

## PASS THROUGH FUNDS AGREEMENT

**THIS PASS THROUGH FUNDS AGREEMENT** (“Agreement”) is entered into as of \_\_\_\_\_, 2021 between the Utah Department of Transportation (“UDOT”), an agency of the State of Utah, and Utah Transit Authority (“UTA”), a large public transit district.

### RECITALS

**WHEREAS**, pursuant to 2021 HB 433, lines 598 to 605, Utah Code Section 63B-31101(4)(a), subsequently modified by 2021 HB 1008, lines 97 to 104, the Utah State Legislature allocated the following funds (“Funds”) (for UDOT’s administration) from the General Fund: \$68,000,000 to double track strategic sections of FrontRunner commuter rail system; \$12,000,000 for construction and improvements to the S-line street car facilities in Salt Lake City; \$11,000,000 for bus rapid transit in the Salt Lake midvalley area; \$5,000,000 for an environmental study at the point of the mountain area; \$4,000,000 for UTA and Sharp-Tintic railroad consolidation project; and \$1,600,000 for a rail station in Vineyard City for a total of \$101,600,000.

**WHEREAS**, Utah Code Section 63J-1-220(2) mandates that UDOT may not provide UTA with state pass through funding unless an agreement is executed. In addition, such agreement must require UTA to provide a written description and itemized report at least annually detailing the expenditure of the Funds, or the intended expenditure of any Funds that have not been spent, and a final written itemized report when all the Funds are spent; and

**WHEREAS**, Utah Code Section 63J-1-903 requires specific performance measures for the funds that are spent to meet UDOT’s reporting obligations to the Governor’s Office of Management and Budget and the Office of Legislative Fiscal Analyst.

### AGREEMENT

**THEREFORE**, in consideration of the foregoing recitals (which by this reference are incorporated herein) and the mutual promises set forth herein, the parties hereto agree as follows:

1. Objective and Payment Schedule. UTA will use the Funds appropriated on its behalf for the purposes stated in this Agreement. UDOT will transfer the Funds to the UTA in the following manner: UDOT will pay the Funds to UTA in four quarterly installments during the state of Utah’s 2021-2022 fiscal year. Each installment will total \$25,400,000. UDOT will pay the four installments to UTA by making a payment within 30 days of each of the following dates: November 15th, December 1<sup>st</sup>, March 1<sup>st</sup>, and June 1<sup>st</sup>. The total amount of all four quarterly installments will be \$101,600,000.

2. Key Activities. UTA will use the Funds as described in this Agreement to meet the following performance measures:

- a. Eighty percent of the projects will have executed contracts for environmental or design work, where applicable, by July 1, 2022 for projects receiving the Funds.
- b. UTA will provide to UDOT a written report of the status of all projects by no later than June 30, 2022, and will provide other reports as stated in this Agreement.
- c. The Funds allows for nine new transit projects to be delivered. It is important that UTA delivers these projects quickly as reasonably possible to provide benefits to the public and allow for the economic benefits for the increased work.

3. Budget and Deliverables. UTA will maintain documents that show all projected and actual spending for the activities described herein, including all funding sources and itemized project costs. UTA agrees that from time-to-time UTA (and UDOT) may be responsible to submit reports or respond to inquiries for the Utah State Legislature and the Utah Governor's Office, and to comply with other reporting rules or audit requirements in connection with the Funds. UTA will promptly respond to UDOT's reasonable requests for information concerning the Funds. Upon spending all of the Total Funds, UTA will provide UDOT with a final written itemized report detailing where the Funds have been spent and also showing all funding sources and total project costs. For all Funds that are not spent during the state's FY 2021-2022, UTA will provide a written description and an itemized report at least annually detailing the expenditure of the Funds, or the intended expenditure of any Funds that have not been spent and will provide the final written itemized report described above upon exhausting the Funds. Reporting requirements are further described in Exhibit A attached hereto and made a part hereof.

4. Limitation. UTA agrees that it will only spend the Funds for the purposes and related activities that are expressly described this Agreement. If UTA misapplies any Funds, it shall promptly notify UDOT and remove such expenditure from the budget so such expenditure is not paid by the Funds. If UTA fails to correct any misapplication of the Funds within 30 days of discovering such misapplication, UTA agrees that it shall no longer have the right to possess the Funds and that all unspent and misapplied Funds shall at that time be immediately due and payable to UDOT so UDOT can return them to the state of Utah in the manner determined by the Utah Governor's Office or the Utah State Legislature. In that case, UTA and UDOT would work out a mutual agreement on the amount of misspent funds and the method and timing of repayment.

5. UDOT's Role. UTA agrees that UDOT is a pass-through administrator only for the Funds and that UDOT does not have any role in the use of the Funds. UDOT is not entitled to any type of handling or administrative fee for its role as a pass-through entity. UTA agrees that UDOT shall not be liable for any claim or cost, of any kind whatsoever, in connection with the Funds, and UTA hereby releases UDOT from all of the same, regardless of when the same may arise. UTA further agrees to indemnify, hold harmless and defend UDOT from any claim or cost, of any kind whatsoever, in connection with the Funds, except to the degree caused by UDOT's negligence or malfeasance. This indemnity obligation shall not be construed to violate Utah's Governmental Immunity Act to the extent that such Act is applicable to a claim or cost. UDOT

has all remedies available by law in addition to those stated in this Agreement, and UDOT's remedies are not limited by the terms of this Agreement.

6. Further Assurances. Each party to this Agreement agrees to undertake and perform all further acts that are reasonably necessary to carry out the intent and purposes of this Agreement and to obtain compliance with the laws or federal obligations that apply to either party, and either party may notify the other party of a need for such further acts.

7. Modifications. The failure of either party to insist upon strict compliance with any of the terms and conditions of this Agreement, or failure or delay by either party to exercise any rights or remedies provided in this Agreement or by law, will not release either party from any obligations arising under this Agreement. This Agreement may not be modified except by a written document signed by an authorized individual representing each of the respective parties.

8. Miscellaneous. This Agreement is binding upon and inures to the benefit of the parties and it does not inure to the benefit of any third party. No party shall assign or transfer any rights, or delegate any duties hereunder, without the other party's prior written consent, and any such attempted assignment, transfer or delegation is void. The parties agree to work cooperatively and in good faith. Before taking any legal action in connection with this Agreement, each party agrees to first advise the other of a dispute and to meet in good faith in an effort to resolve it. If any notice is required in connection with this Agreement, each party shall send a written notice to the other party's chief financial officer using a manner that can reasonably assure a timely and accurate delivery. This Agreement does not create any partnership, joint venture, or agency relationship.

9. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes any prior understandings, agreements, or representations, verbal or written.

10. Signatures. Each party represents that it has the authority to enter into this Agreement and has signed below by an authorized representative. This Agreement may be signed in counterparts.

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the date first written above.

UTAH TRANSIT AUTHORITY

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

UTAH TRANSIT AUTHORITY

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date:

Approved as to form:

*Michael L. Bell*

\_\_\_\_\_  
Assistant Attorney General  
UTA Legal Counsel

UTAH DEPARTMENT OF TRANSPORTATION

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## **EXHIBIT A**

1. **Performance Measures.** The Parties agree that Funds will be applied to an approved scope of work for the project described in this Agreement and that the work will meet the performance measures provided by the recipient of the Funds.
  
2. **Public Funds Compliance.** The recipient of the Funds shall comply with applicable state statutes on the reporting and expenditure of public funds. In particular, Utah Code Annotated 63J-1-220(2)(b) requires recipients to provide UDOT with reports as provided therein and in this Agreement. The recipient of the Funds shall provide regular update reports to UDOT as frequently as UDOT may reasonably direct (but not more frequently than once each quarter). Each year, on the Friday at the end of the last full week of April, the recipient of the Funds will provide an annual report to UDOT that includes, at a minimum, the following (in the order specified):
  - a. An itemized account of amounts spent and the dates when spent (noting any items outside the approved scope of work, if any). The account will include all sources of funding and a statement of all remaining unspent Funds. This information is used to assess accuracy.
  - b. The projected spending that will be incurred before the applicable fiscal year's end (June 30 of each year).
  - c. The difference between the appropriated amount of Funds and the actual amount used.
  - d. A brief explanation of why the Funds were requested or granted, and how Fund expenditures solved or were expected to solve or ameliorate an issue.
  - e. An assessment of implementation which includes: (i) what month and year the project, program, or bill was fully implemented; (ii) whether the project or program encountered any factors that caused a delay in implementation and an explanation of those factors; and (iii) whether the project or program encountered any factors that caused a change in scope and an explanation of those factors
  - f. An assessment of performance which includes: (i) how the success of the project or program is being measured, and (ii) how successful the project or program has been according to those metrics.
  - g. Upcoming project milestone dates and the anticipated date of project completion.
  
3. **Final Report.** Within thirty (30) days after all Funds have been expended, the recipient of the Funds shall submit a Final Report to UDOT. The Final Report must address the following:
  - a. Each topic outlined in the scope of work.
  - b. The information required under Exhibit A, paragraph 2.
  - c. The date when the project or program was completed.

4. **Certification.** For all information submitted, the recipient of the Funds must certify that it has provided accurate information and used the funds as required by this Agreement.