Opportunity Plan**
- **Attachment B - Buy America Certification**
- **Attachment C - Certification Regarding Debarment, Suspension and Other Responsibility Matters**
- **Attachment D - Certification of Restrictions on Lobbying**

- **Attachment E - Cargo Preference – Use of Untied States Flag Vessels**
- **Attachment F - Solicitation Statistics form (Required statistical data)**
- **Attachment G – Requirement for Written Subcontracts**

**NOTE:** The **Solicitation Statistics form** is a federal requirement (49 CFR 26.11) to collect statistical data of all bidders/proposers on federally assisted projects. This information is required with **ANY SUBCONTRACTOR** that is a part of your bid to UTA. Return the form from each proposer **with your bid package**.

**Attachment A-3** – Good Faith Efforts Documentation Form is not required when a bidder / proposer certifies that there exists no opportunity for subcontracting, when a DBE is the prime contractor or the procurement is race neutral.

## **DBE CONTRACT GOAL**

As required by 49 CFR Part 26, “Participation by Disadvantaged Business Enterprises in Department of Transportation Programs”, the Authority will annually adopt an overall DBE goal for goods and services procured under the Authority’s federally-assisted contracts. While the expected percentage of DBE participation may vary from contract to contract, the Authority sets a goal that it believes the overall goal to be realistically obtainable over the year.

**The Contract DBE GOAL for 21-03488VW UTA Mount Ogden Business Unit Bus Facility Expansion – 10%**

The amount of DBE participation will be determined by the dollar value of the work subcontracted to DBEs as compared to the total value of all work performed under this contract, and/or, by the percentage of the net profit which the parties agree will be shared by DBEs where a joint venture is entered into for the completion of the project.

## **COUNTING DBE PARTICIPATION TOWARD GOALS**

When a DBE participates in a contract, the Authority will count only the value of the work actually performed by the DBE toward DBE goals. This information is documented on **ATTACHMENT A-1, DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION FORM**. The Authority will include in this count the following:

1. The entire amount of that portion of a construction contract that is performed by the DBEs own forces. The cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate) is included in this amount.
2. The entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, Contractor, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract provided the Authority determines the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services.
3. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work, only if the DBEs subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.
4. When a DBE performs as a participant in a joint venture, the portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces, is counted toward DBE goals.
5. Expenditures to a DBE contractor is counted toward DBE goals, only if the DBE is performing a commercially useful function on that contract.

A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, the DBE Liaison Officer will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.

A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, the DBE Liaison Officer will examine similar transactions, particularly those in which DBEs do not participate.

If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, the Authority will presume that it is not performing a commercially useful function.

When a DBE is presumed not to be performing a commercially useful function as provided in this section, the DBE may present evidence to rebut this presumption. The Authority may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.

## **REQUIREMENTS, TERMS, AND CONDITIONS**

A Disadvantaged Business Enterprise is a firm that has been certified by the Utah Uniform Certification Program (UUCP) to meet the criteria in 49 CFR Part 26. Only firms certified by the UUCP can receive DBE credit on federally assisted projects in the State of Utah. Firms must be certified as a DBE prior to the contract award for UTA to receive credit for a DBE firm's participation on a contract.

1. Bidders/ Proposers who fail or refuse to complete and return the applicable certifications to this RFP shall be deemed non-responsive and will not be awarded a contract.
2. Where bidders/proposers intend to attain their goal for DBE participation by subcontracting or use of a joint venture, they must **complete and submit** the following certifications as applicable. **Attachments A, A-1, A-2, A-3, and A-5** with your bid.
3. All Bidders/ Proposers are required to submit written assurance of meeting contract goals in their bids/proposals and will submit: (1) names of DBE subcontractors; (2) a description of the work they are to perform; and (3) the dollar value of each proposed DBE subcontract. In order to be a responsive Bidder / Proposer, a Bidder/ Proposer must meet the specified DBE contract goal or demonstrate sufficient good faith efforts to do so. Meeting the contract goal or making sufficient good faith efforts to do so is no less than meeting technical specifications or complying with bid or proposal procedures, is a necessary condition of responsiveness.
4. The Bidder / Proposer expressed goal stated in the **ATTACHMENT A-1 – DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION FORM**, shall express the commitment on part of Bidder/Proposer to the percentage of DBE utilization during the term of the contract.
5. The commitment of the Bidder/Proposer to a specific goal is to meet DBE objectives and is not intended to be used and shall not be used, to discriminate against any qualified company or group of companies.

