



REQUEST FOR PROPOSALS

Professional Services Contract

22-03546VW Apprenticeship Training Curriculum Design Services

This Professional 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 Xpan Interactive USA, Inc., (“Consultant”).

RECITALS

WHEREAS, UTA desires to hire professional services for Apprenticeship Training Curriculum Design Services.

WHEREAS, On February 22, 2022, UTA issued Request for Proposal Package Number 22-03546VW (“RFP”) encouraging interested parties to submit proposals to perform the services described in the RFP.

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

WHEREAS, 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 transit industry. Consultant shall perform all Work in compliance with applicable laws, regulations, rules, ordinances, permit constraints and other legal requirements including, without limitation, those related to safety and environmental protection.

- d. Consultant shall furnish only qualified personnel and materials necessary for the performance of the Work.
- e. When performing Work on UTA property, Consultant shall comply with all UTA work site rules including, without limitation, those related to safety and environmental protection.

2. **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 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 4.6, UTA may (without limiting or waiving any rights or remedies it may have) perform necessary corrective action using other Consultants or UTA's own forces. Any costs reasonably incurred by UTA in such corrective action shall be chargeable to Consultant.

4. PERIOD OF PERFORMANCE

This Contract shall commence as of the Effective Date. This Contract shall remain in full force and effect until all Work is completed in accordance with this Contract, as reasonably determined by UTA. Consultant shall complete all Work no later than December 31, 2022. This guaranteed completion date may be extended if Consultant and UTA mutually agree to an extension evidenced by a written Change Order. The rights and obligations of UTA and Consultant under this Contract shall at all times be subject to and conditioned upon the provisions of this Contract.

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 Supply Agreement (including any exhibits and attachments hereto).

2. 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 Professional Services;
3. Consultant's Proposal including, without limitation, all federal certifications (as applicable);

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 attachments
2. UTA Terms and Conditions
3. UTA Solicitation Terms
4. Consultant's Bid or Proposal including proposed terms or conditions

Any Consultant/consultant 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 21 of this Contract.

9. INVOICING PROCEDURES

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

10. OWNERSHIP OF DESIGNS, DRAWINGS, AND WORK PRODUCT

Any deliverables prepared or developed pursuant to the Contract including without limitation drawings, specifications, manuals, calculations, maps, sketches, designs, tracings, notes, reports, data, computer programs, models and samples, shall become the property of UTA when prepared, and, together with any documents or information furnished to Consultant and its employees or agents by UTA hereunder, shall be delivered to UTA upon request, and, in any event, upon termination or final acceptance of the Professional Services. UTA shall have full rights and privileges to use and reproduce said items. To the extent that any deliverables include or

incorporate preexisting intellectual property of Consultant, Consultant hereby grants UTA a fully paid, perpetual license to use such intellectual property for UTA's operation, maintenance, modification, improvement and replacement of UTA's assets. The scope of the license shall be to the fullest extent necessary to accomplish those purposes, including the right to share same with UTA's Consultants, agent, officers, directors, employees, joint owners, affiliates and consultants.

11. USE OF SUBCONSULTANTS

- a. Consultant shall give advance written notification to UTA of any proposed subcontract (not indicated in Consultant's Proposal) negotiated with respect to the Work. UTA shall have the right to approve all subconsultants, such approval not to be withheld unreasonably.
- b. No subsequent change, removal or substitution shall be made with respect to any such sub consultant without the prior written approval of UTA.
- c. Consultant shall be solely responsible for making payments to subconsultants, 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 subconsultants.
- 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. The following individuals are concerned to be key personnel under this contract.

Amanda LeBlanc, Program Manager
Aditya Joshi, Director, Learning & KX
Deirdre O'Riain, Lead ID
Janice Liwanag, Lead ID
Dianne MacKay, Lead ID 3

If the Consultant changed key personnel without the express written permission of UTA, it shall be in default of the contract and liable for default damages .

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 Consultant. If the Contract is terminated for convenience, UTA shall pay Consultant: (i) in full for Goods delivered and Services fully performed prior to the effective date of termination; and (ii) an equitable amount to reflect costs incurred (including Contract close-out and sub consultant termination costs that cannot be reasonably mitigated) and profit on work-in-progress as of to the effective date of the termination notice. UTA shall not be responsible for anticipated profits based on the terminated portion of the Contract. Consultant shall promptly submit a termination claim to UTA. If Consultant has any property in its possession belonging to UTA, Consultant will account for the same, and dispose of it in the manner UTA directs.

b. FOR DEFAULT:

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

1. Terminate the Contract (in whole or in part) for default and obtain the Professional Services using other Consultants or UTA's own forces, in which event Consultant shall be liable for all incremental costs so incurred by UTA;
2. Pursue other remedies available under the Contract (regardless of whether the termination remedy is invoked); and/or
3. Except to the extent limited by the Contract, pursue other remedies available at law.

CONSULTANT'S POST TERMINATION OBLIGATIONS:

Upon receipt of a termination notice as provided above, Consultant shall (i) immediately discontinue all work affected (unless the notice directs otherwise); and (ii) deliver to UTA all data, drawings and other deliverables, whether completed or in process. Consultant shall also remit a final invoice for all services performed and expenses incurred in full accordance with the terms and conditions of the Contract up to the effective date of termination. UTA shall calculate termination damages payable under the Contract, shall offset such damages against Consultant's final invoice, and shall invoice Consultant for any additional amounts payable by Consultant(to the extent termination damages exceed the invoice). All rights and

remedies provided in this Article are cumulative and not exclusive. If UTA terminates the Contract for any reason, Consultant shall remain available, for a period not exceeding 90 days, to UTA to respond to any questions or concerns that UTA may have regarding the Professional Services furnished by Consultant prior to termination.

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 furnished to UTA or designated audit parties upon request. Consultant agrees that it shall flow-down (as a matter of written contract) these records requirements to all subconsultants utilized in the performance of the Work at any tier.

16. FINDINGS CONFIDENTIAL

Any documents, reports, information, or other data and materials delivered or made available to or prepared or assembled by Consultant or subconsultant 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. If confidential information is released to any third party without UTA's written consent as described above, Consultant shall notify UTA of the data breach within 10 days and provide its plan for immediate

mitigation of the breach for review and approval by UTA.

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

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

17. PUBLIC INFORMATION.

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

18. GENERAL INDEMNIFICATION

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

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 Consultant from liabilities that might arise out of the performance of the work under this contract by the Consultant, his agents, representatives, employees or subconsultants and Consultant is free to purchase additional insurance as may be determined necessary.

A. **MINIMUM SCOPE AND LIMITS OF INSURANCE:** Consultant shall provide coverage with limits of liability not less than those Stated below. An excess liability policy or umbrella liability policy may be used to meet the minimum liability requirements provided that the coverage is written on a “following form” basis.

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 Consultant".
 - b. The policy must also contain the following endorsement, WHICH MUST BE STATED ON THE CERTIFICATE OF INSURANCE: "Contractual Liability Railroads" ISO from CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Utah Transit Authority Property" as the Designated Job Site.

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

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 Consultant or subconsultant is exempt under UCA 34A-2-103, AND when such Consultant or subconsultant 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, Consultant 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 Consultant. Insurance limits indicated in this agreement are minimum limits. Larger limits may be indicated after the consultant's assessment of the exposure for this contract; for their own protection and the protection of UTA.
 2. The Consultant'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 Consultant from potential insurer insolvency.
- E. **VERIFICATION OF COVERAGE:** Consultant 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 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. 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. **SUBCONSULTANTS:** Consultants' certificate(s) shall include all subconsultants as additional insureds under its policies or subconsultants shall maintain separate insurance as determined by the Consultant, however, subconsultant's limits of liability shall not be less than \$1,000,000 per occurrence / \$2,000,000 aggregate. Sub-Consultants maintaining separate insurance shall name Utah Transit Authority as an additional insured on their policy. Blanket additional insured endorsements are not acceptable from sub-Consultants. Utah Transit Authority must be scheduled as an additional insured on any sub-Consultant 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 protect, release, defend, indemnify and hold harmless UTA and the other Indemnitees against and from any and all Claims of any kind or nature whatsoever on account of infringement relating to Consultant's performance under this Contract. If notified promptly in writing and given authority, information and assistance, Consultant shall defend, or may settle at its expense, any suit or proceeding against UTA so far as based on a claimed infringement and Consultant shall pay all damages and costs awarded therein against UTA due to such breach. In case any portion of the Work is in such suit held to constitute such an infringement or an injunction is filed that interferes with UTA's rights under this Contract, Consultant shall, at its expense and through mutual agreement between the UTA and Consultant, either procure for UTA any necessary intellectual property rights, or modify Consultant's services or deliverables such that the claimed infringement is eliminated.
- b. Consultant shall: (i) protect, release, defend, indemnify and hold harmless UTA and the other Indemnitees against and from any and all liens or Claims made or filed against UTA or upon the Work or the property on which the Work is located on account of any labor performed or labor, services, and equipment furnished by subconsultants 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 subconsultants 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 subconsultant, 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 CONSULTANT

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

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 Consultant arising out of or relating to the Contract Documents including any disputed claims for Contract adjustments that cannot be resolved in accordance with the Change Order negotiation process set forth in Article 6. Claims must be made by written notice. The responsibility to substantiate claims rests with the party making the claim.

b. Unless otherwise directed by UTA in writing, Consultant shall proceed diligently with performance of the Work pending final resolution of a Claim, including litigation. UTA shall continue to pay any undisputed payments related to such Claim.

c. The parties shall attempt to informally resolve all claims, counterclaims and other disputes through the escalation process described below. No party may bring a legal action to enforce any term of this Contract without first having exhausted such process.

d. The time schedule for escalation of disputes, including disputed requests for change order, shall be as follows:

Level of Authority	Time Limit
UTA's Project Manager/Consultant's Project Manager	Five calendar days
UTA's [SECOND LEVEL]/Consultant's [SECOND LEVEL]	Five calendar days
UTA's [THIRD LEVEL]/Consultant's [THIRD LEVEL]	Five calendar days

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

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

24. GOVERNING LAW

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

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: 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 Consultant:
Xpan Interactive USA, Inc.
3753 Howard Hughes Parkway Paradise
Unit 200
Las Vegas, NV 89169

- b. Any such notice shall be deemed to have been given, and shall be effective, on delivery to the notice address then applicable for the party to which the notice is directed; provided, however, that refusal to accept delivery of a notice or the inability to deliver a notice because of an address change which was not properly communicated shall not defeat or delay the giving of a notice. Either party may change the address at which such party desires to receive written notice by providing written notice of such change to any other party.
- c. Notwithstanding Section 27, the parties may, through mutual agreement, develop alternative communication protocols to address change notices, requests for information and similar categories of communications. Communications provided pursuant to such agreed means shall be recognized as valid notices under this Contract.

28. 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.

29. INSURANCE COVERAGE REQUIREMENTS FOR CONSULTANT EMPLOYEES AND SUBCONSULTANTS UNDER DESIGN AND CONSTRUCTION CONTRACTS

- a. The following requirements apply to the extent that the Consultant is providing design or construction services and (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 subconsultants 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 subconsultant'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. 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.

32. 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.

33. UTAH ANTI-BOYCOTT OF ISRAEL ACT

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

34. TRAVEL COSTS

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

35. 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.

36. 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.

37. AMENDMENTS

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

38. 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.

39. SURVIVAL

Provisions of this Contract intended by their nature and content to survive termination of this Contract

shall so survive including, but not limited to, Articles 5, 7, 8, 10, 14, 15, 17, 18, 19, 20, 23, 29 and 30.


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

UTAH TRANSIT AUTHORITY:

By: _____ Date: _____
Kimberly Shanklin
Chief People Officer

By: _____ Date: _____
Jay Fox
Executive Director

Approved as to Content and Form

By:  Date: 4/22/2022
70E33A415BA44F6...
Mike Bell, AAG State of Utah
And UTA Legal Counsel

Reviewed & Recommended

By: _____ Date: _____
Stacey Palacios,
Project Manager

XPAN INTERACTIVE USA, INC.:

By:  Date: 4/21/2022
A4546B31078B43C...
Ron Thiele
President
Fed ID#87-3523213

Exhibit A - Scope of Work

Firm will work alongside internal resources in Department of Labor registered apprenticeship programs. Xpan Interactive USA, Inc., to deliver high quality content that may include 3D animation, videos, photos, professional voice, and advanced interactivities to increase learning retention. The Training content may take a hybrid or blended learning approach, whichever is best suited for individual training assignments. However, most of the training content should be prepared as Instructor Led Training, with hands on lab training and On the Job Training (OJT) to match the curriculum and learner needs. All training will incorporate safety and regulatory requirements.

The overall management of the project will be under the direction of UTA through the Manager of Training & Development. All deliverables of this contract will be due by December 31, 2022.

DELIVERABLES

All training deliverables will include:

- Course Outlines
- Suggested timeline/lesson plan
- Classroom presentation materials
 - PowerPoints
 - Workbooks/worksheets
 - Images
 - Videos
 - Test/Assessment
- Facilitator guide
- Original source files/materials (e.g., captivate files, premiere pro sources files)
 - Storyboard
 - Scripts

At the end of this project, UTA will own all completed curriculum and original source files.

ON-DEMAND SERVICES

Training services under this contract shall be provided on an “on-demand” basis. UTA will request either specific on-going support in collaborating with UTA in developing curriculum or it will request the delivery of a curriculum package for a specific training course. For on-gong support, the contractor will be paid the hourly rates shown in Exhibit B of the Contract. For curriculum package development, the Consultant will be paid the program/project-based rate shown in Exhibit B in the Contract.

Exhibit B – Price

Frontrunner	Estimated eLearning Duration (hours)	Classroom (Hours)	Lab (Items)	OJT (Items)
Carbody/ Water and Waste	2	40	3	4
Cab Equipment	2	40	3	4
Coupler and Draft	2	40	3	4
Trucks	3	80	6	6
Compressed air, Friction Brakes, Pneumatic Distribution	3	80	6	6
Doors	2	40	3	4
Prime Engine	4	100	7	8
Rotating Electrical	4	100	7	8
Head End Power (HEP)	3	60	4	6
<i>Subtotal</i>	<i>25</i>	<i>580</i>	<i>41</i>	<i>50</i>
Maintenance of Way				
Track Basics	2	40	3	4
MOW Advanced Electrical	6	160	11	12
Switches	4	120	9	8
Grade Crossing	2	40	3	4
Singal/ Interlocking	3	80	6	6
Cab Signaling/ Communication	4	120	9	8
High Voltage/ OCS	6	160	11	12
<i>Subtotal</i>	<i>27</i>	<i>720</i>	<i>52</i>	<i>54</i>
Electro-Mechanic - Light Rail				
Trucks	2	80	6	4
HVAC	2	80	6	4
Doors & Ramps	2	80	6	4
Propulsion	2	80	6	4
Power Distribution	2	80	6	4
Car Body	1	80	6	2
Communications	1	40	3	2
Vehicle Control Systems	4	80	6	8
<i>Subtotal</i>	<i>16</i>	<i>600</i>	<i>20</i>	<i>32</i>
Total	68	1,900	112	136

Instructor Led Training	Rate
Loaded Hourly Rate	\$85.94
Daily Rate	\$687.53
Project/Program Based Rate (If providing a program rate, please list what is included in the rate)	<div style="text-align: right;">\$3,225,145.00</div> <ul style="list-style-type: none"> ● Production of up to 1,900 hours of ILT materials across 3 apprenticeship programs <ul style="list-style-type: none"> ○ Deliverables <ul style="list-style-type: none"> ▪ Instructional Design Plan ▪ PowerPoints ▪ Facilitator guides ▪ Participant workbooks ▪ Up to 9 days of in-person video shoots ● Estimated 34,844 hours of development time ● Estimated 5,227 hours of project management ● Up to 4 on-site visits in Salt Lake City
Blended or Hybrid Learning	Rate
Loaded Hourly Rate	\$85.94
Daily Rate	\$687.53
Project/Program Based Rate (If providing a program rate, please list what is included in the rate)	<div style="text-align: right;">\$101,097.60</div> <ul style="list-style-type: none"> ● Production of up to 112 lab-based training exercises and up to 136 On The Job Training (OJT) activities across 3 apprenticeship programs <ul style="list-style-type: none"> ○ Deliverables <ul style="list-style-type: none"> ▪ Instructional Design Plan ▪ Lab instructions <ul style="list-style-type: none"> ● Facilitator guides ● Participant workbooks ▪ OJT Worksheets and instructions ● Estimated 993 hours of development time ● Estimated 149 hours of project management ● Up to 4 on-site visits in Salt Lake City (the same 4 noted previously)

eLearning	
Level 1 eLearning	Rate
Loaded Hourly Rate	\$85.94
Daily Rate	\$687.53
Project/Program Based Rate (If providing a program rate, please list what is included in the rate)	\$693,034.00
	<ul style="list-style-type: none"> ● Production of up to 34 hours of eLearning across 3 apprenticeship programs <ul style="list-style-type: none"> ○ Deliverables <ul style="list-style-type: none"> ▪ Instructional Design Plan ▪ eLearning Consultancy ▪ Instructional Design ▪ Media Development ▪ Professional Narration ▪ Up to 34 hours of level 1 eLearning <ul style="list-style-type: none"> ● Passive eLearning interactivity level - Passive Participation – Lowest User Engagement but good for the presentation of simpler materials ● Learners are not required to interact with eLearning resources and the eLearning process is strictly linear. This level may include simple images and graphics, simple video and audio, test questions, etc. ● Estimated 7,854 hours of development time ● Estimated 1,258 hours of project management ● Up to 4 on-site visits in Salt Lake City (the same 4 noted previously)
Level 2 eLearning	Rate
Loaded Hourly Rate	\$85.94
Daily Rate	\$687.53
Project/Program Based Rate (If providing a program rate, please list what is included in the rate)	\$669,378.40
	<ul style="list-style-type: none"> ● Production of up to 27 hours of eLearning across 3 apprenticeship programs <ul style="list-style-type: none"> ○ Deliverables <ul style="list-style-type: none"> ▪ Instructional Design Plan ▪ eLearning Consultancy ▪ Instructional Design ▪ Media Development ▪ Professional Narration ▪ Up to 27 hours of level 2 eLearning <ul style="list-style-type: none"> ● Limited interactivity level - Limited Participation – Moderate User Engagement ● Learners may have some control over their eLearning experience, as they are required to make simple interactions with the eLearning material. This level may include animations, motion graphics, clickable menus, drag and drop interactions, etc. ● Estimated 6,283 hours of development time ● Estimated 1,006 hours of project management ● Up to 4 on-site visits in Salt Lake City (the same 4 noted previously)

Level 3 eLearning	Rate
Loaded Hourly Rate	\$85.94
Daily Rate	\$687.53
Project/Program Based Rate (If providing a program rate, please list what is included in the rate)	\$199,984.6
<ul style="list-style-type: none"> ● Production of up to 7 hours of eLearning across 3 apprenticeship programs <ul style="list-style-type: none"> ○ Deliverables <ul style="list-style-type: none"> ▪ Instructional Design Plan ▪ eLearning Consultancy ▪ Instructional Design ▪ Media Development ▪ Professional Narration ▪ Up to 7 hours of level 3 eLearning <ul style="list-style-type: none"> ● Moderate interactivity level - Moderate Participation - Highest User Engagement ● Learners gain more control over the eLearning experience, which is more customized and complex. This level may include complex drag and drop interactions, gamified simulations, stories, and branching scenarios. ● Estimated 1,571 hours of development time ● Estimated 252 hours of project management ● Up to 4 on-site visits in Salt Lake City (the same 4 noted previously)	

Alternative Budget Presentation Format

	LMS	Class	Lab	OJT	Total
Frontrunner					
50% Level 1 eLearning @ \$320 \$260/min	\$195,000.00				\$195,000.00
40% Level 2 eLearning @ \$400 \$340/min	\$204,000.00				\$204,000.00
10% Level 3 eLearning @ \$480 \$420/min	\$63,000.00				\$63,000.00
\$3,000 \$2500 per Classroom Hour		\$1,022,500.00			\$1,022,500.00
Lab Curriculum			\$12,992.00		\$12,992.00
OJT Curriculum				\$16,000.00	\$16,000.00
Professional Voice Talent	\$31,250.00				\$31,250.00
Project Management	\$73,987.50	\$153,375.00	\$1,948.80	\$2,400.00	\$231,711.30
Subtotal	\$567,237.50	\$1,175,875.00	\$14,940.80	\$18,400.00	\$1,776,453.30

Maintenance of Way

50% Level 1 eLearning @ \$320 \$260/min	\$210,600.00				\$210,600.00
40% Level 2 eLearning @ \$400 \$340/min	\$220,320.00				\$220,320.00
10% Level 3 eLearning @ \$480 \$420/min	\$68,040.00				\$68,040.00
\$3,000 \$2500 per Classroom Hour		\$1,267,500.00			\$1,267,500.00
Lab Curriculum			\$16,640.00		\$16,640.00
OJT Curriculum				\$17,280.00	\$17,280.00
Professional Voice Talent	\$33,750.00				\$33,750.00
Project Management	\$79,906.50	\$190,125.00	\$2,496.00	\$2,592.00	\$275,119.50
Subtotal	\$612,616.50	\$1,457,625.00	\$19,136.00	\$19,872.00	\$2,109,249.50

Electro-Mechanic - Light Rail	LMS	Class	Lab	OJT	Total
50% Level 1 eLearning @ \$320 \$260/min	\$124,800.00				\$124,800.00
40% Level 2 eLearning @ \$400 \$340/min	\$130,560.00				\$130,560.00
10% Level 3 eLearning @ \$480 \$420/min	\$40,320.00				\$40,320.00
\$3,000 \$2500 per Classroom Hour		\$497,500.00			\$497,500.00
Lab Curriculum			\$6,272.00		\$6,272.00
OJT Curriculum				\$10,240.00	\$10,240.00
Professional Voice Talent	\$20,000.00				\$20,000.00
Project Management	\$47,352.00	\$74,625.00	\$940.80	\$1,536.00	\$124,453.80
Subtotal	\$363,032.00	\$572,125.00	\$7,212.80	\$11,776.00	\$954,145.80

Instructional Design Plan (360 hours at \$80/ hour)					\$28,800.00
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Production Totals					\$4,868,648.60
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Ancillary Budgeting

Travel					\$20,000.00
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Program Total					\$4,888,648.60
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* Payment Provision: Monthly invoicing be based on percentage of project completion.

**Contract not to exceed \$5,100,000.