

PURCHASE AND SALE AGREEMENT

**Between
North County Transit District
And
Utah Transit Authority**

THIS PURCHASE AND SALE AGREEMENT (Vehicle) (the “Agreement”) is made and entered into this 30th day of June 2023, by and between Utah Transit Authority, a public transit district organized under the laws of the State of Utah (hereinafter “UTA” or “Purchaser”), and the North County Transit District, a public transit district organized under the laws of the State of California (herein “NCTD” or “Seller”) (collectively referred to herein as “Parties”).

WHEREAS NCTD is a governmental entity established under the laws of the State of California, specifically Public Utilities Code sections 125000, et. seq, owning, operating, and maintaining a public transit system (bus, light rail, and commuter rail) in the San Diego North County area; and

WHEREAS, NCTD currently has possession of certain commuter rail vehicle(s) (the “Vehicles”), more particularly described in Exhibit A hereto; and

WHEREAS the Parties hereto are desirous of entering into this Agreement whereby NCTD agrees to sell to UTA and UTA agrees to purchase from NCTD the Vehicle(s).

NOW, THEREFORE, for and in consideration of the recitals, and the mutual promises, covenants, and conditions set forth in this Agreement, the Parties hereby agree as follows:

1. Purchase and Sale of the Vehicles. Subject to the terms and conditions of this Agreement, Seller agrees to sell, and Purchaser agrees to purchase, the Vehicles (more fully described in Exhibit A, attached hereto and by this reference made a part hereof). The Vehicles are currently in the full custody and control of the Seller and will be sold “as is”.

2. Purchase Price. As consideration for the purchase and sale of the Vehicles, UTA shall pay to NCTD the pre-tax purchase price (the “Purchase Price”) of Two Hundred Thousand Dollars (\$200,000) per Vehicle as described in Exhibit A. UTA shall pay seventy percent (70%) of the Purchase Price (\$140,000 per vehicle) to NCTD upon full execution of this Agreement. The remaining thirty percent (30%) shall be paid once the vehicles are made available to UTA. The Purchase Price does not include sales and/or use taxes and UTA is solely responsible for paying and remitting the applicable sales taxes or use taxes to the applicable state taxing authorities. UTA is also solely responsible for all costs for transportation, packaging, handling, insurance, and delivery.

3. Maintenance and Storage. NCTD shall be responsible for the maintenance and storage of the vehicles until such time as they are made available for possession by UTA. Once the vehicles are available for possession by UTA, NCTD shall continue to store the vehicles while awaiting transport by UTA for a period not to exceed 30 days. In the event that NCTD is required to store the vehicles for a period in excess of 30 days, NCTD reserves the right to invoice UTA for

storage costs and UTA should reimburse NCTD for such storage costs. Storage costs will be based on actual costs.

4. Transfer of Title. Concurrently with its receipt of the full Purchase Price, NCTD shall execute and deliver to UTA a fully executed Bill of Sale, in the form attached hereto as Exhibit B, transferring all rights, title, manufacturer, and other third-party warranties, and interest in and to the Vehicles to UTA. The receipt of the full Purchase Price shall be designated as the "Closing Date." NCTD shall continue its use of the Vehicles until its replacement vehicles are deemed service-ready. During this period of use by NCTD, it shall provide service and repairs necessary to maintain operability of the Vehicles. NCTD will make the Vehicles available to UTA (as listed in Exhibit A) upon completion of commissioning of the new fleet and placement into revenue service. NCTD will provide a sixty (60) days advance notice when the Vehicles are available for possession by UTA.

5. Risk of Loss. Risk of loss shall transfer from NCTD to UTA at the time of transfer of title of the Vehicles to UTA in accordance with paragraph 4.

6. Warranties UTA accepts ownership of and title to the Vehicles AS IS, WHERE IS. Notwithstanding, NCTD will assign to UTA all manufacturer and other third-party warranties applicable to the Vehicles and represents that it has taken all necessary steps to effectuate such assignment.

7. Representations and Warranties. NCTD and UTA, respectively, represent and warrant that the following matters are true as of the date hereof, will also be true as of the Closing Date, and such representations and warranties shall survive the Closing Date of the transaction contemplated herein.

(a) UTA. UTA has full authority and power to execute and deliver this Agreement. The individuals signing below are duly and properly authorized to execute this Agreement on behalf of UTA.

(b) NCTD. NCTD has legal title to the Vehicles, and good and lawful right to transfer and convey the Vehicles. The Vehicles are free and clear of all claims, liens, security interests, and similar encumbrances, and no other parties have or claim any right of possession of the Vehicles. NCTD has full authority and power to execute and deliver this Agreement. The individuals signing below are duly and properly authorized to execute this Agreement on behalf of NCTD. NCTD also affirms that it did not use federal funds to purchase the Vehicles.

8. Indemnification. Both Parties agree to indemnify one another and hold one another harmless for damages or injury caused by the Indemnifying Party or its employees.

9. Insurance. NCTD shall continue to fully insure the Vehicles with both property and no less than \$2M in liability coverage until the transfer of title to UTA. After the transfer of title to UTA, UTA shall be fully responsible for any and all insurance coverage of the Vehicles.

10. Further Assurances. The Parties covenant and agree that subsequent to the execution hereof and conveyance of the Vehicles, and without any further consideration, each party will

execute and deliver any further legal instruments and perform any acts which are or may become reasonably necessary to effectuate the purpose of this Agreement.

