

Regular Meeting of the
Board of Trustees of the Utah Transit Authority



Wednesday, January 27, 2021, 9:00 a.m.
Remote Electronic Meeting – No Anchor Location – Live-Stream at
https://www.youtube.com/results?search_query=utaride

NOTICE OF SPECIAL MEETING CIRCUMSTANCES DUE TO COVID-19 PANDEMIC:

In accordance with the Utah Open and Public Meetings Act, (Utah Code § 52-4-207.4), the UTA Board of Trustees will make the following adjustments to our normal meeting procedures.

- All members of the Board of Trustees and meeting presenters will participate electronically.
- **Public Comment** may be given live during the meeting or through alternate means (see instructions below).
 - To give **live public comment** during the meeting:
Use this link and follow the instructions to register for the meeting (you will need to provide your name and email address)
<https://rideuta.webex.com/rideuta/j.php?MTID=e755e8733563dbf0b185d6c4d23c67533>
 - Sign on to the WebEx meeting portal through the “join event” link provided in your email following approval of your registration.
 - Sign on 10 minutes prior to the meeting start time
 - Use the hand icon in the WebEx portal to indicate that you would like to give a comment
 - Comments are limited to 3 minutes per commenter.
 - Comment online at <https://www.rideuta.com/Board-of-Trustees>
 - Comment via email at boardoftrustees@rideuta.com
 - Comment by telephone at 801-743-3882 option 5 (801-RideUTA option 5) – specify that your comment is for the board meeting.
 - Comments submitted before 2:00 p.m. on Tuesday, January 26th will be distributed to board members prior to the meeting:
- Meeting proceedings may be viewed remotely through the WebEx meeting platform (see above) or YouTube live-streaming. <https://www.youtube.com/user/UTAride>

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| 1. Call to Order and Opening Remarks | Chair Carlton Christensen |
| 2. Safety First Minute | Sheldon Shaw |
| 3. Public Comment | Chair Carlton Christensen |
| 4. Consent | Chair Carlton Christensen |
| a. Approval of January 8, 2021 Special Board Meeting Minutes | |
| b. Approval of January 13, 2021 Board Meeting Minutes | |
| c. Financial Advisor Services – Contract Correction (Zions Public Finance) | |
| 5. Legislative Update | Shule Bishop |
| <i>The board may make motions regarding UTA positions on legislation.</i> | |

Website: <https://www.rideuta.com/Board-of-Trustees>

Live Streaming: https://www.youtube.com/results?search_query=utaride

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| 6. Agency Report
a. UTA My BeUTAHful Community Student Art Competition
b. FTA Public Transportation COVID 19 Research Demonstration Grant | Carolyn Gonot |
| 7. Investment Report - Fourth Quarter 2020 | Bill Greene, Emily Diaz |
| 8. Resolutions
a. R2021-01-07 Resolution Establishing the Authority's Support of the Utah Compact on Racial Equity, Diversity, and Inclusion | Carolyn Gonot |
| 9. Contracts, Disbursements and Grants
a. Contract: On-Call Infrastructure Maintenance (Stacy and Witbeck, Inc.)
b. Change Order: 2021 Transit Bus Replacement – Eighth Order (Gillig, LLC)
c. Change Order: S70 Light Rail Vehicle Wraps (Turbo Images)
d. Revenue Contract: Pass-Through Funds Agreement for Environmental Analysis (Point of the Mountain State Land Authority and Utah Department of Transportation) | Eddy Cumins,
David Hancock
Eddy Cumins, Kyle Stockley
Eddy Cumins, Kyle Stockley
Mary DeLoretto |
| 10. Other Business
a. Next Meeting: February 10, 2021 at 9:00 a.m. | Chair Carlton Christensen |
| 11. Closed Session
a. Strategy Session to Discuss Pending or Reasonably Imminent Litigation | Chair Carlton Christensen |
| 12. Adjourn | Chair Carlton Christensen |

Special Accommodation: Information related to this meeting is available in alternate format upon request by contacting callredge@rideuta.com or (801) 287-3536. Request for accommodations should be made at least two business days in advance of the scheduled meeting.

**UTAH TRANSIT AUTHORITY
ELECTRONIC BOARD MEETING DETERMINATION**

Consistent with provisions of the Utah Open and Public Meetings Act, (UTAH CODE § 52-4-207 [4]), as the Chair of the Board of Trustees ("Board") of the Utah Transit Authority ("UTA"), I hereby make the following written determinations in support of my decision to hold electronic meetings of the UTA Board without a physical anchor location:

1. Due to the ongoing COVID -19 pandemic, conducting Board and Board Committee meetings with an anchor location presents a substantial risk to the health and safety of those who may be present at the anchor location.
2. Federal, state, and local health authorities have adopted guidelines which encourage institutions and individuals to limit in-person interactions and recommend increased virtual interactions.

This written determination takes effect on January 27, 2021, and is effective until midnight on February 26, 2021 and may be re-issued by future written determinations as deemed appropriate.

Dated this 22nd day of January 2021.

DocuSigned by:



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Carlton Christensen, Chair of the Board of Trustees

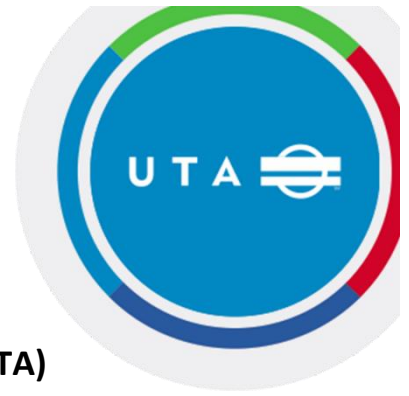
MEMORANDUM TO THE BOARD



TO: Utah Transit Authority Board of Trustees
FROM: Jana Ostler, Board Manager

BOARD MEETING DATE: January 27, 2021

SUBJECT:	Approval of January 8, 2021 Board of Trustees Special Meeting Minutes
AGENDA ITEM TYPE:	Consent
RECOMMENDATION:	Approve the minutes of the January 8, 2021 Board of Trustees special meeting
BACKGROUND:	A special (not regularly scheduled) meeting of the UTA Board of Trustees was held on Wednesday, January 8, 2021 at 1:00 p.m. at UTA Headquarters. Minutes from the meeting document the actions of the Board and summarize the discussion that took place in the meeting. A full audio recording of the open portion of the meeting is available on the Utah Public Notice Website .
ATTACHMENTS:	1) 2021-01-08_BOT_Special_Minutes_UNAPPROVED



**Minutes of the Special Meeting
of the
Board of Trustees of the Utah Transit Authority (UTA)
Utah Transit Authority Headquarters
669 West 200 South, Salt Lake City, Utah
January 8, 2021**

Board Members Participating:

Carlton Christensen, Chair (via video conference)
Beth Holbrook
Jeff Acerson (via video conference)

Also participating were members of UTA staff.

Call to Order and Opening Remarks. Chair Christensen welcomed attendees and called the meeting to order at 1:00 p.m.

Closed Session. Chair Christensen indicated there were matters to be discussed in closed session relative to pending or reasonably imminent litigation. A motion for a closed session was made by Trustee Acerson and seconded by Trustee Holbrook. The motion carried unanimously and the board entered closed session at 1:01 p.m.

Open Session. A motion to return to open session was made by Trustee Acerson and seconded by Trustee Holbrook. The motion carried unanimously and the board returned to open session at 1:40 p.m.

Adjournment. The meeting was adjourned at 1:40 p.m. by motion.

Transcribed by Cathie Griffiths
Executive Assistant to the Board Chair
Utah Transit Authority
cgriffiths@rideuta.com
801.237.1945

This document is not intended to serve as a full transcript as additional discussion may have taken place; please refer to the meeting materials, audio, or video located at <https://www.utah.gov/pmn/sitemap/notice/649647.html> for entire content.

This document along with the digital recording constitute the official minutes of this meeting.

Approved Date:

Carlton J. Christensen
Chair, Board of Trustees

UNAPPROVED

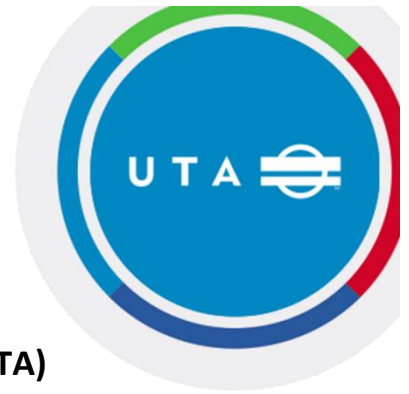


MEMORANDUM TO THE BOARD

TO: Utah Transit Authority Board of Trustees
FROM: Jana Ostler, Board Manager

BOARD MEETING DATE: January 27, 2021

SUBJECT:	Approval of January 13, 2021 Board Meeting Minutes
AGENDA ITEM TYPE:	Consent
RECOMMENDATION:	Approve the minutes of the January 13, 2021 Board of Trustees meeting
BACKGROUND:	A regular meeting of the UTA Board of Trustees was held electronically and broadcast live on YouTube on Wednesday, January 13, 2021 at 9:00 a.m. Minutes from the meeting document the actions of the Board and summarize the discussion that took place in the meeting. A full audio recording of the meeting is available on the Utah Public Notice Website and video feed is available on You Tube at https://www.youtube.com/results?search_query=utaride
ATTACHMENTS:	1) 2021-01-13_BOT_Minutes_unapproved



**Minutes of the Meeting
of the
Board of Trustees of the Utah Transit Authority (UTA)
held remotely via phone or video conference
and broadcast live for the public via YouTube
January 13, 2021**

Board Members Participating:

Carlton Christensen, Chair
Beth Holbrook
Jeff Acerson

Also participating were members of UTA staff and the public.

Call to Order and Opening Remarks. Chair Christensen welcomed attendees and called the meeting to order at 9:00 a.m. He then yielded the floor to Jana Ostler, UTA Board Manager, who read the electronic board meeting determination statement into the record as required by statute. The complete electronic board meeting determination statement is included as Appendix A to these minutes.

Safety First Minute. Sheldon Shaw, UTA Director of Safety & Security, provided a brief safety message.

Public Comment. Chair Christensen noted members of the public were invited to attend and comment during the live portion of the meeting; however, no live public comment was given. It was also noted that online public comment received was distributed to the board for review in advance of the meeting and is included in Appendix B to these minutes.

Consent Agenda. The consent agenda was comprised of:

- a. Approval of December 16, 2020 Board Meeting Minutes

A motion to approve the consent agenda was made by Trustee Holbrook and seconded by Trustee Acerson. The motion carried unanimously.

Agency Report.

Ogden-Weber State University Bus Rapid Transit Grant. Carolyn Gonot, UTA Executive Director, indicated the agency received notice that the Federal Transit Administration (FTA) approved a letter of no prejudice (LONP) on the Ogden-Weber State University (WSU) bus rapid transit (BRT) project. This allows the agency to begin early construction activities in advance of executing the federal Small Starts grant agreement.

Ridership Report. Ms. Gonot was joined by Eddy Cumins, UTA Chief Operating Officer. Mr. Cumins provided an update on 2020 ridership through a variety of analytics, including weekday ridership trends, total ridership over multiple years, system-wide ridership compared to the previous year, average weekday ridership from January 2008 to the present, and percent change in ridership from the previous year by mode. Ridership is down 47% overall due to the COVID-19 pandemic but is trending upward.

COVID-19 Relief Funding. Ms. Gonot noted the agency will receive an additional \$33.5 million in COVID-19 relief funding following the passage by Congress of a second stimulus package.

Financial Report. Brad Armstrong, UTA Senior Manager of Budget & Financial Analysis, reviewed the financial report for November 2020, including the financial dashboard; passenger revenues; sales tax collections; sales tax revenues; revenue loss and Coronavirus Aid, Relief, and Economic Security (CARES) Act funding estimates; operating expense variance by mode; operating expense variance by expense type; and operating expense variance by chief officer.

Discussion ensued. A question on UTA's fuel budget was posed by the board and answered by Mr. Armstrong.

Resolutions.

R2021-01-01 Resolution Authorizing Execution of a Master Development Agreement and a Master Development Plan with Clearfield City, Stack Development, and Hamilton Partners. Paul Drake, UTA Director of Real Estate & Transit-Oriented Development, was joined by Jordan Swain, UTA Transit-Oriented Development Project Manager. Mr. Drake reviewed the Master Development Agreement (MDA) and Master Development Plan (MDP) structure for the Clearfield transit-oriented development (TOD) site. The two documents function together to govern land use control at the site. He asked the board to approve the resolution, which authorizes execution of the agreements.

A motion to approve R2021-01-01 was made by Trustee Holbrook and seconded by Trustee Acerson. The motion carried unanimously with aye votes from Trustee Holbrook, Trustee Acerson, and Chair Christensen.

R2021-01-02 Resolution Appointing Officers and Setting Compensation for District Officers and Employees for 2021. Kim Ulibarri, UTA Chief People Officer, presented the resolution, which adopts the 2021 salary structure for district officers and employees.

A motion to approve R2021-01-02 was made by Trustee Acerson and seconded by Trustee Holbrook. The motion carried unanimously with aye votes from Trustee Acerson, Trustee Holbrook, and Chair Christensen.

R2021-01-03 Resolution Authorizing the Executive Director to Execute Grant Agreements for Specified Projects. Mary DeLoretto, UTA Chief Service Development Officer, described the resolution, which authorizes the execution of grant agreements in the amount of \$224,000 for a suicide prevention research grant from the FTA Safety, Research, and Demonstration Program and \$338,155 for a polarized infrared and optical imaging system grant from the FTA Real Time Transit Infrastructure and Rolling Stock Condition Assessment Demonstration Program.

A motion to approve R2021-01-03 was made by Trustee Holbrook and seconded by Trustee Acerson. The motion carried unanimously with aye votes from Trustee Holbrook, Trustee Acerson, and Chair Christensen.

R2021-01-04 Resolution Authorizing Issuance of a Notice to Proceed Under a Construction Manager/General Contractor (CM/GC) Contract for the TIGER First/Last Mile Connection Program of Projects for 2021. Ms. DeLoretto was joined by Heather Bening, UTA Project Manager II. Ms. Bening requested the board authorize six Phase 2 TIGER first/last mile connection projects for the 2021 calendar year. The project budget details are as follows:

Project	Project Budget/Funding Sources					Est. Contract Amount
	Project Budget	TIGER Grant	Match	UTA-Local	UTA-Prop 1	
Lehi Pedestrian Bridge-2021	\$6,328,289	\$3,649,389	\$2,678,900			\$1,026,500
SLC Folsom Trail	\$3,783,305	\$1,931,166	\$1,852,139			\$3,023,115
UTA Projects: Wayfinding, Bike Parking, Bike Repair Stands, and Bus Stop Improvements	\$405,955	\$324,736	\$600	\$54,967	\$25,652	\$365,358
West Valley Bike Lanes	\$1,721,308	\$1,377,046	\$344,262			\$1,395,598
SLC 300 N Pedestrian Bridge	\$6,204,047	\$1,634,797	\$4,569,250			\$5,363,756
Provo Pedestrian Bridge	\$4,470,325	\$2,684,302	\$1,786,023			\$4,074,356
TOTALS	\$22,913,229	\$11,601,436	\$11,231,174	\$54,967	\$25,652	\$15,248,683

Discussion ensued. Questions on the program completion timeline and UTA projects segment were posed by the board and answered by staff.

A motion to approve R2021-01-04 was made by Trustee Acerson and seconded by Trustee Holbrook. The motion carried unanimously with aye votes from Trustee Acerson, Trustee Holbrook, and Chair Christensen.

R2021-01-05 Resolution Approving the Execution of an Interlocal Cooperation Agreement with Lehi City for Provision of Additional Funds to Supplement the Existing TIGER Stakeholder Agreement. Ms. DeLoretto was joined by Ms. Bening. Ms. Bening summarized the resolution, which authorizes execution of an interlocal agreement with Lehi City to increase the budget of the Lehi Pedestrian Bridge project. The Lehi City contribution to this budget supplement budget is \$64,352.

A motion to approve R2021-01-05 was made by Trustee Acerson and seconded by Trustee Holbrook. The motion carried unanimously with aye votes from Trustee Acerson, Trustee Holbrook, and Chair Christensen.

R2021-01-06 Resolution Approving the Execution of an Interlocal Cooperation Agreement with Mountainland Association of Governments for Provision of Additional Funds to Amend the Existing TIGER Stakeholder Agreement. Ms. DeLoretto was joined by Ms. Bening. Ms. Bening explained the resolution, which authorizes execution of an interlocal agreement with Mountainland Association of Governments (MAG) to increase the budget of the Lehi Pedestrian Bridge project through an exchange of funds with the Provo Pedestrian Bridge project. Through the exchange, MAG agreed to contribute \$886,197 in federal funds to the Lehi Pedestrian Bridge budget supplement.

A motion to approve R2021-01-06 was made by Trustee Acerson and seconded by Trustee Holbrook. The motion carried unanimously with aye votes from Trustee Acerson, Trustee Holbrook, and Chair Christensen.

Contracts, Disbursements, and Grants.

Contract: FrontRunner Bike Car Project (RailPlan International). Mr. Cumins was joined by Bruce Cardon, UTA Commuter Rail General Manager. Mr. Cumins requested the board authorize execution of a contract with RailPlan International in the amount of \$335,890 for replacement of bike racks on 16 commuter rail vehicles.

Discussion ensued. Questions on pre-pandemic bike rack usage and installation timeline were posed by the board and answered by staff.

A motion to approve the contract was made by Trustee Holbrook and seconded by Trustee Acerson. The motion carried unanimously.

Contract: FrontRunner North Park-and-Ride Lots and Sidewalks Snow Removal (Yardmasters, Inc.). Mr. Cumins was joined by Kevin Anderson, UTA Facilities Maintenance Manager. Mr. Cumins asked the board to authorize execution of a five-year contract with Yardmasters, Inc. for snow removal at eight Salt Lake, Davis, and Weber County locations. The total contract value for this service is \$500,000.

A motion to approve the contract was made by Trustee Holbrook and seconded by Trustee Acerson. The motion carried unanimously.

Contract: FrontRunner South Park-and-Ride Lots and Sidewalks Snow Removal (Concrete Concrete, Inc.). Mr. Cumins was joined by Mr. Anderson. Mr. Cumins requested the board authorize execution of a five-year contract with Concrete Concrete, Inc. for snow removal at four Utah County locations. The total contract value for this service is \$250,000.

A motion to approve the contract was made by Trustee Acerson and seconded by Trustee Holbrook. The motion carried unanimously.

Contract: Camera Access Control Maintenance and Service Agreement (Stone Security). Mr. Shaw asked the board to approve execution of a five-year contract with

Stone Security for maintenance and service on UTA's camera and access control system. The total contract value is \$225,000.

Discussion ensued. A question on the procurement process was posed by the board and answered by Mr. Shaw.

A motion to approve the contract was made by Trustee Holbrook and seconded by Trustee Acerson. The motion carried unanimously.

Revenue Contract: Rocky Mountain Power Special Projects Incentive Offer Award – Ogden-WSU BRT Depot Electric Vehicle Charging Infrastructure Project. Ms. DeLoretto was joined by Hal Johnson, UTA Manager – Project Development & Systems Planning. Ms. DeLoretto indicated that Rocky Mountain Power selected UTA to receive \$400,000-500,000 in funds for electric vehicle charging infrastructure on the Ogden-Weber State University (WSU) bus rapid transit (BRT) project.

Discussion ensued. A question on the construction timeline was posed by the board and answered by staff.

A motion to approve the contract was made by Trustee Holbrook and seconded by Trustee Acerson. The motion carried unanimously.

Service and Fare Approvals.

Sponsored Fare Agreement: Trip Reduction/Free Fare Days – Amendment 1 (Division of Air Quality). Monica Morton, UTA Fares Director, asked the board to approve an amendment to a sponsored fare agreement with the Division of Air Quality. The amendment changes the reimbursement amount of each free fare day, the total free fare days available under the contract, and the valid services on free fare days. It also allows UTA to implement an unlimited number of free fare days as long as the amount reimbursed does not exceed \$492,000.

Discussion ensued. A question on not including December as an eligible month was posed by the board and answered by staff.

A motion to approve the fare agreement was made by Trustee Acerson and seconded by Trustee Holbrook. The motion carried unanimously.

Discussion Items.

Ogden-Weber State University (WSU) Bus Rapid Transit (BRT) Project Update. Ms. DeLoretto was joined by Janelle Robertson, UTA Project Manager II. Ms. Robertson provided an overview of the project and discussed its funding plan. She then reviewed work currently in progress and the project schedule.

Discussion ensued. A question related to the work on Harrison Boulevard was posed by the board and answered by staff.

Point of the Mountain Transit Study Locally Preferred Alternative (LPA) Update. Ms. DeLoretto was joined by Patti Garver, UTA Project Manager – Environmental, Grants & Project Controls, and Manjeet Ranu, UTA Director of Capital Projects. Ms. Garver presented an overview of the study. She then spoke about alternatives considered in the study and the subsequent findings and recommendations. Ultimately, the study concluded the LPA would include an 8-mile common ground segment from the Draper FrontRunner Station to the Traverse Mountain area in Lehi with BRT as the mode. The segment will include up to seven stations, with an option to extend to include two additional stations in Lehi.

Discussion ensued. Questions on the timing for review with city councils and other stakeholders, as well as potential for future conversion to rail were posed by the board and answered by staff.

Other Business.

Next Meeting. The next meeting of the board will take place on January 27, 2021 at 9:00 a.m.

Closed Session. Chair Christensen indicated there were matters to be discussed in closed session relative to pending or reasonably imminent litigation. A motion for a closed session was made by Trustee Acerson and seconded by Trustee Holbrook. The motion carried unanimously. Chair Christensen called for a short break at 10:55 a.m. and indicated the closed session would convene at 11:05 a.m.

Open Session. A motion to return to open session was made by Trustee Holbrook and seconded by Trustee Acerson. The motion carried unanimously and open session resumed at 11:57 a.m.

Adjournment. The meeting was adjourned at 11:58 a.m. by motion.

Transcribed by Cathie Griffiths
Executive Assistant to the Board Chair
Utah Transit Authority
cgriffiths@rideuta.com
801.237.1945

This document is not intended to serve as a full transcript as additional discussion may have taken place; please refer to the meeting materials, audio, or video located at <https://www.utah.gov/pmn/sitemap/notice/649991.html> for entire content.

This document along with the digital recording constitute the official minutes of this meeting.

Approved Date:

Carlton J. Christensen
Chair, Board of Trustees

Appendix A

UTAH TRANSIT AUTHORITY ELECTRONIC BOARD MEETING DETERMINATION

Consistent with provisions of the Utah Open and Public Meetings Act, (UTAH CODE § 52-4-207 [4]), as the Chair of the Board of Trustees ("Board") of the Utah Transit Authority ("UTA"), I hereby make the following written determinations in support of my decision to hold electronic meetings of the UTA Board without a physical anchor location:

1. Due to the ongoing threat of the COVID -19 pandemic and the persistence of community person-to-person virus transmission, conducting Board and Board Committee meetings with an anchor location presents a substantial risk to the health and safety of those who may be present at the anchor location.
2. Federal, state, and local health authorities have adopted guidelines which encourage institutions and individuals to limit in-person interactions and recommend increased virtual interactions.

This written determination takes effect on December 16, 2020, and is effective until midnight on January 15, 2021 and may be re-issued by future written determinations as deemed appropriate.

Dated this 11th day of December 2020.

DocuSigned by:



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Carlton Christensen, Chair of the Board of Trustees

Appendix B
Online Public Comment
to the
Board of Trustees of the Utah Transit Authority (UTA)
Board Meeting
January 13, 2021

Received on January 11, 2021 from George Chapman:

comments on Jan 13 UTA Board of Trustees meeting

I would appreciate a correction of the bad data that was given to the SLC Council last week regarding ridership of 455 and 470 buses to justify the South Davis BRT project. The count given was over 4000 but the present ridership is around 2100 and experts do not expect a return to pre-Covid levels for at least 5 years. It would be cheaper than \$170 million to buy 5000 potential riders an electric car.

The last three times I rode a bus, there were riders that did not have full face coverings. UTA drivers should enforce the rules and not allow riders on the bus until they have full, including over the nose, face coverings. In one case the driver had to stop the bus to force the riders to put on masks.

I am against providing any Clearfield Station property for anything other than parking which is desperately needed.

Again, on the record, spending over \$120 million on a bus system/BRT in Ogden that duplicates the 603 service is wrong and bad government.

Again, I am against spending any money on the Draper/Lehi BRT or rail. The increased interest in personal vehicle use and average ridership on 871 of 105 a day does not justify spending millions on an EIS, much less hundreds of millions.

My oped in the Trib countering the arguments of FrontRunner spending, should also be discussed by the Board. UTA spending priorities, in many cases pushed by legislators, should have a realistic, objective and vigorous discussion at the Legislature before spending on projects.



MEMORANDUM TO THE BOARD

TO: Utah Transit Authority Board of Trustees
THROUGH: Carolyn Gonot, Executive Director
FROM: Bill Greene, Chief Finance Officer and Treasurer
PRESENTER(S): Emily Diaz, Financial Services Administrator

BOARD MEETING DATE: January 27, 2021

SUBJECT:	Financial Advisor Services – Contract Correction (Zions Public Finance)	
AGENDA ITEM TYPE:	Expense Contract/Consent	
RECOMMENDATION:	Approve corrected contract 20-0339 and authorize the Executive Director to execute the contract with Zions Public Finance as UTA’s Financial Advisor.	
BACKGROUND:	UTA desires to hire professional services for a Financial Advisor to monitor the bond market and help in bond issuance and refunding. On September 10, 2020, UTA issued a Request for Proposal (“RFP”) encouraging interested parties to submit proposals to perform these services for the next 5 years. After evaluation of the only proposal received, UTA has selected Zions Public Finance. Zions Public Finance has been UTA’s Financial Advisor since 1998 and was in a 5-year contract with UTA which expired on November 18, 2020.	
DISCUSSION:	<p>Contract 20-0339 with Zions Public Finance was approved by the Board on December 16, 2020 for Financial Advisor Services; however due to a staff error, Exhibit C was not included in the contract approved by the Board. Exhibit C contains disclosures from Zions Bank with regard to conflicts of interest.</p> <p>This requested action seeks Board approval to modify the contract to include Exhibit C.</p>	
CONTRACT SUMMARY:	Contractor Name: Zions Public Finance	Contract Number: 20-03339
	Base Contract Effective Dates: December 15, 2020 – December 15, 2024	Extended Contract Dates: N/A
	Existing Contract Value: N/A	Amendment Amount: N/A
	New/Total Amount Contract Value: \$1,118,891.50	
	Procurement Method: Request for Proposal	Funding Sources: UTA

ALTERNATIVES:	UTA could perform these services in house by hiring a full-time financial employee to monitor the bond market for potential bond refundings and remain current on changing bond requirements in the market.
FISCAL IMPACT:	The fees for the Financial Advisor are included in the cost of bond issuances and refundings.
ATTACHMENTS:	1) Zions Public Finance contract

Professional Services Contract

UTA CONTRACT NO. 20-03339

FINANCIAL ADVISOR

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 Zions Public Finance, a wholly-owned subsidiary of Zions Bancorporation, a nationally-chartered financial institution (“Consultant”).

RECITALS

- A. UTA desires to hire professional services for a Financial Advisor.
- B. On September 10, 2020, UTA issued a Request for Proposal Package Number 20-03339 (“RFP”) encouraging interested parties to submit proposals to perform the services described in the RFP.
- C. Upon evaluation of the proposals submitted in response to the RFP, UTA selected Consultant as the preferred entity with whom to negotiate a contract to perform the Work.
- 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 herefrom, and for other valuable consideration, the receipt and sufficiency of which the parties acknowledge, it is hereby agreed as follows:

1. SERVICES TO BE PROVIDED

- a. 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 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 a five (5) year period expiring December 15, 2025, for a total Contract period not to exceed five (5) years. 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 payment 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 Contract (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 Professional 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:

- UTA Contract including all attachments
- UTA Terms and Conditions
- UTA Solicitation Terms
- 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 21 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 OF DESIGNS, DRAWINGS, AND WORK PRODUCT

Any deliverables prepared or developed pursuant to the Contract including without limitation drawings, specifications, manuals, calculations, maps, sketches, designs, tracings, notes, reports, data, computer programs, models and samples, shall become the property of UTA when prepared, and, together with any documents or information furnished to Contractor and its employees or agents by UTA hereunder, shall be delivered to UTA upon request, and, in any event, upon termination or final acceptance of the Goods and Services. UTA shall have full rights and privileges to use and reproduce said items. To the extent that any deliverables include or incorporate preexisting intellectual property of Contractor, Contractor hereby grants UTA a fully paid, perpetual license to use such intellectual property for UTA's operation, maintenance, modification, improvement and replacement of UTA's assets. The

scope of the license shall be to the fullest extent necessary to accomplish those purposes, including the right to share same with UTA's contractors, agent, officers, directors, employees, joint owners, affiliates and consultants.

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 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 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 Goods and 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. Contractor 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 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.

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 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 is not under a confidentiality obligation;
 - C. Information developed by or in the custody of Consultant before entering into this Contract;
 - 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.

18. GENERAL INDEMNIFICATION

Contractor shall indemnify, hold harmless and defend UTA, its officers, trustees, agents, and employees (hereinafter collectively referred to as "Indemnitees") from and against all liabilities, claims, actions, damages, losses, and expenses including without limitation reasonable attorneys'

fees and costs (hereinafter referred to collectively as “claims”) related to bodily injury, including death, or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of the failure of such Contractor to conform to federal, state, and local laws and regulations. If an employee of Contractor, a subcontractor, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable brings a claim against UTA or another Indemnatee, Contractor’s indemnity obligation set forth above will not be limited by any limitation on the amount of damages, compensation or benefits payable under any employee benefit acts, including workers’ compensation or disability acts. The indemnity obligations of Contractor shall not apply to the extent that claims arise out of the sole negligence of UTA or the Indemnitees.

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
Annual Aggregate	\$2,000,000

- a. In the event that the professional liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of three (3) years beginning at the time work under this Contract is completed.

5. Railroad Protective Liability Insurance (RRPLI) – **Not applicable to this RFP**

During construction and maintenance within fifty (50) feet of an active railroad track, including but not limited to installation, repair or removal of facilities, equipment, services or materials, the Licensee and/or Licensee’s Contractor must maintain “Railroad Protective Liability” insurance on behalf of UTA only as named insured, with a limit of not less than \$2,000,000 per occurrence and an aggregate of \$6,000,000.

If the Licensee and/or Licensee’s Contractor is not enrolling for this coverage under UTA’s blanket RRPLI program, the policy provided must have the definition of “JOB LOCATION” AND “WORK” on the declaration page of the policy shall refer to this Agreement and shall describe all WORK or OPERATIONS performed under this Agreement.

- 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 Contractor's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.
- C. **NOTICE OF CANCELLATION:** Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided or canceled except after thirty (30) days prior written notice has been given to the Utah Transit Authority, except when cancellation is for non-payment of premium, then ten (10) days prior notice may be given. Such notice shall be sent directly to (Utah Transit Authority agency Representative's Name & Address).
- D. **ACCEPTABILITY OF INSURERS:** Insurance is to be placed with insurers duly licensed or authorized to do business in the State and with an "A.M. Best" rating of not less than A-VII. The Utah Transit Authority in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.
- E. **VERIFICATION OF COVERAGE:** Contractor shall furnish the Utah Transit Authority with certificates of insurance (on standard ACORD form) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and any required endorsements are to be sent to insurancecerts@rideuta.com 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. **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 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 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 6. Claims must be made by written notice. The responsibility to substantiate claims rests with the party making the claim.

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

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

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

Level of Authority	Time Limit
UTA's Project Manager/Contractor's Project Manager	Five calendar days
UTA's Chief Financial Officer/Contractor's Second Level	Five calendar days
UTA's Executive Officer/Contractor's Third Level	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, 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: Pat Postell
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:
Zions Public Finance
1 South Main Street, 18 Fl
Salt Lake City, UT 84133

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 23.1, the parties may, through mutual agreement, develop alternative

communication protocols to address change notices, requests for information and similar categories of communications. Communications provided pursuant to such agreed means shall be recognized as valid notices under this Contract.

28. CONTRACT ADMINISTRATOR

UTA's Contract Administrator for this Contract is Pat Postell, 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. Offeror 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, Offeror 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. Offeror 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 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.

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 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.

ZIONS PUBLIC FINANCE

By  _____

By _____

UTAH TRANSIT AUTHORITY:

Carolyn M. Gonot
Executive Director

William Greene
Chief Financial Officer

Michael Bell Digitally signed by Michael Bell
Date: 2021.01.18 13:55:30 -07'00'

Mike Bell
Assistant Attorney General

EXHIBIT A

A. SCOPE OF WORK

The scope of the work contemplated includes, but is not limited to, the following:

1. Assist and make recommendations on all aspects of financings including, but not limited to the following: method of sale, timing of sale, economic considerations, market conditions, lien structure (senior vs subordinate), tax exempt vs taxable financings, maturity structures, interest rates (including fixed vs variable rate financings), current interest vs capital appreciation bonds, redemption provisions, financial and non-financial covenants, debt service requirements, evaluation of bond pricing, use and evaluation of syndicate structure and any retail selling group members, monitoring bond allocations, settlement and post-settlement analyses, and any other post-settlement service as may be reasonably requested.
2. For competitively sold transactions, the financial advisor will assist in the preparation of the official notice of sale and bidding provisions, independently evaluate and verify bids, verify the True Interest Cost calculations and conformance with bidding parameters, and recommend an award.
3. For negotiated transactions, the financial advisor will; (i) provide recommendations regarding syndicate liabilities, order priority, takedown designations, use of retail-only order periods, and the use and composition of retail-only selling groups; (ii) provide independent price guidance for each maturity across a range of couponing alternatives; (iii) analyze and recommend fair pricing levels based on UTA's historical pricing and the pricing of comparable credits in the then current municipal bond market; and (iv) coordinate the allocation and distribution of bonds among the members of the underwriting team.
4. Examine, evaluate, and recommend an overall financing plan that is expected to result in the lowest, risk-adjusted cost of borrowing to UTA over the life of the debt, and how that overall plan fits in UTA's 30-year Transit Development Plan.
5. Assist UTA in analyzing capital development requests from municipalities within its service district, by detailing capital costs, financing requirements, new revenue streams, shared liability and/or cost, etc.
6. Provide timely analysis and opinions for UTA staff and trustees of the UTA Board.
7. Prepare comprehensive schedules and agendas for finance team meetings, including analysis of the timing of the sale in light of competing supply, prevailing interest rates, investor demand, economic conditions, and other factors.
8. Participate in and assist in the organization of all finance team meetings and conference calls.

9. Prepare and maintain Cost of Issuance budgets on all debt issuances. Assist UTA as requested, on negotiating fees for services comprising COI budget.
10. Monitor and evaluate refunding opportunities with respect to outstanding UTA debt obligations, at least semi-annually, or more often, as requested, using nominal and present value analysis.
11. For refunding issues involving an escrow, assist with the submission of SLGS subscriptions and/or structure and procure open market securities for escrows on a security by security basis (as circumstances warrant). Develop a bid package for open market securities bidding, evaluate alternative call dates (as applicable), and coordinate the successful delivery of securities at closing.
12. Provide professional financial advisory services to UTA staff, regarding the issuance of all types of debt, including Sales Tax Revenue bonds, Grant Anticipation Notes, short term financings, capital leasing, etc.
13. Assist in the preparation, review and publication of the preliminary and final official statements and all other documents related to the marketing and issuance of securities.
14. Assist in the preparation and presentation of rating agency presentations, internet roadshows, and other presentations in conjunction with bond issuance.
15. Assist with the evaluation and selection of underwriters/investment bankers, credit facility providers, bond trustees, printing, escrow verification, verification agents, and other professional service providers, including preparation of requests for proposals, review and evaluation of those proposals and interviewing of respondents.
16. Assist UTA in the preparation and review of secondary market disclosure materials if requested.
17. Provide transaction summaries, outlining pricing performance, orders and allocations, market dynamics and other relevant issuance data, including a Final Numbers Report at the conclusion of each transaction.
18. Advise on arbitrage rebate, tax, and bond proceeds investments and other analyses and services related to current or prospective debt issuances, as requested.
19. Assist UTA with post-issuance compliance issues.
20. Perform such other functions normally contemplated to be the function of a full-service financial advisor.
21. Maintain the confidentiality of any nonpublic records provided to your firm pursuant to this agreement.

22. Provide copies of any and all work product produced pursuant to this assignment.
23. From time to time, you may be invited to meet at the offices of UTA to meet with staff, attend board committee meetings, and/or attend monthly board meetings. Please note that UTA will not provide reimbursement for travel related time and expenses needed to fulfill any on-site meetings.

EXHIBIT B

Submitted by: Zions Public Finance, Inc.

A. Indicate your proposed professional fees and expenses (in percentages) for a single transaction:

	\$0– \$50,000,000	\$50,000,001– \$100,000,000	\$100,000,001– \$200,000,000	\$200,000,001– \$300,000,000	\$300,000,001– \$400,000,000	\$400,000,001– \$500,000,000	>\$500,000,001
Sales Tax Revenue Bonds	0.15%, Minimum \$35,000	0.15%	0.125%	0.1%	0.075%	0.06%	0.05%
Sales Tax Refunding Bonds	0.15%, Minimum \$35,000	0.15%	0.125%	0.1%	0.075%	0.06%	0.05%
VDRN's	0.15%, Minimum \$35,000	0.15%	0.125%	0.1%	0.075%	0.06%	0.05%
Grant Anticipation Notes	0.1%, Minimum \$35,000	0.9%	0.8%	0.7%	0.06%	0.05%	0.03%
Lease Revenue Bonds or Other	0.15%, Minimum \$35,000	0.15%	0.125%	0.1%	0.075%	0.06%	0.05%

Preparation of Official Statements	\$6,000	\$6,000	\$6,000	\$6,000	\$6,000	\$6,000	\$6,000
Preparation of Continuing Disclosure Memorandum	\$3,000 Annual Fee	\$3,000 Annual Fee	\$3,000 Annual Fee	\$3,000 Annual Fee	\$3,000 Annual Fee	\$3,000 Annual Fee	\$3,000 Annual Fee
Work Outside Scope of RFP (Hourly Rate)	\$250/hour see scale below	\$250/hour see scale below	\$250/hour see scale below	\$250/hour see scale below	\$250/hour see scale below	\$250/hour see scale below	\$250/hour see scale below

B. Indicate the discount (in percentage) you will take off of the above proposed professional fees and expense schedule for additional issues of the same type within three (3) months of each other.

20%, with the discount coming on the deal that would generate the lower fee amount.

C. Indicate the discount (in percentage) you will take off of the above proposed professional fees and expense schedule for additional issues of different type (i.e. sales tax revenue bond issue followed by lease revenue bond issue, or vice versa) within three (3) months of each other.

20%, with the discount coming on the deal that would generate the lower fee amount.

D. Detail other expenses your firm will charge in addition to the above fee that are not directly reimbursable.

None.

E. Explicitly itemize “directly reimbursable expenses” which may apply. How are these fees tracked?

Rating agency or investor meeting travel and expenses (if applicable), copies, conference calls. Actual costs are tracked on a “billables” sheet we are happy to share with the Authority.

In addition, Zions will often pay up front for deal-related expenses, and then have UTA pay for these through the costs of issuance budget and the Zions invoice. These are a direct pass through of a cost that could have been paid directly by UTA, but was paid for initially by Zions for convenience and simplicity. These may include CUSIPs, expenses related to net roadshows and electronic distribution of the POS, and fees associated with the Parity electronic bidding platform (for a competitive sale). Copies of invoices can be presented to UTA.

F. Is preparation of an Official Statement included as part of services provided? If not, indicate your fee to prepare an Official Statement.

Zions offers to prepare the preliminary and final official statements as part of the service we offer on any transaction for a fee of \$6,000. UTA is not required to use us for this service, and can have disclosure council prepare these documents if it so chooses. We believe that Zions’ work on these documents, at this fee, will save UTA \$10,000-\$15,000 per transaction.

G. Indicate your fee for producing UTA’s Annual Continuing Disclosure Memorandum, should you be asked to do so.

If asked to do so, Zions will produce UTA’s Annual Continuing Disclosure Memorandum at an annual fee of \$3,000. We hope that UTA recognizes the value of having our disclosure experts prepare this important annual document, including the burden and time commitment it removes from staff.

H. For work outside the scope of work of this RFP, please provide an indication of the fee schedule or the hourly fee you would propose for the individuals assigned.

Vice President and above – \$250.00 per hour
AVP or Analyst – \$175.00 per hour
Administrative Assistant – \$75.00 per hour

Exhibit C
Zions Public Finance, Inc.
Disclosure Statement of
Municipal Advisor

The Municipal Securities Rulemaking Board (MSRB) adopted Rule G-42 on December 23, 2015. It became effective on June 23, 2016. Section (b) of Rule G-42 requires all Municipal Advisors to disclose to their clients, in writing, any actual or potential material conflicts of interest, including with respect to certain specifically identified categories in Rule G-42, if applicable. Zions Public Finance, Inc. (hereinafter “Zions”) makes the disclosures set forth below with respect to material actual or potential conflicts of interest in connection with our Agreement for Municipal Advisory Services (the “Agreement”) dated December 15, 2020 with Authority, together with an explanation of how Zions addresses, or intends to manage or mitigate each conflict.

Conflicts of Interest

With respect to each actual or potential conflict disclosed below, Zions mitigates such conflicts through adherence to our fiduciary duty to the Authority, which includes a duty of loyalty in performing all municipal advisory activities for the Authority. This duty of loyalty obligates Zions to deal honestly and with the utmost good faith with the Authority and to act in the Authority’s best interests without regard to Zions’ financial or other interests. Because Zions is part of a much larger banking organization, our profitability is not dependent on maximizing short-term revenues generated from our municipal advisory activities, but instead is dependent on long-term profitability built on a foundation of integrity, quality service, and strict adherence to our fiduciary duty.

In connection with the issuance of municipal securities, Zions may receive compensation from the Authority for services rendered which may be contingent upon the successful closing of a transaction, and/or where our compensation may be based in whole or in part on the size of the transaction. In other situations, our compensation may be based upon an hourly rate or rates. In still other situations, our compensation may be based upon an annual retainer or a fixed fee for a given project.

Consistent with Rule G-42, Zions hereby discloses that each of these methods of compensation may present a potential conflict of interest regarding our ability to provide unbiased advice to enter into such transaction.

For example, fees that are (i) dependent upon the size of and successful closing of a transaction could create an incentive for Zions to recommend unnecessary, oversized, or disadvantageous financings in order to increase our compensation; (ii) based upon an hourly rate could create an incentive for Zions to recommend alternatives that result in greater hours worked; and (iii) based upon an annual retainer or fixed fee could incentivize Zions to recommend less time-consuming alternatives or fail to do a more thorough analysis of alternatives.

In each case, Zions represents that the potential conflict of interest relating to compensation will not impair our ability to render unbiased and competent advice or to fulfill our fiduciary duty as described above to UTA.

Also, Zions has numerous municipal advisory relationships with various governmental entities that may from time to time have interests that could have a direct or indirect impact on UTA's interests. For example, Zions' other municipal advisory clients may from time to time, and depending on specific circumstances, have competing interests, such as accessing the new issue market with the most advantageous timing and with limited competition at the time of the offering. In acting in the interests of its various clients, Zions could potentially face a conflict of interest arising from these competing client interests.

In addition to serving as municipal advisor to the Authority, Zions may, from time to time, serve as a municipal advisor to a conduit borrower. In such event, the Authority and the conduit borrower may have conflicting interests with regard to fees, terms of the issuance, and other matters. In addition to the general mitigations described above, Zions will mitigate any such potential conflict through full written disclosure to both the conduit borrower and the Authority in a timely manner.

As a part of ZIONS BANCORPORATION, N.A., a nationally-chartered banking organization, Zions has many affiliated businesses that have provided, or desire to provide, services to governmental entities, including the Authority.

These affiliates include:

- Zions Bank Corporate Trust, a division of ZIONS BANCORPORATION, N.A, and an entity related to Zions ("Corporate Trust"), offers corporate trustee and custodial services to municipal issuers and obligated persons. If a client engages in these services, it is done directly with Corporate Trust under a separate engagement.
- Zions Capital Advisor Institutional Liquidity Management ("ZCA"), an affiliate and SEC registered investment advisor provides discretionary money management to institutional clients for a fee. If the client engages ZCA for these services, they will be dealing directly with ZCA under their own agreement and disclosures.
- Zions Bank Capital Markets, an affiliated bank dealer, provides underwriting and dealer services to institutional clients including municipal issuers. Additionally, the dealer may take positions or underwrite securities for other municipal issuers.
- Zions Bank, a division of ZIONS BANCORPORATION, N.A, provides traditional banking services to municipal clients through their branch locations and treasury departments. Any products or services offered are subject to the terms and conditions of the bank agreement for the engagement.

Corporate Trust is the only affiliate that may be expected to provide services that are directly related to the Municipal Advisory activities to be provided by Zions within the scope of services under the Agreement. Corporate Trust acts as a Paying Agent, Registrar, Trustee, and Escrow Agent to municipal clients on municipal financings. Corporate Trust's desire to do business with the Authority could create an incentive for Zions to recommend a course of action that increases the level of the Authority's business activity with this affiliate. In addition to the general mitigations described above, in the event that Zions makes a recommendation to UTA that could influence the level of business with Corporate Trust, Zions will consider alternatives to such recommendations which will be disclosed to the Authority along with the potential impact such recommendations and alternatives would have on UTA and the affiliate.

As further described below, Zions Bank, an affiliate of Zions, may from time to time make bank loans to, or purchase leases or securities from, the Authority, which such loans and purchases are expressly excluded from the scope of the Agreement.

After reviewing our list of existing client relationships and upcoming transactions, we cannot identify any existing material conflicts of interest that would prevent us from serving UTA's best interests. Zions has served as the State of Utah's advisor for many years and has provided advice to both UTA and the State of Utah over that time. If Zions becomes aware of any potential or actual conflicts of interest after this initial disclosure, in this relationship or any other, Zions will proactively disclose the detailed information, in writing, to UTA in a timely manner.

Legal or Disciplinary Events

Zions does not have any legal events or disciplinary history on Zions' Form MA and/or Form MA-I. These forms include information about any criminal actions, regulatory actions, investigations, terminations, judgements, liens, civil judicial actions, customer complaints, arbitrations and civil litigation when they occur. Each of Zions' most recent Form MA and Form MA-I filed with the SEC may be accessed electronically on the following website:
www.sec.gov/edgar/searchedgar/companysearch.html.

There have been no material changes to a legal or disciplinary event disclosure on any Form MA or Form MA-I filed with the SEC. If any material legal or regulatory action is brought against Zions, Zions will provide complete disclosure to you in detail, allowing you to evaluate Zions, its management and personnel.

Contract Exemption for Bank Products and Direct Purchases

In our proposed Municipal Advisory Agreement, there is a provision that specifically excludes from the Agreement any commercial banking transactions with, and leases or securities purchased from the Authority.

When UTA determines that it would like one of Zions' affiliates to directly engage in a commercial banking transaction, or purchase a lease or municipal security from the Authority, and provided that Zions has not previously provided any advice to UTA regarding such transaction, Zions will deliver to the Authority an additional disclosure document indicating that (a) Zions and its personnel: (i) will not be serving as UTA's municipal advisor; (ii) will not owe a fiduciary duty to the Authority pursuant to Section 15B of the Securities Exchange Act of 1934 regarding that transaction; and (iii) will have interests conflicting with UTA; (b) all Zions (or affiliate) personnel the Authority deals with in such a transaction will be acting and serving as part of the affiliate's team and not on behalf of the Authority; (c) Zions may bill UTA for standard fees in connection with such transaction, but will not bill the Authority for any municipal advisory fees since it won't be performing a municipal advisory function for the Authority with respect thereto; and (d) UTA may wish to discuss information or material provided in connection with such transaction with an internal or external expert.

If Zions has previously provided any advice to you regarding the loan, lease, or security in question, our affiliates will not be allowed to purchase the transaction.

MSRB Rule G-42 specifically exempts these transactions that are less than \$1 million in par value from the prohibition on advice. Therefore, if the transaction is less than \$1 million, Zions is allowed to provide advice on the transaction, even if it is purchased by one of our affiliates.

MSRB Rule G-10: Formal Complaints

The MSRB adopted a revision of its Rule G-10 in which all Municipal Advisors are now required to provide their clients a notice which provides information regarding the process for filing formal complaints.

Zions Public Finance, Inc. is registered as a municipal advisor with the SEC (Securities Exchange Commission) and the MSRB, as required by section 15B of the Securities Exchange Act. The MSRB protects investors, state and local governments and other municipal entities, and the public interest, by regulating municipal securities firms, banks and municipal advisors that engage in municipal securities and advisory activities.

Additional information about the protections provided by MSRB Rules as well as procedures to file a formal complaint surrounding any suspected violation or unfair practice by a regulated entity, may be found in the MSRB's Investor Brochure located at www.msrb.org.



MEMORANDUM TO THE BOARD

TO: Utah Transit Authority Board of Trustees
FROM: Shule Bishop, Government Relations Director
PRESENTER(S): Shule Bishop, Government Relations Director

BOARD MEETING DATE: January 27, 2021

SUBJECT:	Legislative Update
AGENDA ITEM TYPE:	Report
RECOMMENDATION:	Informational report for discussion. Make motions regarding UTA positions on legislation as needed.
DISCUSSION:	Shule Bishop, UTA Government Relations Director will report on transit-related issues before the Utah Legislature.



MEMORANDUM TO THE BOARD

TO: Utah Transit Authority Board of Trustees
FROM: Carolyn Gonot, Executive Director
PRESENTER(S): Carolyn Gonot, Executive Director

BOARD MEETING DATE: January 27, 2021

SUBJECT:	Agency Report
AGENDA ITEM TYPE:	Report
RECOMMENDATION:	Informational report for discussion
DISCUSSION:	<p>Carolyn Gonot, UTA Executive Director will report on recent activities of the agency and other items of interest.</p> <ul style="list-style-type: none">- UTA My BeUTAHful Community Student Art Competition- FTA Public Transportation COVID 19 Research Demonstration Grant



MEMORANDUM TO THE BOARD

TO: Utah Transit Authority Board of Trustees
THROUGH: Carolyn Gonot, Executive Director
FROM: Bill Greene, Chief Financial Officer and Treasurer
PRESENTER(S): Emily Diaz, Financial Services Administrator

BOARD MEETING DATE: January 27, 2021

SUBJECT:	Investment Report - Fourth Quarter 2020
AGENDA ITEM TYPE:	Report
RECOMMENDATION:	Informational report for discussion
BACKGROUND:	<p>The Board of Trustees Policy No. 2.1, Financial Management, authorizes the Treasurer to manage the investment of all non-retirement Authority funds in compliance with applicable laws and requires the Chief Financial Officer to prepare and present to the Board a summary of investments, investment activity, and investment performance compared to benchmarks as soon as practical after the end of each calendar quarter. The Fourth Quarter 2020 Investment Report has been prepared in accordance with the Financial Management Policy and is being presented to the Board.</p>
DISCUSSION:	<p>As of December 31, the benchmark return (3-month T-bill) was 0.090%. Investment returns at the PTIF (0.489%) and Zions Capital Advisors (0.729%) exceeded the benchmark return. Investment returns on the overnight account at Zions Bank (0.030%) were below the benchmark return. The blended portfolio return of 0.416% exceeded the benchmark rate by 33 basis points (0.326%).</p> <p>All investments are in compliance with the State's Money Management Act (Utah Code Section 51-7).</p>
ATTACHMENTS:	1). Fourth Quarter 2020 Investment Report

Utah Transit Authority

Investment Portfolio

December 31, 2020

Investment	CUSIP	Amount Invested	Purchase Date	Maturity	Yield to Maturity	Annual Earnings
No current Investments		\$ -				
Zions Capital Advisors		\$ 29,291,236			0.729%	\$ 213,533
Zions Bank		\$ 14,353,516			0.030%	\$ 4,306
Public Treasurer's Investment Fund		\$ 295,940,352			0.489%	\$ 1,448,332
Total Investments		\$ 339,585,104			0.416%	\$ 1,666,171

Rates as of Last Trading Day of

	<u>October</u>	<u>November</u>	<u>December</u>
Zions Capital Advisors	1.000%	0.869%	0.729%
Public Treasurer's Investment Fund	0.519%	0.519%	0.489%
Benchmark Return*	0.090%	0.090%	0.090%

*Benchmark Return is the highest of either the 3 Month T Bill rate or the Fed Funds rate.

Investments Purchased October 1 through December 31, 2020

Investment	CUSIP	Amount Invested	Purchase Date	Maturity	Yield to Maturity	Annual Earnings
No purchases this quarter						

Investments Sold October 1 through December 31, 2020

Investment	CUSIP	Amount Invested	Date Sold	Sale Amount	Interest Earned	Gain
No sales this quarter						



MEMORANDUM TO THE BOARD

TO: Utah Transit Authority Board of Trustees
THROUGH: Carolyn Gonot, Executive Director
FROM: Carolyn Gonot, Executive Director
PRESENTER(S): Carolyn Gonot, Executive Director

BOARD MEETING DATE: January 27, 2021

SUBJECT:	R2021-01-07 Resolution Establishing the Authority's Support of the Utah Compact on Racial Equity, Diversity, and Inclusion
AGENDA ITEM TYPE:	Resolution
RECOMMENDATION:	Adopt the resolution establishing the Utah Transit Authority's support of the Utah Compact on Racial Equity, Diversity, and Inclusion. Join other signatories across the state in signing the compact.
BACKGROUND:	Public transit plays a critical role in increasing mobility and access to opportunities, in addition to providing safe and equitable access to public spaces and streets. This role is to champion inclusion by building trust across social, cultural, racial, political, generational, regional, religious, and economic differences. As a public transit agency, key community member, and large employer in Utah, Utah Transit Authority is in a position to advance racial equity, diversity, and inclusion in our community and within our agency.
DISCUSSION:	<p>UTA is proud to join other Utahns in uniting behind a common goal to create equal opportunity and social, racial, and economic justice. Signing the Utah Compact on Racial Equity, Diversity, and Inclusion provides the foundation for advancing transit equity in our region, as well as developing robust and inclusive engagement processes that provide communities with more equitable opportunities to participate in decisions essential to their mobility. Joining this compact also provides Utah Transit Authority the opportunity to acknowledge the importance of creating a society in which race and ethnicity do not determine or limit value, opportunity, and life outcomes.</p> <p>UTA recognizes that we must do everything we can to ensure our work fosters a more just future for all. This includes examining our policies, practices, and decisions with a renewed vision of equity, access, and opportunity.</p> <p>Additionally, pledging support of the compact is an important part of Utah Transit Authority's larger commitment to creating a more inclusive community and workplace. More specifically, it aligns with our recent organizational restructure and the development of the Office of Planning and Engagement. This office is deeply committed to creating</p>

	equitable access to opportunities through public transit. Within the agency, Utah Transit Authority will advance workplace inclusivity through Equal Employment Opportunity (EEO) efforts and a continued focus on building a culture of inclusion and belonging.
FISCAL IMPACT:	N/A
ATTACHMENTS:	1) Resolution R2021-01-07

**RESOLUTION OF THE BOARD OF TRUSTEES OF THE UTAH TRANSIT
AUTHORITY ESTABLISHING THE AUTHORITY'S SUPPORT OF THE UTAH
COMPACT ON RACIAL EQUITY, DIVERSITY, AND INCLUSION**

2021-01-07

January 27, 2021

WHEREAS, the Utah Transit Authority (the "Authority") is a large public transit district organized under the laws of the State of Utah and was created to transact and exercise all of the powers provided for in the Utah Limited Purpose Local Government Entities - Local Districts Act and the Utah Public Transit District Act (collectively the "Act"); and

WHEREAS, the Utah Transit Authority (the "Authority") stands in solidarity with communities across the country taking steps to create a more just world for all; and

WHEREAS, the Authority recognizes that public transit plays a critical role in increasing mobility and access to opportunities, in addition to providing safe and equitable access to public spaces and streets; and

WHEREAS, as a public transit agency, key community member, and large employer in Utah, the Authority is in a position to advance racial equity, diversity, and inclusion in our community; and

WHEREAS, the Authority acknowledges that racism exists and actions against it make a difference; and

WHEREAS, the Authority will invest time and resources to create greater opportunity for people of color; and

WHEREAS, the Authority will advance solutions to racial ills by listening and creating policies that provide equal opportunity and access to education, employment, housing, and healthcare; and

WHEREAS, the Authority will commit to effect change through broader engagement, equitable representation, and deeper connection across social, cultural, and racial lines; and

WHEREAS, the Authority proudly joins other Utahns who unite behind a common goal to create equal opportunity through a legacy movement of social, racial, and economic justice.

NOW, THEREFORE, BE IT RESOLVED by the Board of Trustees of the Utah Transit Authority:

1. That the Board does not tolerate acts of racism and injustice in our community, on our public transit system, nor within our agency.
2. That the Board hereby supports the Utah Compact on Racial Equity, Diversity, and Inclusion attached as Exhibit A, and proudly joins other signatories in signing the compact.
3. That the Board formally ratifies actions taken by the Authority, including those taken by the Executive Director and staff, that are necessary or appropriate to give effect to this Resolution.
4. That the corporate seal be attached hereto.

Approved and adopted this 27th day of January 2021.

Carlton Christensen, Chair
Board of Trustees

ATTEST:

Secretary of the Authority

(Corporate Seal)

Approved As To Form:

DocuSigned by:
David Wilkins
5E3257B1CE024B9...

Legal Counsel

EXHIBIT A

UTAH COMPACT *on* RACIAL EQUITY, DIVERSITY, *and* INCLUSION

A Declaration of Five Principles and Actions to Create Equal Opportunity

===== NOVEMBER 18, 2020 =====

*W*e, the signers of the Utah Compact on Racial Equity, Diversity, and Inclusion, affirm that all people are created equal under God. A racially equitable state requires us to act and create a society in which race and ethnicity do not determine or limit value, opportunity, and life outcomes.

We also affirm two key principles on which everyone can agree: That all Utahns must have a truly equal opportunity to prosper, and that economic inclusion is essential to creating these opportunities.

We view racism as more than just an individual character flaw. It is a system of ideas, beliefs, practices, structures, and policies that give some people greater opportunity to be fully human and live a happier and healthier life than others. Unraveling centuries of internalized and systemic racism requires bold anti-racist actions and policies right now.

We pledge to advance behavior on an individual, business, and government level that will establish priorities and laws that create equal opportunity and access for all.

We likewise pledge to foster cultures of inclusion in every aspect of our organizations and society while addressing social injustice and inequality, and condemning all forms of prejudice, bigotry, and discrimination.

We believe many of our nation's societal ills can be solved by providing equal opportunity and access to education, employment, housing, and healthcare.

We further recognize that we must listen and learn from each other, realizing that as we deepen our understanding of differences, we can, in turn, be better understood.

Therefore, we commit to, and invite other Utahns to commit to, these anti-racist principles and actions:

1. **Acknowledgement and action** – We acknowledge that racism exists, and our actions make a difference. We call out racism wherever we see it and take purposeful steps to stop it.
2. **Investment** – We invest our time and resources to create greater opportunity for people of color. Eliminating racial and ethnic disparities requires our significant effort and investment.
3. **Public policies and listening** – We advance solutions to racial ills by listening and creating policies that provide equal opportunity and access to education, employment, housing, and healthcare.
4. **Engagement** – We engage to effect change. Broader engagement, equitable representation, and deeper connection across social, cultural, and racial lines will uphold the principle – “nothing about us, without us.”
5. **Movement, not a moment** – Utahns unite behind a common goal to create equal opportunity. We affirm our commitment will not just be a passing moment, but a legacy movement of social, racial and economic justice.

“WE ARE ALL IN!”



MEMORANDUM TO THE BOARD

TO: Utah Transit Authority Board of Trustees
THROUGH: Carolyn Gonot, Executive Director
FROM: Eddy Cumins, Chief Operating Officer
PRESENTER(S): Eddy Cumins, Chief Operating Officer
David Hancock, Director of Asset Management

BOARD MEETING DATE: January 27, 2021

SUBJECT:	On-Call Infrastructure Maintenance (Stacy and Witbeck, Inc.)
AGENDA ITEM TYPE:	Expense Contract
RECOMMENDATION:	Approve contract and authorize Executive Director to execute contract and associated disbursements with Stacy and Witbeck Inc. for on-call infrastructure maintenance in the amount of \$25,000,000.
BACKGROUND:	<p>In October 2020, UTA released a request for procurement (RFP) for an on-call maintenance contractor focused specifically on infrastructure assets. Bids were received and evaluated, and Stacy and Witbeck Inc. was selected as the winner based on overall scoring using the best value format.</p> <p>This is UTA's third procurement effort for this type of contract. Considering the amount of infrastructure maintenance work required annually, UTA has found it advantageous to execute smaller projects under an on-call maintenance contract.</p>
DISCUSSION:	<p>UTA staff is requesting approval of a contract with Stacy and Witbeck Inc. to provide on-call maintenance for UTA's infrastructure assets in the amount of \$25,000,000. This is a three-year contract with two one-year options.</p> <p>Typical task orders under this contract will include:</p> <ul style="list-style-type: none">• Grade crossing replacement efforts on UTA's rail system• Rail maintenance to include ballast, tie, and other rail replacement activities• Bus stop construction• General concrete/asphalt replacement <p>UTA anticipates spending approximately \$5,000,000 per year during the contract period, bringing the total five-year contract amount to \$25,000,000.</p>
CONTRACT SUMMARY:	Contractor Name: Stacy and Witbeck Inc.

	Contract Number: 20-03349VM	Existing Contract Value: N/A
	Base Contract Effective Dates: January 1, 2021 through December 31, 2023	Extended Contract Dates: Option Years: January 1, 2024 through December 31, 2025
	Amendment Amount: N/A	New/Total Amount Contract Value: \$25,000,000
	Procurement Method: RFP	Funding Sources: SGR and Capital Projects Budget
ALTERNATIVES:	The alternative would be advertisement, contractor selection, negotiations, and individual contracts for each potential task order.	
FISCAL IMPACT:	This budget is included in the 2021 Capital Program. It also will contain funding through the anticipated 2022-2025 Capital budget for those respective years.	
ATTACHMENTS:	1) Contract	

TASK ORDERING AGREEMENT

20-03349VW On-Call Transit Infrastructure Construction, Maintenance and Repair Contractor

This Task Ordering Agreement (TOA) 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 Stacy and Witbeck, Inc. (“Contractor”).

RECITALS

- A. UTA desires to award a task ordering contract for construction, maintenance and repair of UTA transit infrastructure per the Statement of Services contained at Exhibit A.
- B. On November 2, 2020, UTA issued Request for Proposal Package Number 20-03349VW encouraging interested parties to submit proposals to perform the services described in the RFP.
- C. Upon evaluation of the proposals submitted in response to the RFP, UTA selected Contractor as the preferred entity with whom to negotiate a contract to perform the Work.
- D. Contractor is qualified and willing to perform the Work as set forth in the Scope of Services.

AGREEMENT

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

1. SERVICES TO BE PROVIDED

- a. Contractor shall perform all Tasks issued under this TOA as set forth in the Scope of Services (Exhibit A). Except for items (if any) which this Contract specifically states will be UTA-provided, Contractor shall furnish all the labor, material and incidentals necessary for the Work.
- b. Contractor shall perform all Work under this TOA in a professional manner, using at least that standard of care, skill and judgment which can reasonably be expected from similarly situated professionals.
- c. All Work shall conform to generally accepted standards in the transit industry. Contractor shall perform all Work in compliance with applicable laws, regulations, rules, ordinances, permit constraints and other legal requirements including, without limitation, those related to safety and environmental protection.
- d. Contractor shall furnish only qualified personnel and materials necessary for the performance of the Work.

- e. When performing Work on UTA property, Contractor shall comply with all UTA work site rules including, without limitation, those related to safety and environmental protection.

2. TASK ORDER ISSUANCE

- a. The Contractor's shall perform services with respect to a wide variety of tasks, as described in Exhibit A at the request of UTA.
- b. Each discrete maintenance item is referred to as a "Task." UTA and the Contractor will negotiate scope, schedule, and lump sum price for each Task, and document those and other terms, as necessary, in a written "Task Order" in substantively the same format as that attached as Exhibit A. The lump sum price for each Task shall be developed in accordance with Section 8 of this Contract and Exhibit B. Upon the execution of a Task Order, the Contractor shall perform services for that Task, including furnishing all the materials, appliances, tools, and labor of every kind required, and constructing and completing in the most substantial and skillful manner, the work identified in the scope of work attached as an Exhibit to that Task Order.
- c. If UTA and the Contractor are unable to agree on the price, scope, or other terms of a Task Order, UTA shall retain the right to remove the Task from the scope of the on-call Contractor and procure the item outside this Contract.