6. The Bidders/ Proposers must actively and aggressively seek to meet the specific contract goal for the project or the overall goal if an individual contract goal has not been set. In determining whether a Bidder/ Proposer has made good faith efforts to ensure DBE participation if awarded the contract, the Authority may consider, and the Bidder/ Proposer must be able to provide, evidence regarding the good faith efforts. This information is provided on **ATTACHMENT A-3, GOOD FAITH EFFORTS DOCUMENTATION FORM**. Good Faith Efforts Documentation Form A-3 is not required when a bidder / proposer certifies that there exists no opportunity for subcontracting, when a DBE is the prime contractor or the procurement is race neutral.

The Authority will award a contract only to a Bidder / Proposer who makes good faith efforts to meet the established goal. A Bidder / Proposer has made good faith efforts if the Bidder / Proposer does either of the following:

Documents that it has obtained enough DBE participation to meet the goal; or

Documents that it has made adequate good faith efforts to meet the goal, including assurances that the Bidder/ Proposer has done the following:

- (1) Attended any pre-solicitation or pre-bid meetings that were scheduled by the Authority to inform DBEs of contracting and subcontracting opportunities;
- (2) Advertised information concerning the subcontracting opportunities in general circulation, trade association, and minority-focused media;
- (3) Provided written notice to a reasonable number of specific DBEs that their interest in the contract was being solicited, in sufficient time to allow the DBEs to participate effectively;
- (4) Followed up initial solicitations of interest by contacting DBEs to determine with certainty whether the DBEs were interested;
- (5) Selected portions of the work to be performed by DBEs in order to increase the likelihood of meeting the DBE goals (including, where appropriate, breaking down contracts into economically feasible units to facilitate DBE participation);
- (6) Provided interested DBEs with adequate information about the plans, specifications and requirements of the contract;
- (7) Negotiated in good faith with interested DBEs, not rejecting DBEs as unqualified without sound reasons based on a thorough investigation of their capabilities;
- (8) Assisted interested DBEs in obtaining bonding, lines of credit, or insurance required by the Authority or the Bidders/ Proposers, and;
- (9) Used the services of available minority community organizations; minority contractor's groups; local, state, and Federal minority business assistance offices and other organizations that provide assistance in the recruitment and placement of DBEs.

For further guidance and additional steps to take concerning good faith efforts, see 49 CFR Part 26. A copy is included in the Authority's DBE Plan. The Authority's DBE Plan is available from the Authority upon request.

If the Authority determines that the apparent successful Bidder/ Proposer has failed to meet the foregoing requirements, before awarding the contract the Authority will provide the Bidder/ Proposer an opportunity for administrative reconsideration. As part of this reconsideration, the Bidder/ Proposer will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The Authority's decision on reconsideration will be made by a DBE Administrative Hearing Officer. The Bidders/ Proposers will be given the opportunity to meet in person with the Authority's reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. The Authority will send the Bidders/ Proposers a written decision on reconsideration, explaining the basis for finding that the Bidders/ Proposers did or did not meet the goal or make adequate good faith efforts to do so. The result of this reconsideration process is not administratively appealable to DOT.

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## INSTRUCTIONS TO ALL CONTRACTORS

1. Termination of DBE Subcontractors. No contractor may terminate for convenience a DBE subcontractor listed in response to this request (or an approved substitute DBE firm) and then perform the work of the terminated subcontractor with its own forces or those of an affiliate, without the Authority's prior written consent.

When a DBE subcontractor is terminated, or fails to complete its work on the contract for any reason, the prime contractor must make good faith efforts to find another DBE subcontractor to substitute for the original DBE. These good faith efforts must be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal the Authority established for the procurement.

The Authority reserves the right to order completion of the work (that was subcontracted to a DBE who is unable to perform successfully), by any of the following three methods:

- a. Modify or renegotiate the contract to compensate for reasonable extra costs or time necessary to obtain a DBE replacement.
- b. Modify or renegotiate the contract to provide for the completion of the work by the prime contractor.
- c. Order the work completed by the prime contractor to be reimbursed as provided for in subsection 00910, Force Account Work of the Standard Specifications.

Termination of a DBE subcontractor in contravention of these requirements will be a material breach of the contract and will result in forfeiture by the Contractor of the contract amounts that should have been accomplished by DBE participation.

This section will also apply to DBE Bidder / Proposer for prime contracts. In determining whether a DBE Bidder / Proposer for a prime contract has met the established contract goal, the Authority will count the work the DBE has committed to perform with its own forces as well as the work that it has committed to be performed by DBE subcontractors and DBE suppliers.

2. Prompt payment mechanisms as an inducement for DBE participation. The Contractor will pay all subcontractors for satisfactory performance of their contracts no later than thirty (30) days from receipt of each payment the Authority makes to Contractor.
3. Contractor will return retainage payments to the subcontractor within thirty (30) days after the subcontractor's work is satisfactorily completed, unless Contractor has received its retention proceeds from the Authority, then the preceding paragraph will apply. The prime contractor cannot withhold retainage past 30 days. This clause applies to both DBE and non-DBE subcontracts.
4. Upon notification to the Authority that appropriate payments have not been made by Contractor to its subcontractors, the Authority will give written notice to Contractor that it has breached the contract. If Contractor fails to immediately correct the breach, the Authority may elect to withhold from future payments due Contractor monies sufficient to pay the outstanding amounts due subcontractors. Contractor will be responsible to pay interest at the statutory rate on the amounts it owes subcontractors for amounts not paid when originally due. Repeated or continued failure by Contractor to make appropriate payments to subcontractors will be a material breach of the contract and may result in termination of the contract and denial of future opportunities to bid on the Authority's projects.

5. The Contractor will maintain those records and documents for three (3) years following performance of the contract which indicate compliance with these DBE requirements. These records and documents, or copies thereof, will be made available at reasonable times and places for inspection by any authorized representative of the Authority and will be submitted to the Authority upon request; together with any other compliance information which such representative may require.
6. **Monitoring.** The Authority's DBE Liaison Officer will monitor the work committed to DBEs under this contract to determine what work is actually performed by the DBEs. Contractor will provide all information requested by the DBE Liaison Officer to enable the Authority to keep a running tally of DBE attainments (e.g., payments actually made to DBE firms). The Authority will give credit for DBE participation toward overall or contract goals only when payments are actually made to DBE firms.
7. **DBE Financial Institutions.** The Authority continues to seek services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in its geographic area. To date, no such financial institutions exist in the State of Utah. The Authority will encourage prime contractors to use such institutions as they are identified.

A hard copy of the directory is available upon request to the UTA DBE Liaison Officer, located in the Authority's Civil Rights Office.

**ATTACHMENT A: EQUAL EMPLOYMENT OPPORTUNITY AND  
DISADVANTAGED BUSINESS ENTERPRISE STATEMENT**

The undersigned states on behalf of the Bidder / Proposer R&O Construction.

A. The Bidder / Proposer has given or will give, prior to the commencement of an approved UTA project, notice to all pertinent personnel, i.e., managers, supervisors, employees, unions, subcontractors, etc. of the Bidder / Proposer EEO and DBE policies and procedures and its intent and effort to realize such procedures in connection with the EEO and DBE requirements that UTA is required to follow as a Federal Transit Administration Grantee.

B. Bidder / Proposer designates --

Name Todd Zampedri

Title Senior Estimator

as the person assigned the responsibility for securing compliance with and reporting progress to the Bidders/Proposers and UTA's Civil Rights Office on all EEO efforts initiated and taken.

C. Bidder / Proposer will cooperate fully with UTA and ensure equal employment opportunity to the maximum extent possible during the term of this contract. Attachment A-5 must be completed and submitted. If the Bidder / Proposer employs 50 or more persons and, or will be entering into a contract hereunder in an amount of \$50,000 or more, then an EEO Plan for employment of minorities and women must be submitted. UTA will further be kept fully informed of any refusals by unions or others to cooperate with UTA's and the Bidder / Proposer EEO and DBE requirements.

D. Bidder / Proposer agrees to make every reasonable good faith effort to utilize DBE's in the performance of this contract. Bidder / Proposer will take affirmative steps to meet the DBE contract goal set for this bid.

Company Name: R&O Construction

Address: 933 Wall Ave., Ogden, UT 84404

Signed: 

Title: Senior Estimator

Phone Number: 801-337-6339

**ATTACHMENT A-1: DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION FORM**

**DBE PROJECT GOAL 10%**

The Bidder / Proposer must check the appropriate box, provide the information requested, and sign this form certifying to the accuracy of the information provided, and submit this form with its bid. Failure to complete and submit this form may result in rejection of the bid/proposal as non-responsive. Race neutral procurements do not require good faith effort documentation.

**Bidder / Proposer will meet or exceed the DBE goal for this contract.** If awarded this contract, Bidder / Proposer will subcontract with the DBEs listed below, which will be performing a total of  Ten  percent (  10  %) of the total dollar amount of the contract work.

Bidders/Proposers shall submit and attach evidence with this form that the DBEs being submitted for work on this project are presently certified by the Utah Uniform Certification Program (UUCP). The DBE Letters of Intent (Attachment A-2) are included with this DBE Participation Form.

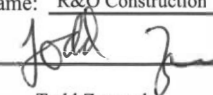
<u>DBE Name &amp; Address</u>	<u>Description of Work</u>	<u>\$ Amount of Participation</u>	<u>% of Total Price</u>
_____	_____	_____	_____ %
_____	_____	\$ _____	_____ %
_____	_____	\$ _____	_____ %

(Attach additional sheets if necessary)

- Bidder / Proposer *does not* meet the DBE goal for this contract. **Bidder / Proposer certifies that it has made good faith efforts** in accordance with the bid/proposal instructions to meet the DBE goal, but, despite those efforts, has been unable to meet the goal. The Good Faith Efforts Documentation Form (Attachment A-3) is attached to this DBE Participation Form. Please list above ANY DBE participation your firm has committed to.
- Bidder / Proposer *does not* meet the DBE goal for this contract. **Bidder / Proposer certifies that there exists no opportunity for subcontracting as part of this project.** It is the general practice of Bidder / Proposer's firm to perform all work of this nature solely with its own work force and to do otherwise would constitute a violation of industry standards. Attachment A-3, Good Faith Effort Documentation Form, is not required under this selection.

Date:  October 6, 2021

Company Name:  R&O Construction

Signature:  

Printed Name:  Todd Zampedri

Title:  Senior Estimator

**ATTACHMENT A-2: SAMPLE LETTER OF INTENT TO SUBCONTRACT WITH DBE  
FIRM  
(COMPANY LETTERHEAD)**

(DATE)

(DBE)

(Name and Address)

Reference: (Project Name and Bid/Proposal Number)

(Appropriate Salutation)

Our firm is submitting a bid/proposal with the intent to be awarded a contract with the Utah Transit Authority for the performance of the above-referenced project and if our firm is awarded the contract, shall as act as prime contractor for this project.

Please sign this "Letter of Intent to Subcontract" to verify that you are willing to participate and enter into a subcontract with our firm to provide (specify equipment, materials, supplies, services, etc.) in the amount of \$ 375,000.00, if our firm is awarded the contract with Utah Transit Authority. **A DBE company has to be certified in the State of Utah and current in its DBE certification. Please attach a copy of a recent certification letter / annual update that states your firm is presently certified as a DBE by the Utah Uniform Certification Program (UUCP).**

**DBE firm has read and certifies to the above:**

**Prime Contractor:**

[Signature]  
Signature

[Signature]  
Signature

Shande Fox  
Printed Name

Todd Zampedri  
Printed Name

President  
Title

Senior Estimator  
Title

**NOTE:** Submit this letter with specific information and it signed by the proposed DBE company. All equipment, materials, supplies, and services to be provided by the DBE subcontractor must be listed, and all amounts to be paid to the DBE subcontractor must be specified.