11. Notices. Any notice required or permitted to be given by either party to the other shall be in writing and shall be deemed to have been duly given when delivered personally or sent by certified mail, return receipt requested, in a postage-paid envelope addressed to the party at the address set out below:

If to UTA:

Commuter Rail General Manager
669 West 200 South
Salt Lake City, UT 84101

If to NCTD:

Executive Director
810 Mission Avenue
Oceanside, CA 92054

12. Choice of Law. The Parties agree to mediate any disputes, at a location to be mutually agreed to by the Parties, prior to commencing litigation. With respect to the Parties' respective rights or remedies under this Agreement, this Agreement shall be governed by the laws of the State of Nevada. Should a dispute relating to this Agreement arise between the Parties warranting the filing of legal action, either party may pursue available legal remedies in an Nevada state or federal court in Clark County, Nevada. With respect to claims by third parties relating to the NCTD's use or operation of the Vehicles in the State of California, those claims shall be governed by the laws of the State of California, and the venue for those claims shall be in state or federal courts in San Diego County, California. All other claims shall be governed by the law of the jurisdiction where the cause of action arose.

13. Force Majeure. Neither party hereto shall be considered in default in the performance of its obligations hereunder to the extent that the performance of any such obligation is prevented or delayed by unforeseen causes including acts of God, acts of a public enemy, and government acts beyond the control and without fault or negligence of the affected party. Market conditions and economic hardship shall not be considered as force majeure events. Each party hereto shall give notice promptly to the other of the nature and extent of any such circumstances claimed to delay, hinder, or prevent performance of any obligations under this Agreement.

14. Miscellaneous. This Agreement embodies the entire agreement between the Parties and supersedes all prior agreements and understandings, if any relating to the matters addressed herein, and may be amended or supplemented only by a written instrument executed by the party against whom enforcement is sought. This Agreement shall be binding upon and inure to the benefit of the executing Parties and their respective successors and approved assigns. In the event one or more of the provisions contained in this Agreement shall, for any reason, be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. This Agreement may be executed in

counterpart, each of which when so executed shall be deemed to be an original, and in each case, the counterparts together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the Parties have executed this Agreement in multiple originals. This Agreement is effective on the date both Parties' authorized representatives have signed this Agreement.

UTAH TRANSIT AUTHORITY

Signature: _____

Printed Name: Jay Fox

Title: Executive Director

Date:

Signature: _____

Printed Name: Cherryl Beveridge

Title: Chief Operating Officer

Date:

Approved as to form:

Signature: Michael L Bell Digitally signed by Michael L Bell
Date: 2023.07.10 09:18:29 -06'00'

Printed Name: Michael Bell

Title: Assistant Attorney General

Date: 7-10-23

NORTH COUNTY TRANSIT DISTRICT

Signature: _____

Printed Name: Matthew O. Tucker

Title: Executive Director

Date:

Approved as to form:

Signature: _____

Printed Name: Lori Winfree

Title: General Counsel

Date:

EXHIBIT A

Description of Vehicles

Description	Bi-level car No.	Manufacturer	Year of Manufacture	Purchase Price
Bi-level coach car	2202	Bombardier	1993	\$200,000
Bi-level coach car	2204	Bombardier	1993	\$200,000
Bi-level coach car	2205	Bombardier	1993	\$200,000
Bi-level coach car	2206	Bombardier	1993	\$200,000
Bi-level coach car	2207	Bombardier	1993	\$200,000

EXHIBIT B
BILL OF SALE
(Vehicle No. XXXXX)

North County Transit District, a public transit district organized and incorporated under the laws of the State of California (“**SELLER**”), in consideration of the sum of two hundred thousand (\$200,000) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does hereby sell, convey, transfer, set over, and deliver to Utah Transit Authority, a public transit district organized and incorporated under the laws of the State of Utah, (“**BUYER**”), all of the SELLER’s right, title, interest, manufacturer and other third-party warranties, and equity in and to the Vehicle described as follows:

(Describe the individual vehicle)

SELLER warrants that it is the lawful owner of the Vehicle; that the Vehicle is free from all liens and encumbrances arising under SELLER; that SELLER has full right and authority to sell the same; and that SELLER will warrant and defend title to the same against any and all lawful claims thereunto pertaining. EXCEPT FOR THE FOREGOING WARRANTY OF TITLE, OWNERSHIP, AND AUTHORITY, **TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SELLER HEREBY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, IN RESPECT OF THE VEHICLE OR ANY PORTION THEREOF. BUYER ACKNOWLEDGES THAT BUYER’S PURCHASE OF THE VEHICLE, AND ACCEPTANCE OF TITLE AND POSSESSION THEREOF, IS ON AN “AS IS” AND “WHERE IS” BASIS, WITH ALL FAULTS, AND SUBJECT TO NO OTHER REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS, OR IMPLIED, EXCEPT FOR ANY MANUFACTURER OR OTHER TRANSFERABLE THIRD-PARTY WARRANTIES, AND/OR COMPLIANCE WITH ANY APPLICABLE LAWS, AND WITHOUT RECOURSE TO THE SELLER, ITS DIRECTORS, OFFICERS, AGENTS, REPRESENTATIVES, SUCCESSORS, AND ASSIGNS.**

Dated this _____ day of _____, 2023.

NORTH COUNTRY TRANSIT DISTRICT
SELLER

UTAH TRANSIT AUTHORITY
BUYER

By: _____
Printed Name: _____
Title: _____

By: _____
Printed Name: _____
Title: _____

Approved as to Form:

Approved as to Form: