

**UTA CONTRACT NO. 21-03430BM**

**Advertising Services**

This Professional Services Agreement (“Contract”) 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 & R PARTNERS, INC. (“Consultant” or “Contractor”).

**RECITALS**

- A. UTA desires to hire Consultant for the Advertising Services described in Exhibit A (“Work”), and
- B. On April 5, 2021, UTA issued Request for Proposal Package Number 21-03430BM (“RFP”) encouraging interested parties to submit proposals to perform the services described in the Request for Proposal, and
- C. Upon evaluation of the proposals submitted in response to the Request for Proposal, UTA selected Consultant as providing the best value for UTA, and
- D. Consultant is qualified and willing to perform the Work as set forth in the Scope of Services.

**AGREEMENT**

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

**1. SERVICES TO BE PROVIDED**

- a. Consultant shall perform all Work as set forth in the Scope of Services (Exhibit A). Except for items (if any) which this Contract specifically states will be UTA-provided, Consultant shall furnish all the labor, material and incidentals necessary for the Work.
- b. Consultant shall perform all Work under this 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 Advertising profession. Consultant shall perform all Work in compliance with applicable laws, regulations, rules, ordinances, permit constraints and other legal requirements including, without limitation, those related to safety and environmental protection.
- d. Consultant shall furnish only qualified personnel and materials necessary for the performance of the Work.

- e. When performing Work on UTA property, Consultant shall comply with all UTA work site rules including, without limitation, those related to safety and environmental protection made known to Consultant in advance and in writing or publicly available.

## **2. MANAGEMENT OF WORK**

- a. Consultant's Project Manager will be the day-to-day contact person for Consultant 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 Consultant 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. Consultant shall prosecute the Work in a diligent and continuous manner and in accordance with all applicable notice to proceed, critical path schedule and guaranteed completion date requirements set forth in (or developed and agreed by the parties in accordance with) the Scope of Services.
- b. Consultant shall conduct regular meetings to update UTA's Project Manager regarding the progress of the Work including, but not limited to, any unusual conditions or critical path schedule items that could affect or delay the Work. Such meetings shall be held at intervals mutually agreed to between the parties.
- c. Consultant shall deliver monthly progress reports and provide all Contract submittals and other deliverables as specified in the Scope of Services.
- d. Any drawing or other submittal reviews to be performed by UTA in accordance with the Scope of Services are for the sole benefit of UTA, and shall not relieve Consultant of its responsibility to comply with the Contract requirements.
- e. UTA will have the right to inspect, monitor and review any Work performed by Consultant hereunder as deemed necessary by UTA to verify that such Work conforms to the Contract requirements. Any such inspection, monitoring and review performed by UTA is for the sole benefit of UTA, and shall not relieve Consultant of its responsibility to comply with the Contract requirements.
- f. UTA shall have the right to reject Work which fails to materially conform to the requirements of this Contract. Upon receipt of notice of rejection from UTA, Consultant shall (at its sole expense and without entitlement to equitable schedule relief) promptly re-perform, replace or re-execute the Work so as to conform to the Contract requirements.
- g. If Consultant fails to promptly remedy rejected Work as provided in Section 3.f, UTA may (without limiting or waiving any rights or remedies it may have) perform necessary corrective action using other contractors or UTA's own forces. Any costs reasonably incurred by UTA in such corrective action shall be chargeable to Consultant.

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

This Contract shall commence as of the Effective Date. This Contract shall remain in full force and effect for Five (5) year period expiring June 30, 2026. UTA may, at its sole election and in its sole discretion, extend the initial term. Three, one-year extension options may be exercised by UTA upon providing Consultant with notice of such election at least thirty (30) days prior to the expiration of the initial term or then-expiring option period (as applicable). This Contract may be further extended if the Consultant and UTA mutually agree to an extension evidenced in writing. The rights and obligations of UTA and Consultant under this Contract shall at all times be subject to and conditioned upon the provisions of this Contract.

#### **5. COMPENSATION**

- a. For the performance of the Work, UTA shall pay Consultant in accordance with the payments provisions described in Exhibit B. Payments shall be made in accordance with the milestones or other payment provisions detailed in Exhibit B. If Exhibit B does not specify any milestones or other payment provisions, then payment shall be made upon completion of all Work and final acceptance thereof by UTA.
- 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 Consultant 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 Consultant 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) Consultant 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 Consultant 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 Consultant 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 Professional Services Agreement (including any exhibits and attachments hereto).

2. Contractor's Proposal including, without limitation, all federal certifications (as applicable);

3. UTA's RFP including, without limitation, all attached or incorporated terms, conditions, federal clauses (as applicable), drawings, plans, specifications and standards and other descriptions of the Goods and Services;

b. The above-referenced documents are made as fully a part of the Contract as if hereto.

## **7. ORDER OF PRECEDENCE**

The Order of Precedence for this contract is as follows:

- This Professional Services Agreement including all attachments
- UTA Terms and Conditions
- UTA RFP
- 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. CHANGES**

a. UTA's Project Manager or designee may, at any time, by written order designated or indicated to be a Change Order, direct changes in the Work including, but not limited to, changes:

- A. In the Scope of Services;
- B. In the method or manner of performance of the Work; or
- C. In the schedule or completion dates applicable to the Work.

To the extent that any change in Work directed by UTA causes an actual and demonstrable impact to: (i) Consultant's cost of performing the Work; or (ii) the time required for the Work, then (in either case) the Change Order shall include an equitable adjustment to this Contract to make Consultant whole with respect to the impacts of such change.

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

- A. The date, circumstances, and source of the change; and
- B. That Consultant regards the identified item as a change in Work giving rise to an adjustment in this Contract.

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

- d. As soon as practicable, but in no event longer than 30 days after providing notice, Consultant must provide UTA with information and documentation reasonably demonstrating the actual cost and schedule impacts associated with any change in Work. Equitable adjustments will be made via Change Order. Any dispute regarding the Consultant’s entitlement to an equitable adjustment (or the extent of any such equitable adjustment) shall be resolved in accordance with Article 23 of this Contract.

## **9. INVOICING PROCEDURES**

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

## **10. OWNERSHIP AND DISTRIBUTION OF DESIGNS, DRAWINGS, AND WORK PRODUCT**

Except as it relates to Contractor Tools (defined below), 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 written request, and, in any event, upon termination or final acceptance of the Work. To the extent that any deliverables include or incorporate Contractor Tools, Contractor hereby grants UTA a fully paid-up license to make copies of the Contractor Tools as part of this engagement for its internal business purposes and provided that such Contractor Tools cannot be modified or distributed outside UTA without the written permission of Contractor or except as otherwise permitted hereunder.

Contractor shall retain all rights, title and interest (including, without limitation, all copyrights, patents, service marks, trademarks, trade secret and other intellectual property rights) in and to all technical or internal designs, methods, ideas, concepts, know-how, techniques, generic documents and templates that have been previously developed by Contractor or developed during the course of the provision of the Work provided such generic documents or templates do not contain any UTA confidential information or proprietary data (“Contractor Tools”). Rights and ownership by Contractor of Contractor Tools shall not extend to or include all or any part of UTA’s confidential information or proprietary data.

Contractor’s Work is prepared solely for the internal business use of the UTA. To the extent that Contractor’s Work is not subject to disclosure under applicable public records laws, Contractor’s Work may not be provided to third parties without Contractor’s prior written consent. Contractor does not intend to benefit or create a legal duty to any third-party recipient of its work product, and Contractor may include a legend on its reports so stating. UTA agrees not to remove any such disclaimer language from Contractor’s work. Contractor’s consent to release its work product to any third party may be conditioned on the third party signing a release, subject to the following exception(s): (a) UTA may provide a copy of Contractor’s Work, in its entirety, to the UTA’s professional service advisors who are subject to a duty of confidentiality and who agree to not use Contractor’s Work for any purpose other than to benefit the UTA; (b) UTA may provide a copy of Contractor’s Work, in its entirety, to other governmental entities, as required by law. No third-party recipient of Contractor’s Work should rely upon Contractor’s Work. Such recipients should engage qualified professionals for advice appropriate to their own specific needs.

UTA’s use and ownership of the Work is limited by any third-party releases, agreements or licenses permitting use of third-party property which was included or incorporated in the Work. Consultant shall notify UTA of the material terms of any third-party releases, agreements, or licenses.

## **11. USE OF SUBCONTRACTORS**

- a. Consultant shall give advance written notification to UTA of any proposed subcontract (not indicated in Consultant’s Proposal) negotiated with respect to the Work. UTA shall have the right to approve all 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. Consultant shall be solely responsible for making payments to subcontractors, and such payments shall be made within thirty (30) days after Consultant receives corresponding payments from UTA.
- d. Consultant shall be responsible for and direct all Work performed by subcontractors.
- e. Consultant agrees that no subcontracts shall provide for payment on a cost-plus-percentage-of-cost basis. Consultant further agrees that all subcontracts shall comply with all applicable laws.

## **12. KEY PERSONNEL**

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

consent of UTA.

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

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

### **14. TERMINATION**

**a. FOR CONVENIENCE:** UTA shall have the right to terminate the Contract at any time by providing written notice to Contractor. If the Contract is terminated for convenience, UTA shall pay Contractor: (i) in full for Work delivered and Advertising Services fully performed prior to the effective date of termination; and (ii) an equitable amount to reflect costs incurred (including Contract close-out and subcontractor termination costs that cannot be reasonably mitigated) and profit on work-in-progress as of to the effective date of the termination notice. UTA shall not be responsible for anticipated profits based on the terminated portion of the Contract. Contractor shall promptly submit a termination claim to UTA. If Contractor has any property in its possession belonging to UTA, Contractor will account for the same, and dispose of it in the manner UTA directs.

**b. FOR DEFAULT:** If Contractor (a) becomes insolvent; (b) files a petition under any chapter of the bankruptcy laws or is the subject of an involuntary petition; (c) makes a general assignment for the benefit of its creditors; (d) has a receiver appointed; (e) should fail to make prompt payment to any subcontractors or suppliers; or (f) fails to comply with any of its material obligations under the Contract, UTA may, in its discretion, after first giving Contractor seven (7) days written notice to cure such default:

1. Terminate the Contract (in whole or in part) for default and obtain the Advertising Services using other contractors or UTA's own forces, in which event Contractor shall be liable for all incremental costs so incurred by UTA;
2. Pursue other remedies available under the Contract (regardless of whether the termination remedy is invoked); and/or

3. Except to the extent limited by the Contract, pursue other remedies available at law.

**c. CONTRACTOR'S POST TERMINATION OBLIGATIONS:**

Upon receipt of a termination notice as provided above, Contractor shall (i) immediately discontinue all work affected (unless the notice directs otherwise); and (ii) deliver to UTA all data, drawings and other deliverables, whether completed or in process; provided, however Consultant makes no express or implied warranty and shall have no liability of any form whatsoever with respect to any draft or unfinished work product that is delivered to UTA pursuant to this clause. Contractor shall also remit final invoices for all Advertising Services performed and expenses incurred in full accordance with the terms and conditions of the Contract up to the effective date of termination including outstanding invoices for media buys. Expenses for media buys shall be curtailed as the earliest possible date. UTA shall calculate termination damages payable under the Contract, shall offset such damages against Contractor's final invoice, and shall invoice Contractor for any additional amounts payable by Contractor (to the extent termination damages exceed the invoice). All rights and remedies provided in this Article are cumulative and not exclusive. If UTA terminates the Contract for any reason, Contractor shall remain available, for a period not exceeding 90 days, to UTA to respond to any questions or concerns that UTA may have regarding the Goods and Services furnished by Contractor prior to termination; provided, however if the amount of post-termination work is material, reasonable costs incurred from that work during the 90-day period shall be paid to the Contractor.

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

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

**16. FINDINGS CONFIDENTIAL**

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

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

- A. Information already in the public domain;
- B. Information disclosed to Consultant by a third party who, to the actual knowledge of Consultant following reasonable inquiry is not under a confidentiality obligation to UTA;
- C. Information developed by or in the custody of Consultant before entering into this Contract or thereafter provided such information was not based on UTA confidential information or proprietary data;
- D. Information developed by Consultant 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.

### **17. PUBLIC INFORMATION.**

Contractor acknowledges that the Contract and related materials (invoices, orders, etc.) will be public documents under the Utah Government Records Access and Management Act (GRAMA). Contractor's response to the solicitation for the Contract will also be a public document subject to GRAMA, except for legitimate trade secrets, so long as such trade secrets were properly designated in accordance with terms of the solicitation. UTA shall provide Consultant notice of any GRAMA request that may include the confidential information of any of Consultant's third-party vendors.

### **18. GENERAL INDEMNIFICATION AND LIMITATION OF LIABILITY**

Contractor shall indemnify, hold harmless and defend UTA, its officers, trustees, agents, and employees (hereinafter collectively referred to as "Indemnitees") from and against all third party claims or actions and the directly resulting liabilities, 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 Claims 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 Indemnitee as a result of Contractor's failure to meet its obligations to such employee or subcontractor, 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 primarily out of the negligence of UTA or the Indemnitees.

In the event of any claim arising from services provided by Contractor at any time, the total liability of Contractor, its officers, directors, agents and employees to UTA shall not exceed five million dollars (\$5,000,000). This limit applies regardless of the theory of law under which a claim is brought, including negligence, tort, contract, or otherwise. In no event shall Contractor be liable for lost profits of UTA or any other type of incidental or consequential damages. The foregoing limitations shall not apply in the event of the intentional fraud or willful misconduct of Contractor.

### **19. INSURANCE REQUIREMENTS**

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The 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
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Annual Aggregate	\$2,000,000
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- 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 limits of liability referenced in this Section 19.
- 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 canceled except after thirty (30) days prior written notice has been given to the Utah Transit Authority. Such notice shall be sent directly to Brian Motes, Procurement and Contracts Specialist, Utah Transit Authority, 669 West 200 South, Salt Lake City, Utah 84101.

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 Office of General Counsel, whose decision shall be final. Such action will not require a formal Contract amendment, but may be made by administrative action.

## **20. OTHER INDEMNITIES**

- a. Consultant shall 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 of a third party's intellectual property rights directly resulting from Consultant's performance under this Contract. If notified promptly in writing and given authority, information and assistance, Consultant shall defend, or may settle at its expense, any suit or proceeding against UTA so far as based on a claims that Consultant's deliverables infringe third party intellectual property rights and Consultant shall pay all damages and costs awarded therein against UTA deemed to have resulted from such infringement. In case any portion of the Work is in such suit held to constitute such an infringement or an injunction is filed that interferes with UTA's rights under this Contract, Consultant shall, at its expense and through mutual agreement between the UTA and Consultant, either procure for UTA any necessary intellectual property rights, or modify Consultant's services or deliverables such that the claimed infringement is eliminated. Consultant is not obligated to indemnify UTA if UTA has

used any Work in violation of any third-party releases, licenses, or agreements, the material terms of which have been disclosed to UTA.

- b. Consultant shall: (i) 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 Consultant or its subcontractors of any tier. If any lien arising out of this Contract is filed, before or after Work is completed, Consultant, within ten (10) calendar days after receiving from UTA written notice of such lien, shall obtain a release of or otherwise satisfy such lien. If Consultant fails to do so, UTA may take such steps and make such expenditures as in its discretion it deems advisable to obtain a release of or otherwise satisfy any such lien or liens, and Consultant shall upon demand reimburse UTA for all costs incurred and expenditures made by UTA in obtaining such release or satisfaction. If any non-payment claim is made directly against UTA arising out of non-payment to any subcontractor, Consultant shall assume the defense of such claim within ten (10) calendar days after receiving from UTA written notice of such claim. If Consultant fails to do so, Consultant shall upon demand reimburse UTA for all costs incurred and expenditures made by UTA to satisfy such claim.

## **21. INDEPENDENT CONTRACTOR**

Consultant 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. Consultant is responsible to provide and pay the cost of all its employees' benefits.

## **22. PROHIBITED INTEREST**

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

## **23. 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 8. 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/Project Manager	Five calendar days
UTA's Sr. Supply Chain Manager/Second Level manager	Five calendar days
UTA's Chief Procurement Officer/Third Level manager	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, that either party may commence formal mediation under the Juris Arbitration and Mediation (JAMS) process using a mutually agreed upon JAMS mediator.

If the Mediation Process described above fails to produce a resolution, the parties agree to proceed to final and binding arbitration under the JAMS arbitration process. The arbitration shall take place before a panel of three arbitrators in the State of Utah. Within 30 days of the commencement of the arbitration, each party shall designate in writing a single neutral and independent arbitrator. The two arbitrators designated by the parties shall then select a third arbitrator. The arbitrators shall have a background in the field of advertising, a related field, or the procurement of professional services. The arbitrators shall have the authority to permit limited discovery, including depositions, prior to the arbitration hearing, and such discovery shall be conducted consistent with the Federal Rules of Civil Procedure. The arbitrators shall have no power or authority to award punitive or exemplary damages. The arbitrators may, in their discretion, award the cost of the arbitration, including reasonable attorney fees, to the prevailing party. Any award made may be confirmed in any court having jurisdiction. Any arbitration shall be confidential, and except as required by law, neither party may disclose the content or results of any arbitration hereunder without the prior written consent of the other parties, except that disclosure is permitted to a party's auditors and legal advisors.

## **24. GOVERNING LAW**

This Contract shall be interpreted in accordance with the substantive and procedural laws of the State of Utah.

## **25. ASSIGNMENT OF CONTRACT**

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

**26. 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.

**27. NOTICES OR DEMANDS**

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

If to UTA:  
Utah Transit Authority  
ATTN: Brian Motes  
669 West 200 South

with a required copy to:  
Utah Transit Authority  
ATTN: Legal Counsel  
669 West 200 South

If to Consultant:  
R&R Partners  
Attn: Kyle Curtis  
837 East South Temple  
Salt Lake City, UT 84102

With a copy to:  
Morgan Baumgartner  
6160 Plumas, Ste. 200  
Reno, Nevada 89519

- b. Any such notice shall be deemed to have been given, and shall be effective, on delivery to the notice address then applicable for the party to which the notice is directed; provided, however, that refusal to accept delivery of a notice or the inability to deliver a notice because of an address change which was not properly communicated shall not defeat or delay the giving of a notice. Either party may change the address at which such party desires to receive written notice by providing written notice of such change to any other party.
- c. Notwithstanding Section 27 a, 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.

**28. CONTRACT ADMINISTRATOR**

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

Contract Administrator, or designee.

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

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

## **30. 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.

## **31. ANTIDISCRIMINATION**

1. Employment Practices. Consultant hereby declares that it is and will remain fully compliant with the provisions of the Utah Anti-discrimination Act (UTAH CODE §§ 34A-5-101 TO 34A-5-108) and the equivalent anti-discrimination laws of its State of incorporation and/or headquarters location. Under the Act, an employer may not refuse to hire, promote, discharge, demote, or terminate a person, or to retaliate against, harass, or discriminate in matters of compensation or in terms, privileges, and conditions of employment against a person otherwise qualified, because of race, color, sex, pregnancy, childbirth, or pregnancy-related conditions; age, if the individual is 40 years of age or older; religion; national origin; disability; sexual orientation; or gender identity.

2. Goods and Services Provided to UTA. In addition to avoiding discriminatory employment practices as described above, Consultant also declares that all goods and services it provides to UTA are useable and accessible by individuals with disabilities as described in Title II of the American with Disabilities Act and also Section III (H) of UTA Policy 6.1.1 which states that programs, services, and facilities procured by UTA will be accessible to and useable by individuals with disabilities. Consultant further certifies that any digital software, tool, program or web application must meet the most recent version of the Web Content Accessibility Guidelines (WCAG) found at <https://www.w3.org/TR/WCAG21>. To the extent Offeror is providing transportation services, vehicles

or facilities it also declares that it is in compliance with Department of Transportation (DOT) ADA standards found at 49 CFR Parts 27, 37, 38, and 39.

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

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

### **33. FORCE MAJEURE**

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

### **34. SEVERABILITY**

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

### **35. ENTIRE AGREEMENT**

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

### **36. AMENDMENTS**

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

### **37. COUNTERPARTS**

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

retransmission of any signed copy hereof shall be the same as delivery of an original.

**38. SURVIVAL**

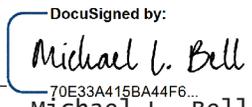
Provisions of this Contract intended by their nature and content to survive termination of this Contract shall so survive including, but not limited to, Articles 10, 14, 15,16, 17, 18, 19, 20, 23, 24, 29 and 30.

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

**UTAH TRANSIT AUTHORITY:**

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

By  \_\_\_\_\_  
Name Michael L. Bell  
Title Utah Attorney General 6/2/2021  
UTA Legal Counsel

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_  
Project Manager

**R & R PARTNERS INC.**

E-SIGNED by Morgan Baumgartner  
By on 2021-06-02 21:20:01 GMT  
Name Morgan Baumgartner  
Title Executive Vice President, General Counsel

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

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

UTA has awarded a contract to R & R Partners for a period of five (5) years, plus up to three (3) option years, subject to the terms, conditions, and limitations as set forth herein and incorporated into this contract.

R & R Partners is expected to perform and fulfill the following activities and requirements for Utah Transit Authority.

**Advertising & Marketing Campaigns**

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

- Corporate Branding/Ridership Campaign: one (1) main campaign each year. Usually a television and online/digital campaign with 2-3 produced spots.
- Change Day occurs three times per year (April, August & November). Depending on the size and scope of the change day, UTA may implement a paid media campaign to create awareness about the changes and/or promote additional service being implemented.
- Ed Pass: a back-to-school campaign targeted to the students at the major universities in UTA's service area. Tactics typically include inclusion in new freshman materials, digital/social media, and on-campus digital and print signage.
- Targeted Campaigns: Identified paid media campaigns for specific services, fare products or promotions, safety programs, new product launches, etc. May include 4-6 campaigns a year. Examples include:
  - o Micro transit service launch in southwestern Salt Lake County
  - o Promoting fare products: UTA Go Ride, FAREPAY
  - o Promoting new technologies and rider tools: Transit app, Service Alerts
  - o Safety Campaigns: may be targeted to riders, to vehicle drivers, or pedestrians

**Special Events & Collateral Materials**

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

Year in Review, the Federal Priorities document and the Fast Facts booklet.

### **Covid-19 Recovery Strategy**

UTA responded swiftly and pro-actively when the Covid-19 pandemic hit in March of 2020. We quickly implemented strict daily cleaning and disinfecting measures, installed operator shields on all the buses, limited contact by implementing rear-door boarding and not handling fare media, providing for social distancing by monitoring ridership, and requiring masks. As a result, UTA's incidence of Covid-19 cases is reflective of the community at large, and there has not been an outbreak tied to the UTA system.

However, UTA ridership dropped as schools went virtual, events were canceled, and employers implemented telecommuting practices. UTA's ridership has stabilized in recent months, and even slightly increased, and we still carry about 65,000 trips per day.

- As vaccinations increase in the State, events return, school return to the classroom in the fall, and employees potentially return to the workplace, UTA implemented a TV/digital campaign in early 2021 to create awareness about our safety measures and begin to build confidence. The agency has also created a Ridership Recovery Team to identify potential campaigns and fare promotions to encourage people to return to transit.
- The Contractor must be able to provide a strategic messaging and communications plan to assist UTA in further building confidence and ultimately increasing ridership and emerging from the Covid-19 pandemic.
- The Contractor will also need to assist the agency in developing, producing and placing the communications plans for the various campaigns and fare promotions

### **Vehicle Design & Updates**

The Public Relations & Marketing Department, as part of UTA's branding efforts, is responsible for the exterior and interior design - and updates - of UTA vehicles, either for existing or new services.

Recent examples include the design of UTA's bus rapid transit vehicles (starting with UVX and now being applied to the Ogden BRT project), creating the design for the UTA On Demand by Via micro transit pilot vans, and updating the old TRAX vehicles (SD100 and SD160 fleet) with the new S70 design.

- The Contractor will need to have the branding and design expertise to assist UTA in developing detailed designs for new services in compliance with UTA's brand guidelines, assisting the agency in updating designs to existing fleet vehicles, and

assisting the agency on brand strategy for identifying specific vehicles (such as alternative fuel vehicles).

- The Contractor will need to be able to provide UTA with design files that can be provided to vehicle manufacturers.

### **Research**

- Each year the Public Relations & Marketing Department conducts a Benchmark Survey to residents throughout the agency's service area. The Benchmark Survey is designed to a) gauge overall opinion of UTA and its performance and accountability, b) gauge perception of UTA's services, c) ascertain high-level reasons why people ride/don't ride, d) ascertain potential motivators to ride, and e) where people would look for information about UTA or how to ride.
- UTA has kept the Benchmark Survey very consistent – with a few minor updates each year – to track results over time. UTA also seeks a sample size of at 600+ responses to ensure adequate representation across all the counties in the agency's service area.
- The Contractor will need to have the research expertise to assist UTA with updating the survey each year and provide the resources or a sub-contractor to implement and conduct the survey.

**Exhibit B**  
**Pricing and Payment**

This Contract will not exceed \$2,520,000 for five (5) years for all services, deliverables and efforts as described in the Scope of Work and Contract above with the detailed pricing below. The additional option years shall not exceed \$504,000 per year. Payment shall only be made for actual work performed within the stated not-to-exceed amounts.

<b>Pricing Sheet: UTA Advertising Agency RFP 21-03430BM</b>						<b>4200</b>			
Price shall be proposed as a blended hourly rate up to a maximum of 4,200 hours annually (based on estimated average maximum of 350 average hours per month x 12 months).						4200			
	Year 1	Year 2	Year 3	Year 4	Year 5	Option 1	Option 2	Option 3	8 Year Total
<b>Proposed Blended Hourly Rate</b>	\$ 120.00	\$ 120.00	\$ 120.00	\$ 120.00	\$ 120.00	\$ 120.00	\$ 120.00	\$ 120.00	\$4,032,000
	\$504,000	\$504,000	\$504,000	\$504,000	\$504,000	\$504,000	\$504,000	\$504,000	\$4,032,000
<i>The \$120 hour rate assumes project based work. R&amp;R Partners is able to reduce the proposed blended hourly rate and maintain our current contracted blended hourly rate with UTA at \$115 within a retainer-based model.</i>									

Expenses pursuant to this Contract, including production costs, media buys and other deliverables and efforts as described in the Scope of Work will not exceed \$6,000,000 for five (5) years. Expenses in the additional option years shall not exceed \$1,200,000 per year for all services and media buys. Payment shall only be made for actual work performed within the stated not-to-exceed amounts.

UTA will pay for these services each month after approval of monthly invoices. The payment will be made each month after the satisfactory delivery and acceptance of the deliverables and completion of the statement of services approved by UTA's Project Manager for each month.

An invoice for work completed shall be submitted monthly by the Consultant to the UTA Project Manager. The invoice shall be accompanied by a monthly progress report including a brief summary statement of the work completed, any Contract submittals and any other deliverables as specified in the Scope of Services.

The monthly invoice shall include at a minimum the following information for all work completed (including work completed by subcontractors):

**Administrative Project Information**

- Invoice Date
- Project Name
- UTA Contract Number