## Lake Town Mechanical, LLC

2500 South 3400 West, West Valley City, UT. 84119

# Estimate

### PROJECT INFORMATION

**NAME:** UTA MOBU Expansion

**Address:** 137 West 17<sup>th</sup> Street

**City State Zip:** Ogden, UT

**Date:** October 5, 2021

#### SCOPE BASE BID

ADDENDUMS ACKNOWLEDGED: 0

- Provide one ERV with seismic rated curb, OA and RA filters and factory startup.
- Provide one 40-foot 80k btu radiant tube heater with flue through the roof.
- Provide one lot of internally lined square galvanized duct and fittings for the return air
- Provide one lot of square galvanized duct and fittings for the supply air
- Provide one lot of spiral galvanized duct and fittings for the supply air
- Provide one lot spiral galvanized duct for exhaust hood and fans to include gooseneck termination
- Mechanical Controls
- One lot of 15 GRDs
- Final test and balance

#### Clarifications/Deviations to 237400 for ERV-1

- 2.1.E.4: OA Filters are 12" deep per the schedule
- 2.1.H.2: Sump is bolted together, not welded, sump overflow is 1.5" into the safety drain, and the drain line is 1.25"
- 2.1.H.3: Side walls and panels are 18-gauge SS
- 2.1.H.5: pump manufacturer is Little Giant, and the flushing valve is 0.75"
- 2.1.H.6: Float valve is 1"

**\*\* We are a WOSB and we acknowledge this is a Davis Bacon, and Buy America project\*\***

#### Excludes:

BIM, motor starters, undercutting of doors, ceiling mounted access doors, cutting, pouring, or patching of concrete or brick, natural or propane gas piping, hot and cold- water piping, steam piping, condensate piping, patching and or painting of walls, ducts, ceilings, roofs, and anything not specifically mentioned under scope. All work to be performed between normal business hours of M-F 6:00 AM - 5:30 PM. Any work needing preformed outside these hours will require additional charges. Estimate is only valid for 15 days.

## Estimate Base Bid: \$ 375,000

The Above pricing, specifications, and conditions are satisfactory and are hereby accepted. Lake Town Mechanical L.L.C. is authorized to do the work as specified above. No work will be performed without this estimate being signed and returned. We reserve the right to charge a 1.5% monthly interest fee or maximum amount allowed by Utah state law on invoices overdue greater than 45 days. By signing this you agree to all terms stated.

Acceptance of Estimate: \_\_\_\_\_ Date of Acceptance: \_\_\_\_\_

Dave Fox 435.241.8711

**ATTACHMENT A-5: EMPLOYMENT PRACTICES / EEO PLAN**

**A) Contractors that have less than 50 employees or have a contract for less than \$50,000 yet more than \$10,000 are responsible to complete the following information outlining their employment goals on this UTA project.**

Prepared By: \_\_\_\_\_  
( Print name & title)

Solicitation No. \_\_\_\_\_

Name of Project \_\_\_\_\_

Location of Workforce \_\_\_\_\_

Prime Contractor \_\_\_\_\_

In keeping with UTA policy of nondiscrimination in employment practices, the \_\_\_\_\_ (Name of Company) has set as a project goal for the utilization of minorities, which is \_\_\_\_\_%. Minority goals are formulated in terms of craft work hours performed in a specific Standard Metropolitan Statistical Area (SMSA). (Name of Company) has set as a project goal for the utilization of females, which is 6.9%. The \_\_\_\_\_(Company name), by its \_\_\_\_\_(Title of Company Representative) assures to the UTA that good faith efforts will be used to achieve said goals. The good faith efforts proposed are described in the attached narrative.

**B) Requirements Concerning The Submission Of An EEO Plan (For all construction and non-construction contractors)**

If the contractor has 50 or more employees and a contract of \$50,000 or more is contemplated, an EEO Plan should be submitted in lieu of this form per the specifications noted in the instruction to offerors.

 President  
\_\_\_\_\_  
Signature and Title of Company Official (Contractor)

## Section 2 – Employment Policies

### 2-1. Equal Employment Opportunity

R&O Construction is an Equal Opportunity Employer that provides equal employment opportunities to all employees and applicants for employment without regard to race, color, ancestry, national origin, gender, sexual orientation, marital status, religion, age, disability, gender identity, results of genetic testing, service in the military, or any other characteristic protected by applicable federal, state or local laws. Equal employment opportunity applies to all terms and conditions of employment, including hiring, placement, promotion, termination, layoff, recall, transfer, leave of absence, compensation, and training.

The Company will endeavor to make a reasonable accommodation to the known physical or mental limitations of qualified employees with disabilities unless the accommodation would impose an undue hardship on the operation of our business or a safety risk. If employees need assistance to perform their job duties because of a physical or mental condition, please contact the Director of Human Resources.

The Company will endeavor to accommodate the sincere religious beliefs of its employees to the extent such accommodation does not impose an undue hardship on the Company's operations. If employees wish to request such an accommodation, they should speak to the Director of Human Resources.

Any employee with questions or concerns about equal employment opportunities in the workplace is encouraged to bring these issues to the attention of the Director of Human Resources. The Company will not allow any form of retaliation against individuals who raise issues of equal employment opportunity. If an employee feels he or she has been subjected to any such retaliation, he or she should bring it to the attention of the Director of Human Resources, in-house legal counsel, or the President. To ensure our workplace is free of artificial barriers, violation of this policy including any improper retaliatory conduct will lead to discipline, up to and including discharge. All employees must cooperate with all investigations.

**ATTACHMENT B: BUY AMERICA CERTIFICATE**

Solicitation No. 21-03588vw

Exhibit \_\_\_\_\_  
UTAH TRANSIT AUTHORITY  
BUY AMERICA CERTIFICATE  
(Federally-Assisted Contract)

**SECTION (1); Certify only for IRON, STEEL, or MANUFACTURED PRODUCTS: (Mark One)**

- CERTIFICATE OF COMPLIANCE WITH SECTION 165(a).** The offeror hereby certifies that it *will comply* with the requirements of Section 165(a) of the Surface Transportation Assistance Act of 1982, as amended, *and* the applicable regulations of 49 CFR Part 661;
- OR--
- CERTIFICATE FOR NON-COMPLIANCE WITH SECTION 165(a).** The offeror hereby certifies that it *cannot comply with* the requirements of Section 165(a) of the Surface Transportation Assistance Act of 1982, as amended, but it *may qualify for an exception* to the requirement pursuant to Section 165(b)(2) or (b)(4) of the Surface Transportation Assistance Act, as amended, and regulations in 49 CFR Part 661.7.

**SECTION (2); Certify only for ROLLING STOCK and ASSOCIATED EQUIPMENT: (Mark One)**

- CERTIFICATE OF COMPLIANCE WITH SECTION 165(b)(3).** The offeror hereby certifies that it *will comply with* the requirements of Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, and the applicable regulations of 49 CFR Part 661.11;
- OR--
- CERTIFICATE FOR NON-COMPLIANCE WITH SECTION 165(b)(3).** The offeror hereby certifies that it *cannot comply with* the requirements of Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, but it *may qualify for an exception* to the requirement consistent with Section 165(b)(2) or (b)(4) of the Surface Transportation Assistance Act, as amended, and regulations in 49 CFR Part 661.7.

**SECTION (3); OFFEROR'S SIGNATURE: (Sign, date and enter your title and the name of your company)**

 \_\_\_\_\_  
Signature Date

Senior Estimator \_\_\_\_\_  
Title

R&O Construction \_\_\_\_\_  
Name of Company/Offerer

**ATTACHMENT C: CERTIFICATION REGARDING DEBARMENT,  
SUSPENSION AND OTHER INELIGIBILITY AND VOLUNTARY EXCLUSION FROM  
TRANSACTIONS FINANCED IN PART BY THE U.S. GOVERNMENT**

This certification is made in accordance with Executive Order 12549, 49 CFR Part 29, 31 USC §6101 and similar federal requirements regarding debarment, suspension and ineligibility with respect to federally-funded contracts.

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the Federal Transit Administration. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the Federal Transit Administration, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

If the bidder or proposer is unable to certify to the statement above, it shall attach an explanation, and indicate that it has done so, by placing an "X" in the following space \_\_\_\_\_.

  
\_\_\_\_\_  
Signature of the Bidder or Proposer Authorized Official

Todd Zampedri, R&O Construction  
Name and Title of the Bidder or Proposer Authorized Official

**FEDERAL ID # 87-0357889** \_\_\_\_\_

October 6, 2021  
Date

## **CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS**

### **Instructions for Certification**

- 1. By signing and submitting this bid or proposal, the prospective contractor is providing the signed certification set out below:**

#### **"Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction"**

- (1) The prospective contractor certifies, by submission of this bid or proposal, that neither it nor its "principals" [as defined at 49 C.F.R. § 29.105(p)] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) When the prospective contractor is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this bid or proposal.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, UTA may pursue available remedies, including suspension and/or debarment.
3. The prospective contractor shall provide immediate written notice to UTA if at any time the prospective contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "persons," "lower tier covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. You may contact UTA for assistance in obtaining a copy of those regulations.
5. The prospective contractor agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by UTA.
6. The prospective contractor further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List issued by U.S. General Service Administration.
8. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, UTA may pursue available remedies including suspension and/or debarment.

**ATTACHMENT D: CERTIFICATION OF RESTRICTIONS ON LOBBYING**

I, Todd Zampedri, Senior Estimator, hereby certifies  
(Name and Title of Company Official)  
on behalf of R&O Construction that:  
(Name of Company)

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all sub recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Executed this 6th day of October, 2021.

By   
(Signature of Authorized Official)

Senior Estimator  
(Title of Authorized Official)

**ATTACHMENT D: CERTIFICATION OF RESTRICTIONS ON LOBBYING**

I, Todd Zampedri, Senior Estimator, hereby certifies  
(Name and Title of Company Official)  
on behalf of R&O Construction that:  
(Name of Company)

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all sub recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Executed this 6th day of October, 2021.

By   
(Signature of Authorized Official)

Senior Estimator  
(Title of Authorized Official)

**ATTACHMENT D: CERTIFICATION OF RESTRICTIONS ON LOBBYING**

I, Todd Zampedri, Senior Estimator, hereby certifies  
(Name and Title of Company Official)  
on behalf of R&O Construction that:  
(Name of Company)

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all sub recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Executed this 6th day of October, 2021.

By   
(Signature of Authorized Official)

Senior Estimator  
(Title of Authorized Official)

**ATTACHMENT D: CERTIFICATION OF RESTRICTIONS ON LOBBYING**

I, Todd Zampedri, Senior Estimator, hereby certifies  
(Name and Title of Company Official)  
on behalf of R&O Construction that:  
(Name of Company)

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all sub recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Executed this 6th day of October, 2021.

By   
(Signature of Authorized Official)

Senior Estimator  
(Title of Authorized Official)

"General Decision Number: UT20210089 05/14/2021

Superseded General Decision Number: UT20200089 State: Utah  
Construction Type: Building

Counties: Morgan and Weber Counties in Utah.

BUILDING CONSTRUCTION PROJECTS (does not include single family homes or apartments up to and including 4 stories).

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.95 for calendar year 2021 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.95 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2021. If this contract is covered by the EO and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must pay workers in that classification at least the wage rate determined through the conformance process set forth in 29 CFR 5.5(a)(1)(ii) (or the EO minimum wage rate, if it is higher than the conformed wage rate). The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

Modification Number	Publication Date
0	01/01/2021
1	04/16/2021
2	05/14/2021

CARP0801-002 10/01/2019

	Rates	Fringes
CARPENTER (Drywall Hanging AND Metal Stud Installation only) .....	\$28.48	12.63

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## ELEC0354-001 01/21/2021

	Rates	Fringes
ELECTRICIAN (Low Voltage Wiring Only).....	\$ 26.76	14.40+1.5%
ELECTRICIAN.....	\$ 35.19	1.3%+13.54

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## PAIN0077-003 07/01/2019

	Rates	Fringes
DRYWALL FINISHER/TAPER	\$ 27.50	7.05

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## PLUM0140-001 08/01/2020

	Rates	Fringes
PLUMBER/PIPEFITTER	\$38.35	13.53

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## \* SFUT0669-003 04/01/2021

	Rates	Fringes
SPRINKLER FITTER (Fire Sprinklers)	\$36.50	22.17

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## SHEE0312-002 07/01/2017

	Rates	Fringes
SHEET METAL WORKER (Including HVAC Duct Installation.....)	\$33.36	11.36

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## SUUT2012-021 07/29/2014

	Rates	Fringes
BRICKLAYER.....	\$22.13	1.67

CARPENTER (Acoustical Ceiling Installation Only) .....	\$21.00	3.20
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CARPENTER, Excludes Acoustical Ceiling Installation, Drywall Hanging, and Metal Stud Installation .....	\$20.68	5.49
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CEMENT MASON/CONCRETE FINISHER.....	\$16.00	0.00
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## INSULATOR – MECHANICAL

(Duct, Pipe & Mechanical System Insulation).....	\$17.76	1.83
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IRONWORKER, STRUCTURAL.....	\$20.21	3.22
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LABORER: Common or General.....	\$12.78	0.00
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LABORER: Irrigation .....	\$9.50	0.00
LABORER: Mason Tender - Brick.....	\$16.38	1.00
LABORER: Mason Tender – Cement/Concrete.....	\$13.87	0.14
LABORER: Pipelayer .....	\$13.57	0.00
OPERATOR: Backhoe/Excavator/Trackhoe.....	\$16.92	0.00
OPERATOR: Loader .....	\$19.34	0.00
PAINTER (Brush, Roller and Spray, Excluding Drywalling/Tapping)	\$15.33	0.00
ROOFER .....	\$15.62	0.00
TILE FINISHER .....	\$13.54	0.00
TILE SETTER .....	\$23.00	0.00
TRUCK DRIVER .....	\$17.74	2.66

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WELDERS – Receive rate prescribed for craft performing operation to which welding is incidental.

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 Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year.

Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

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The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by

the wage determination. The classifications are listed in alphabetical order of ""identifiers"" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

#### Union Rate Identifiers

A four-letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number,

005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

#### Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

#### Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage

determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

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WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION

## **Exhibit F Proposal Clarifications**

R&O Construction proposes to furnish all labor, material, supervision, and management services for the above listed projects at UTA Mount Ogden Business Unit in Ogden, UT. Please see attached bid forms for the pricing on this project. Our pricing is dependent upon the clarifications described below:

R&O Construction exclude the following from their bid proposal:

- Tests & inspections
- Building Permit & Fees
- Access Controls – By Owner
- Fire Alarm – By Owner

Further Clarification

- Performance and Payment Bonds are included, and the amount is \$22,504.00

Due to the current COVID-19 Pandemic the following conditions are to be considered part of this bid proposal. This will take effect March 25, 2020, until further notice.

This Proposal is conditioned upon a lack of impact due to the COVID-19 Pandemic (“COVID-19 Impact”), including but not limited to quarantine, travel restrictions, labor or material shortages, increased costs, actions by Federal, State, or local government, or similar consequences. R&O will use its best efforts to maintain the price and schedule set forth in the Proposal but reserves the right to modify the Proposal in the event of a COVID-19 Impact prior to the Parties reaching a final contract.

Pricing is good for 30 days.