3. REVENUE OPERATIONS

For some Tasks, UTA may designate a Revenue Operations Date, which is the date the affected facility must be fully operational and available for use by UTA's patrons. Where applicable, Tasks shall be ready for revenue operations by the Revenue Operations Date specified in the applicable Task Order.

4. MANAGEMENT OF WORK

- a. Contractor's Project Manager will be the day-to-day contact person for Contractor and will be responsible for all Work, as well as the coordination of such Work with UTA.
- b. UTA's Project Manager will be the day-to-day contact person for UTA, and shall act as the liaison between UTA and Contractor with respect to the Work. UTA's Project Manager shall also coordinate any design reviews, approvals or other direction required from UTA with respect to the Work.

5. PROGRESS OF WORK

- a. Contractor shall prosecute the Work in a diligent and continuous manner and in accordance with all applicable notice to proceed, critical path schedule and guaranteed completion date requirements set forth in (or developed and agreed by the parties in accordance with) the Scope of Services.
- b. Contractor shall conduct regular meetings to update UTA's Project Manager regarding the progress of the Work including, but not limited to, any unusual conditions or critical path schedule items

that could affect or delay the Work. Such meetings shall be held at intervals mutually agreed to between the parties.

- c. Contractor shall deliver monthly progress reports and provide all Contract submittals and other deliverables as specified in the Scope of Services.
- d. Any drawing or other submittal reviews to be performed by UTA in accordance with the Scope of Services are for the sole benefit of UTA, and shall not relieve Contractor of its responsibility to comply with the Contract requirements.
- e. UTA will have the right to inspect, monitor and review any Work performed by Contractor hereunder as deemed necessary by UTA to verify that such Work conforms to the Contract requirements. Any such inspection, monitoring and review performed by UTA is for the sole benefit of UTA, and shall not relieve Contractor of its responsibility to comply with the Contract requirements.
- f. UTA shall have the right to reject Work which fails to conform to the requirements of this Contract. Upon receipt of notice of rejection from UTA, Contractor shall (at its sole expense and without entitlement to equitable schedule relief) promptly re-perform, replace or re-execute the Work so as to conform to the Contract requirements.
- g. If Contractor fails to promptly remedy rejected Work as provided in Section 4.6, UTA may (without limiting or waiving any rights or remedies it may have) perform necessary corrective action using other contractors or UTA's own forces. Any costs reasonably incurred by UTA in such corrective action shall be chargeable to Contractor.

6. FINAL ACCEPTANCE OF TASKS

Each Task shall be entirely completed – including all punch list items, final cleanup, etc. – by the final acceptance date specified in the applicable Task Order. When, in the opinion of UTA's PM, the Contractor has fully performed the work under a Task Order, UTA's PM will notify the Contractor of final acceptance.

Final acceptance will be final and conclusive except for defects not readily ascertainable by UTA, actual or constructive fraud, gross mistakes amounting to fraud, or other errors which the Contractor knew or should have known about, as well as UTA's rights under any warranty or guarantee. Final acceptance may be revoked by UTA at any time prior to the issuance of the final payment by UTA or upon UTA's discovery of such defects, mistakes, fraud, or errors in the work even after final payment is issued.

7. PERIOD OF PERFORMANCE

This Contract shall commence as of the Effective Date. This Contract shall remain in full force and effect until all Work is completed in accordance with this Contract, as reasonably determined by UTA. Contractor shall complete all Work no later than **December 31, 2023**. (This contract contains two additional option years which may be exercised in the sole discretion of UTA with 60 days advance written notice. The option period will be subject to the same terms and conditions which are contained in this TOA. This guaranteed completion date may be extended if Contractor and UTA mutually agree

to an extension evidenced by a written Change Order. The rights and obligations of UTA and Contractor under this Contract shall at all times be subject to and conditioned upon the provisions of this Contract.)

8. COMPENSATION

a. Compensation for Task Management Services

1. UTA agrees to pay Contractor for services rendered hereunder in accordance with the applicable hourly rates for Contractor's Managers as set forth in Exhibit B.
2. Payment will be based on actual hours expended (except that no more than 8 hours per day will be charged regardless of the hours worked on that day, nor more than 40 hours per week will be charged, regardless of the hours worked that week), plus appropriate and authorized direct expenses.

b. Compensation for Task Performance

1. Unless otherwise agreed in a Task Order, payment for the completion of Tasks will be in the form of a lump sum price negotiated between UTA and the Contractor and set forth in an executed Task Order. The lump sum price will be negotiated through an open-book cost estimating process based on the pricing elements set forth in Exhibit B. The lump sum price will be paid to the Contractor for satisfactory completion of all work identified in the applicable Task Order. Except as amended by UTA-issued change orders, the amount to be paid to the Contractor for all costs necessary to complete the work, whether stated or reasonably implied in the Task Order or other contract documents, will not exceed the lump sum price, including all labor, materials, equipment, supplies, small tools, incidental expenses, and any other direct or indirect associated costs.
2. The lump sum price for Tasks must not include any compensation for task management services, which are fully compensated through the hourly fees set forth above.

9. INCORPORATED DOCUMENTS

- a. The terms and conditions of this Task Ordering Agreement. The following documents hereinafter listed in chronological order, re hereby incorporated into the Contract by reference and made a part hereof:
 1. The Addendum 1 Supplemental Terms and Conditions for Construction Services. (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 Construction Services;
- b. The above-referenced documents are made as fully a part of the Contract as if hereto attached.

10. ORDER OF PRECEDENCE

The Order of Precedence for this contract is as follows:

- UTA Contract including all terms and conditions and attachments
- Addendum 1 Supplemental Terms and Conditions for Construction Services
- UTA Solicitation Terms
- 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.

11. TERMINATION

UTA's termination rights under Article 9 of the Supplemental Terms and Conditions for Construction Services contained at Addendum 1 to this TOA shall apply, in UTA's discretion, to either an individual task order or the entire TOA. Where the TOA is terminated for convenience, the Contractor shall be entitled to payment in full for all tasks satisfactorily completed prior to the termination date. Where a task is terminated prior to acceptance by UTA, Contractor shall be entitled to its actual allowable and allocable costs expended to the date of termination for the terminated task. Other rights and obligations associated with the termination are as described under Article 9 of Addendum 1.

12. INVOICING PROCEDURES

- a. Contractor 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 Contractor 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 Contractor's entitlement to the requested payment must be submitted with each invoice.
- b. UTA shall have the right to disapprove (and withhold from payment) specific line items of each invoice to address non-conforming Work or invoicing deficiencies. Approval by UTA shall not be unreasonably withheld. UTA shall have the right to offset from payment amounts reasonably reflecting the value of any claim which UTA has against Contractor under this Contract. Payment for all invoice amounts not specifically disapproved by UTA shall be provided to Contractor within thirty (30) calendar days of invoice submittal.

13. OWNERSHIP OF DESIGNS, DRAWINGS, AND WORK PRODUCT

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

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

14. USE OF SUBCONTRACTORS

- a. Contractor shall give advance written notification to UTA of any proposed subcontract (not indicated in Contractor's Proposal) negotiated with respect to the Work. UTA shall have the right to approve all subcontractors, such approval not to be withheld unreasonably.
- b. No subsequent change, removal or substitution shall be made with respect to any such subcontractor without the prior written approval of UTA.
- c. Contractor shall be solely responsible for making payments to subcontractors, and such payments shall be made within thirty (30) days after Contractor receives corresponding payments from UTA.
- d. Contractor shall be responsible for and direct all Work performed by subcontractors.
- e. Contractor agrees that no subcontracts shall provide for payment on a cost-plus-percentage-of-cost basis. Contractor further agrees that all subcontracts shall comply with all applicable laws.

15. KEY PERSONNEL

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

16. INFORMATION, RECORDS and REPORTS: AUDIT RIGHTS

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

17. FINDINGS CONFIDENTIAL

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

writing from UTA.

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

18. 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.

19. GENERAL INDEMNIFICATION

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

20. 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 \$4,000,0
- Products – Completed Operations \$1,000,0
- Personal and Advertising Injury \$1,000,0
- Each Occurrence \$2,000,0

- a. The policy shall be endorsed to include the following additional insured language: "The Utah Transit Authority shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor".

2. Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL) \$2,000,000

- a. The policy shall be endorsed to include the following additional insured language: "The Utah Transit Authority shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor, including automobiles owned, leased, hired or borrowed by the Contractor".

3. Worker's Compensation and Employers' Liability

Workers' Compensation	Statutory
Employers' Liability	
Each Accident	\$100,000
Disease – Each Employee	\$100,000
Disease – Policy Limit	\$500,000

- a. Policy shall contain a waiver of subrogation against the Utah Transit Authority.
- b. This requirement shall not apply when a contractor or subcontractor is exempt under UCA, AND when such contractor or subcontractor executes the appropriate waiver form.

4. Professional Liability (Errors and Omissions Liability)

The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Services of this contract.

Each Claim	\$1,000,000
Annual Aggregate	\$2,000,000

- a. In the event that the professional liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of three (3) years beginning at the time work under this Contract is completed.

5. Railroad Protective Liability Insurance (RRPLI)

During construction and maintenance within fifty (50) feet of an active railroad track, including but not limited to installation, repair or removal of facilities, equipment, services or materials, the Licensee and/or Licensee's Contractor must maintain "Railroad Protective Liability" insurance on behalf of UTA only as named insured, with a limit of not less than \$2,000,000 per occurrence and an aggregate of \$6,000,000.

If the Licensee and/or Licensee's Contractor is not enrolling for this coverage under UTA's blanket RRPLI program, the policy provided must have the definition of "JOB LOCATION" AND "WORK" on the declaration page of the policy shall refer to this Agreement and shall describe all WORK or OPERATIONS performed under this Agreement.

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 Contractor's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.

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

D. ACCEPTABILITY OF INSURERS: Insurance is to be placed with insurers duly licensed or authorized to do business in the State and with an "A.M. Best" rating of not less than A-VII. The Utah Transit Authority in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

E. VERIFICATION OF COVERAGE: Contractor shall furnish the Utah Transit Authority with certificates of insurance (on standard ACORD form) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and any required endorsements are to be sent to insurancecerts@rideuta.com 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. 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.

21. 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 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.

22. INDEPENDENT CONTRACTOR

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

23. PROHIBITED INTEREST

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

24. CLAIMS/DISPUTE RESOLUTION

- a. "Claim" means any disputes between UTA and the Contractor arising out of or relating to the Contract Documents including any disputed claims for Contract adjustments that cannot be resolved in accordance with the Change Order negotiation process set forth in Article 6. Claims must be made by written notice. The responsibility to substantiate claims rests with the party making the claim.
- b. Unless otherwise directed by UTA in writing, Contractor shall proceed diligently with performance of the Work pending final resolution of a Claim, including litigation. UTA shall continue to pay any undisputed payments related to such Claim.
- c. The parties shall attempt to informally resolve all claims, counterclaims and other disputes through the escalation process described below. No party may bring a legal action to enforce any term of this Contract without first having exhausted such process.
- d. The time schedule for escalation of disputes, including disputed requests for change order, shall be as follows:

Level of Authority

Time Limit

UTA's Project Manager, Daniel Hofer/ Contractor's Project Manager [FIRST LEVEL]	Five calendar days
UTA's Chief Operating Officer, Eddy Cumins/ Contractor's [SECOND LEVEL]	Five calendar days
UTA's Executive Director, Carolyn Gonot / Contractor's [THIRD LEVEL]	Five calendar days

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

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

25. GOVERNING LAW

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

26. ASSIGNMENT OF CONTRACT

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

27. 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.

28. 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 Contractor:
Stacy and Witbeck, Inc.
Keith Tarkalson
Area Manager
2800 Harbor Bay Pkwy
Alameda, CA 94502

- 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 23.1, the parties may, through mutual agreement, develop alternative communication protocols to address change notices, requests for information and similar categories of communications. Communications provided pursuant to such agreed means shall be recognized as valid notices under this Contract.

29. 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.

30. INSURANCE COVERAGE REQUIREMENTS FOR CONTRACTOR EMPLOYEES

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

subcontract value threshold have and will maintain an offer of qualified health insurance coverage (as defined by Utah Code Ann. § 17B-2a-818.5 for the subcontractor's employees and the employee's dependents during the duration of the subcontract.

31. 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

32. NO THIRD PARTY BENEFICIARY

The parties enter in to 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 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.

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 5, 7, 8, 10, 14, 15, 17, 18, 19, 20, 23, 29 and 30.

UTAH TRANSIT AUTHORITY:

CONTRACTOR:

By _____
David Hancock
Director of Asset Management
Date:

By: _____
Name:
Title:
Date:

By _____
Eddy Cumins
Chief Operation Officer
Date:

By: _____
Name:
Title:
Date:

By _____
Carolyn Gonot
Executive Director
Date:

Fed ID# _____

Approved as to Content and Form

Michael Bell Digitally signed by Michael Bell
Date: 2021.01.18 14:57:42 -07'00' Date _____
Mike Bell, AAG State of Utah
And UTA Legal Counsel

_____ Date _____
Reviewed & Recommended
Dan Hofer, Manager State of Good Repair
UTA Project Manager

Addendum 1- Supplemental Terms and Conditions for Construction

ARTICLE 1

1.1 **Cooperation.** UTA and Contractor commit at all times to cooperate fully with each other, and proceed on the basis of trust and good faith, so as to permit each party to realize the benefits afforded under the Contract Documents.

1.2 **Professional Standards.** Contractor shall perform the Work in a good and workmanlike manner, and shall use reasonable skill, care, and diligence. If the Work includes professional services, Contractor shall perform those services in a professional manner, using at least that standard of care, skill and judgment that can reasonably be expected from similarly situated professionals.

1.3 **Definitions.** Terms that are defined in the Agreement have the same definition in all the Contract Documents, including in these General Conditions. Unless expressly modified by the Agreement, the following definitions shall also apply to all Contract Documents:

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

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

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

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

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

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

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

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

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

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

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

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

“General Conditions” means this document.

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

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

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

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

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

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

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

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

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

ARTICLE 2

Contractor’s Services

2.1 General Services.

2.1.1 Contractor’s Project Manager shall be reasonably available to UTA and shall have the necessary expertise and experience required to supervise the Work. Contractor’s Project Manager shall communicate regularly with UTA and shall be vested with the authority to act on behalf of Contractor.

2.1.2 Contractor shall provide UTA with a monthly status report detailing the progress of the Work, including: (i) whether the Work is proceeding according to schedule; (ii) whether discrepancies, conflicts, or ambiguities exist in the Contract Documents that require resolution; (iii) whether unusual

health and safety issues exist in connection with the Work; and (iv) other items that require resolution so as not to jeopardize Contractor's ability to complete the Work for the Contract Price and within the Contract Time(s).

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

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

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

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

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

224 Contractor shall submit proposed Construction Documents to UTA, which must be consistent with the latest set of interim design submissions, as such submissions may have been modified

in a design review meeting and recorded in the meeting minutes. The parties shall have a design review meeting to discuss, and UTA shall review and approve, the Construction Documents in accordance with the procedures set forth in Section 2.2.2 above. Contractor shall submit one set of approved Construction Documents to UTA prior to commencement of construction

225 UTA's review and approval of interim design submissions, meeting minutes, and Construction Documents is for the purpose of mutually establishing a conformed set of Contract Documents compatible with the requirements of the Work. Neither UTA's review nor approval of any interim design submissions, meeting minutes, and Construction Documents shall be deemed to: (i) relieve Contractor from its obligations to comply with the Contract Documents; (ii) relieve Contractor from its obligations with respect to the accuracy of the design submittals; or (iii) transfer any design liability from Contractor to UTA.

226 Upon completion of the Work, and as a condition to receiving final payment pursuant to Section 4.7, Contractor shall prepare and provide to UTA a final set of as-built drawings, depicting the Project as completed, including all changes to the Project made subsequent to the approval of the Construction Documents.

227 All drawings, specifications, interim design submissions, Construction Documents, and other documents furnished by Contractor to UTA pursuant to the Contract Documents (those documents, the "Work Product") are deemed to be instruments of service and Contractor shall retain the ownership and intellectual property rights therein.

228 Once UTA has made a corresponding payment for the Work required for Contractor to prepare any Work Product, Contractor will be deemed to have granted to UTA a license to use that Work Product in connection with the construction, occupancy, and maintenance of the Project, or any other UTA project or facility.

2.3 Government Approvals, Permits, and Legal Requirements.

231 Except where the Contract Documents expressly state that UTA will be responsible for a specific entitlement, Contractor shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees required for the prosecution of the Work by any government or quasi-government entity having jurisdiction over the Project or Site. Contractor shall provide reasonable assistance to UTA in obtaining any permits, approvals, and licenses that the Contract Documents expressly specify to be a UTA responsibility.

232 Contractor shall perform the Work in accordance with all Legal Requirements and shall provide all notices applicable to the Work as required by the Legal Requirements.

2.3.2 Contractor shall file a notice of commencement, a notice of completion, and other notices required by Utah Code Title 38 (Liens). Contractor shall file such notices in the manner and within the time periods required by law.

2.3.3 The Contract Price and/or Contract Time(s) will be adjusted to compensate Contractor for the effects of any changes in the Legal Requirements provided that such changes: (i) materially increase

Contractor's cost of, or time required for, the performance of the Work; and (ii) are enacted after the effective date of the Agreement.

2.4 Construction Services.

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

2.4.2 Except to the extent that the Contract Documents expressly identify UTA obligations related to the Work, Contractor shall provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other temporary facilities (whether or not expressly stated or depicted in the Contract Documents or Construction Drawings) to permit Contractor to complete construction of the Project consistent with the Contract Documents.

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

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

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

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

2.4.7 Contractor is responsible for the proper performance of the Work by Subcontractors and for any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between UTA and any Subcontractor, including but not limited to any third-party beneficiary rights.

2.4.8 Contractor shall coordinate the activities of all of its Subcontractors. If UTA performs other

work on the Project or at the Site with separate contractors under UTA's control, Contractor agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

2.4.9 Contractor shall keep the Site reasonably free from debris, trash and construction wastes to permit Contractor to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Upon Substantial Completion of the Work, or a portion of the Work, Contractor shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit UTA to occupy the Project or a portion of the Project for its intended use.

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

2.5.1 Contractor shall develop a Project-specific construction quality control plan as contemplated in UTA's Quality Management Plan and Construction Quality Plan. The Contractor's plan shall satisfy the minimum requirement imposed by UTA's Construction Quality Plan and shall be sufficient to ensure that Work is performed in compliance with the Contract Documents. If the Work includes any design services, Contractor shall also develop and thereafter comply with a design quality plan that meets the minimum requirements set forth in the UTA Design Quality Plan. The UTA Quality Management Plan, Construction Quality Plan and Design Quality Plan are incorporated into the Contract Documents by reference. The Contractor's plans shall be subject to UTA's review and approval.

2.5.2 Contractor shall comply with the approved quality control plan(s). Responsibilities shall include inspection and testing and related activities including administration, management, supervision, reports, record keeping and use of independent testing agencies and laboratories. Contractor shall provide evidence of compliance with the Contract Documents.

2.5.3 UTA will have the right to audit and spot check the Contractor's quality control procedures and documentation. This will include the Company's right to inspect and test all Work at reasonable times. Contractor shall cooperate with any inspection and testing performed by UTA. All contractor-furnished materials and supplies shall be subject to inspection at the point of manufacture.

2.5.2 Any inspection and testing performed by UTA shall be for the sole and exclusive benefit of UTA. Neither inspection and testing of Work, nor the lack of same nor acceptance of the Work by UTA, nor payment therefore shall relieve Contractor from any of its obligations under the Contract Documents.

2.5.3 At any time prior to Substantial Completion, UTA may reject Work which fails to conform to the Contract Documents. Contractor shall, at its sole expense, promptly re-perform or correct any Work so as to conform to the requirements of the Contract. Contractor shall not be entitled to an adjustment to the Contract Price and/or Contract Times with respect to any corrective action necessary to rectify non-conforming Work.

2.5.4 If Contractor fails to promptly remedy rejected Work, UTA may, without limiting or waiving any other rights or remedies it may have, self-perform (through its own forces or through other contractors) the necessary corrective action(s) and deduct all amounts so incurred from any amount then or thereafter due Contractor.

2.6 Contractor's Warranty.

2.6.1 Contractor warrants to UTA that all Work, including all materials and equipment furnished as part of the Work, shall be: (i) of good quality conforming to generally recognized industry standards; (ii) in conformance with the Contract Documents; (iii) free of defects in materials and workmanship; and (iv) consistent with applicable Legal Requirements. Without limiting the generality of the forgoing, Contractor also specifically warrants that any design, engineering or other professional services provided by Contractor shall be shall satisfy applicable professional standards of care and that all materials and that any equipment furnished as part of the construction shall be new (unless otherwise specified in the Contract Documents). This provision is not intended to limit any manufacturer's warranty that provides UTA with greater warranty rights than set forth in this Section 2.6. Contractor shall provide UTA with all manufacturers' warranties upon Substantial Completion. Similarly, nothing in this Article is intended to limit any other express warranties set forth in the Contract Documents or to limit any other warranties implied by law, custom or usage of trade.

2.6.2 If Contractor becomes aware of any defect in the Work, or non-conformance with the Contract Documents, Contractor shall give prompt written notice of that defect or non-conformance to UTA.

2.6.3 Except as otherwise stated in the Agreement, Contractor shall correct any Work that does not comply with the warranties provided above for a period of two years following the date of Substantial Completion.

2.6.4 Contractor shall, within seven (7) Days of receipt of written notice from UTA that the Work does not comply with the warranties provided above, take meaningful steps to commence corrective action, including the correction, removal, replacement or re-performance of the nonconforming Work and the repair of any damage to other property caused the warranty failure. If Contractor fails to commence the necessary corrective action within such seven (7) Day period (or thereafter fails to continuously and diligently pursue such corrective action to completion), UTA may (in addition to any other remedies provided under the Contract Documents) provide Contractor with written notice that UTA will self-perform (through its own forces or through other contractors) correction of the warranty failure at Contractor's expense. If UTA performs (or causes to be performed) such corrective action, UTA may collect from Contractor all amounts so incurred. If the nonconforming Work creates an emergency requiring an immediate response, the seven (7) Day period identified above shall be deemed inapplicable.

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

ARTICLE 3 **Site Conditions**

3.1 Hazardous Materials.

3.1.1 Unless otherwise expressly provided in the Contract Documents to be part of the Contractor's Work, Contractor is not responsible for any Hazardous Materials encountered at the Site. "Hazardous Materials" means any substance that: (i) is deemed a hazardous waste or substance under any environmental law; or (ii) might endanger the health of people exposed to it.

3.1.2 If Contractor discovers at the Site any substance the Contractor reasonably believes to be a Hazardous Material, Contractor shall immediately stop Work in the area of the discovery and immediately report the discovery to the UTA Project Manager. UTA shall determine how to deal with the Hazardous Material, and Contractor shall resume Work in the area when directed to do so by the UTA Project Manager.

3.1.3 Contractor will be entitled to an adjustment to the Contract Price and/or Contract Time(s) to the extent Contractor's cost and/or time of performance have been adversely impacted by the presence of Hazardous Materials.

3.1.4 The risk allocation and change provisions of Sections 3.1.1 through 3.1.3 do not apply to any Hazardous Materials introduced to the Site by Contractor, its Subcontractors, or anyone for whose acts Contractor is responsible. Those provisions also exclude Hazardous Materials that were properly stored and/or contained at the Site but thereafter released as a result of the Contractor's negligent performance of the Work. To the extent that Hazardous Materials are introduced and/or released at the Site by Contractor as described above in this Section 3.1.4, then: (i) to the fullest extent permitted by law, Contractor shall defend and indemnify UTA from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from such Hazardous Materials; and (ii) Contractor shall not be entitled to an extension of Contract Price and/or Contract Time(s).

3.2 Differing Site Conditions.

3.2.1 If Contractor encounters a Differing Site Condition, Contractor will be entitled to an adjustment to the Contract Price and/or Contract Time(s) to the extent Contractor's cost and/or time of performance have been adversely impacted by the Differing Site Condition. "Differing Site Condition" means concealed or latent physical conditions at the Site that: (i) materially differ from the conditions indicated in the Contract Documents; and (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work.

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

ARTICLE 4 **Payment**

4.1 Schedule of Values.

4.1.1 Unless required by UTA upon execution of this Agreement, within ten (10) Days of

execution of the Agreement, Contractor shall submit for UTA's review and approval a Schedule of Values for all of the Work. The Schedule of Values will: (i) subdivide the Work into its respective parts; (ii) include values for all items comprising the Work; and (iii) serve as the basis for monthly progress payments made to Contractor throughout the Work.

4.1.2 UTA will timely review and approve the Schedule of Values so as not to delay the submission of the Contractor's first application for payment. UTA and Contractor shall timely resolve any differences so as not to delay the Contractor's submission of its first application for payment.

4.2 Application for Payment.

4.2.1 To receive payment, Contractor shall submit to UTA an Application for Payment requesting payment for all Work performed as of the date of the Application for Payment. Contractor shall not submit Applications for Payment more often than once per month. The Application for Payment must be accompanied by supporting documentation sufficient to establish, to UTA's reasonable satisfaction, Contractor's entitlement to receive payment.

4.2.2 The Application for Payment may request payment for equipment and materials not yet incorporated into the Project, provided that: (i) UTA is satisfied that the equipment and materials are suitably stored at either the Site or another acceptable location; (ii) the equipment and materials are protected by suitable insurance; and (iii) upon payment, UTA will receive the equipment and materials free and clear of all liens and encumbrances.

4.2.3 The Application for Payment will constitute Contractor's representation that the Work described therein has been performed consistent with the Contract Documents, has progressed to the point indicated in the Application for Payment, and that title to all materials and equipment will pass to UTA free and clear of all claims, liens, encumbrances, and security interests upon the incorporation of the materials and equipment into the Project, or upon Contractor's receipt of payment, whichever occurs earlier.

4.3 Sales Tax Exemption

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

4.4 UTA's Payment Obligations.

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

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

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

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

4.5 Contractor's Payment Obligations.

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

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

4.6 Substantial Completion.

4.6.1 Contractor shall notify UTA when it believes the entire Work is Substantially Complete. As used in the Contract Documents, "Substantially Complete" or "Substantial Completion" refers to the Contractor's satisfactory completion of all Work in accordance with the Contract Documents (excluding Punchlist items) to point such that UTA may safely start-up, occupy or otherwise fully use the Project for its intended purposes in compliance with applicable Legal Requirements. The terms "Substantially Complete" or "Substantial Completion" also require the completion of any items of Work specifically set forth as conditions precedent to Substantial Completion in the Agreement. Within five (5) Days of UTA's receipt of Contractor's notice, UTA and Contractor will jointly inspect such Work to verify that it is Substantially Complete in accordance with the requirements of the Contract Documents. If such Work is Substantially Complete, UTA shall prepare and issue a Certificate of Substantial Completion that will set forth: (i) the date of Substantial Completion of the Work or portion thereof; (ii) the remaining Punchlist items that have to be completed before Final Completion and final payment; and (iii) provisions (to the extent not already provided in the Contract Documents) establishing UTA's and Contractor's responsibility for the Project's security, maintenance, utilities and insurance pending Final Completion and final payment.

4.6.2 Promptly after issuing the Certificate of Substantial Completion, UTA shall release to Contractor all retained amounts, less an amount equal to two times the reasonable value of all remaining Punchlist items noted in the Certificate of Substantial Completion.

4.6.3 Upon Contractor's request or upon UTA's own initiative, UTA may, in its sole discretion, deem a discrete segment of the Project to be Substantially Complete. The provisions of Sections 4.6.1 and 4.6.2 will apply to that discrete segment of the Project. In addition, before UTA may take possession of a discrete segment of the Project, UTA and Contractor shall obtain the consent of their sureties, insurers, and any government authorities having jurisdiction over the Project.

464 Following Substantial Completion, UTA may restrict Contractor's access to the Site. UTA shall allow Contractor reasonable access to the Site in order for the Contractor to achieve Final Completion.

4.7 **Final Payment.**

471 When Contractor has achieved Final Completion of the Work, Contractor shall submit a Final Application for Payment. As used in the Contract Documents, "Final Completion" refers to the Contractor's satisfactory completion of all Work in accordance with the Contract Documents including completion of Punchlist items, demobilization from the Site and the transmittal of all deliverables required by the Contract Documents. The Final Application for Payment shall include (at a minimum) the items set forth below.

4.7.1.1 An affidavit that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, materials, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work which will in any way affect UTA's interests;

4.7.1.2 A general release executed by Contractor waiving, upon receipt of final payment, all claims, except those claims previously made in writing to UTA and remaining unsettled at the time of final payment;

4.7.1.3 All as-built drawings, redlined drawings, operating manuals, warranty assignments and other deliverables required by the Contract Documents; and

4.7.1.4 Certificates of insurance confirming that required coverages will remain in effect consistent with the requirements of the Contract Documents.

472 Deficiencies in the Work discovered after Substantial Completion, whether or not such deficiencies would have been included on the Punchlist if discovered earlier, will be deemed warranty Work. Contractor shall correct such deficiencies pursuant to Section 2.6, and UTA may withhold from the final payment the reasonable value of completion of the deficient work until that work is completed.

ARTICLE 5 **Indemnification and Loss**

5.1 **Patent and Copyright Infringement.** If the Work includes any design services, provisions 5.1.1 through 5.1.3 apply.

5.1.1 Contractor shall defend any action or proceeding brought against UTA based on any claim that the Work, or any part thereof, or the operation or use of the Work or any part thereof, constitutes infringement of any United States patent or copyright, now or hereafter issued. UTA shall give prompt written notice to Contractor of any such action or proceeding and will reasonably provide authority, information and assistance in the defense of same. Contractor shall indemnify UTA from and against all damages and costs, including but not limited to attorneys' fees and expenses awarded against UTA or Contractor in any such action or proceeding. Contractor shall keep UTA informed of all developments in the defense of such actions.

5.12 If UTA is enjoined from the operation or use of the Work, or any part thereof, as the result of any patent or copyright suit, claim, or proceeding, Contractor shall at its sole expense take reasonable steps to procure the right to operate or use the Work. If Contractor cannot so procure such right within a reasonable time, Contractor shall promptly, at Contractor's expense, either: (i) modify the Work so as to avoid infringement of any such patent or copyright; or (ii) replace said Work with Work that does not infringe or violate any such patent or copyright.

5.13 Sections 5.1.1 and 5.1.2 above shall not be applicable to any suit, claim or proceeding based on infringement or violation of a patent or copyright: (i) relating solely to a particular process or product of a particular manufacturer specified by UTA and not offered or recommended by Contractor to UTA; or (ii) arising from modifications to the Work by UTA or its agents after acceptance of the Work

5.2 **Payment Claim Indemnification.** Provided that UTA is not in breach of its contractual obligation to make payments to Contractor for the Work, Contractor shall indemnify, defend and hold harmless UTA from any claims or mechanic's liens brought against UTA or against the Project as a result of the failure of Contractor, its Subcontractors, or others for whose acts Contractor is responsible, to pay for any services, materials, labor, equipment, taxes or other items or obligations furnished or incurred for or in connection with the Work. Within three (3) Days of receiving written notice from UTA that such a claim or mechanic's lien has been filed, Contractor shall commence to take the steps necessary to discharge said claim or lien, including, if necessary, the furnishing of a mechanic's lien bond. If Contractor fails to do so, UTA will have the right to discharge the claim or lien and hold Contractor liable for costs and expenses incurred, including attorneys' fees.

5.3 **Contractor's General Indemnification.**

5.3.1 Contractor, to the fullest extent permitted by law, shall indemnify, hold harmless and defend UTA, its officers, trustees, and employees from and against claims, losses, damages, liabilities, including attorneys' fees and expenses, for bodily injury, sickness or death, and property damage or destruction resulting from or arising out of the negligent acts or omissions of Contractor, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable.

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

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

ARTICLE 6 **Time**

61 **Obligation to Achieve the Contract Times.** Contractor shall commence performance of the Work and achieve the Contract Time(s) in accordance with the Contract Documents. The Contract Documents specify critical completion milestones with which Contractor must comply. All time and schedule requirements included within the Contract Documents are of the essence. By executing the Agreement, Contractor confirms that the completion milestones in the Contract Documents are reasonable for the performance of the Work. Unless otherwise excused by the terms of the Contract Documents, Contractor's failure to timely perform the Work in accordance with the completion milestones shall result in the assessment of liquidated damages (if, and to the extent, set forth in the Agreement) and (where no liquidated damages are provided under the Agreement or where the maximum liquidated damages available under the Agreement have been incurred) an event of default.

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

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

ARTICLE 7 **Changes**

7.1 Change Orders.

7.1.1 Contractor shall not undertake any activity that materially changes the Work, or materially deviates from the requirements of the Contract Documents, except as authorized in this Article 7. Any costs incurred by Contractor without authorization as provided in this Article 7 will be considered non-compensable.

7.1.2 A Change Order is a written instrument, signed by UTA and Contractor, issued after execution of the Agreement, stating their agreement on a change in: (i) the scope of the Work; (ii) the Contract Price; and/or (iii) the Contract Time(s).

7.1.3 All changes in the Work authorized by applicable Change Order shall be performed under the applicable conditions of the Contract Documents. UTA and Contractor shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for such changes.

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

Order.

7.3 **Constructive Changes.**

7.3.1 To the extent that Contractor: (i) receives a written or verbal direction or proceeding from UTA that Contractor believes to constitute a material change to the nature, character or schedule of the Work; and/or (ii) becomes aware of any circumstance or condition that expressly provides Contractor a right to a Change Order under the terms of the Contract Documents, then (in either case) Contractor shall deliver to UTA's Project Manager written notice (hereinafter a "Potential Change Notice") within ten (10) Days after Contractor becomes aware of (or should have reasonably become aware) the facts and circumstances which Contractor believes to give rise to a Change Order.

7.3.2 Contractor's failure to deliver a Potential Change Notice in a timely manner shall constitute a waiver of all of Contractor's rights to a Change Order.

7.3.3 In conjunction with the Potential Change Notice (or as soon as reasonably possible thereafter), Contractor shall submit to UTA all supporting information and documentation necessary for UTA to evaluate the contractual basis for the Potential Change Notice and to also evaluate the relief claimed by Contractor. Contractor shall promptly respond to all UTA inquiries about the Potential Change Notice and the supporting information and documentation.

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

7.4 **Direction or Authorization to Proceed.**

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

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

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

7.6 **Contract Price Adjustments.**

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

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

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

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

7.6.1.4 If an increase or decrease cannot be agreed to as set forth in items 7.6.1.1 through 7.6.1.3 above and UTA issues a DAP, the cost of the change of the Work shall be determined by the reasonable expense and savings in the performance of the Work resulting from the change, including a reasonable overhead and profit rate, as may be set forth in the Agreement.

7.6.2 If unit prices are set forth in the Contract Documents or are subsequently agreed to by the parties, but application of such unit prices will cause substantial inequity to UTA or Contractor because of differences in the character or quantity of such unit items as originally contemplated, such unit prices shall be equitably adjusted.

7.6.3 Negotiations over changes in the Contract Price will be conducted using an open-book cost-estimating process. UTA defines “open-book” to include all elements of Contractor’s costs, including labor hours and rates, units and estimated quantities, unit prices, equipment estimates, material costs, and subcontractor costs. Contractor shall openly share its detailed cost estimate, material and subcontractor quotations and any other information used to compile its cost estimate.

7.7 **Disputes Regarding Change Orders.** If the parties are not able to agree as to whether a Change Order is warranted under the Contract Documents, or cannot agree upon the extent of relief to be granted under a Change Order after good faith negotiations, either party may refer the dispute to the Claim resolution provisions of Article 8. Pending resolution of such Claim, Contractor shall proceed with the Work as directed by UTA under a reservation of rights. UTA shall continue to pay any undisputed payments related to such Claim.

7.8 **Emergencies.** In any emergency affecting the safety of persons and/or property, Contractor shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Contract Price and/or Contract Time(s) on account of emergency work shall be determined as provided in this Article 7.

ARTICLE 8 **Claims and Claim Resolution**

8.1 Claims.

8.1.1 “Claim” means any disputes between UTA and the Contractor arising out of or relating to the Contract Documents including any disputed claims for Contract adjustments that cannot be resolved in accordance with the Change Order negotiation process set forth in Article 8. Claims must be made by

written notice. The responsibility to substantiate claims rests with the party making the claim.

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

8.2 Claim Resolution.

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

8.2.2 If UTA's Project Manager and Contractor's Project Manager are not able to resolve the Claim within fourteen (14) Days after their first meeting (or such longer period of time as may be mutually agreed upon), either party may request that UTA's Senior Representative and the Contractor's management representative ("Contractor's Management Representative") meet at least once to attempt to resolve the Claim.

8.2.3 If the Claim has not been resolved within sixty (60) Days of the date the Claim is made, either party may refer the Claim to non-binding mediation by sending a written mediation request to the other party. In the event that such a request is made, the Parties agree to participate in the mediation process. Non-binding mediation of claims or controversies under the Contract Documents shall be conducted by a professional mediator that is mutually acceptable to and agreed upon by both parties (the "Mediator"). The parties and the Mediator may join in the mediation any other party necessary for a mutually acceptable resolution of the Claim. The mediation procedure shall be determined by the Mediator in consultation with the parties. The fees and expenses of the Mediator shall be borne equally by the parties.

8.2.4 If the Claim is not resolved within thirty (30) days after the commencement of mediation, or if no mediation has been commenced within one hundred and twenty (120) days of the date the Claim is made, either party may commence litigation to resolve the Claim. The exclusive forum for any such litigation is the Third District Court in and for Salt Lake County, Utah.

ARTICLE 9 **Suspension and Termination**

9.1 UTA's Right to Stop Work.

9.1.1 UTA may, without cause and for its convenience, order Contractor in writing to stop and suspend the Work. Such suspension shall not exceed one hundred and twenty (120) consecutive Days or aggregate more than two hundred and forty (240) Days during the duration of the Project. In the event a suspension continues longer than the above-referenced periods, Contractor shall have the right to terminate the Agreement. Any such termination shall be considered to be a termination for convenience by UTA.

9.1.2 If a suspension is directed by UTA without cause, Contractor shall be entitled to seek an adjustment of the Contract Price and/or Contract Time(s) if its cost or time to perform the Work has been adversely impacted by any suspension or stoppage of the Work by UTA.

9.1.3 In addition to its rights under Section 9.3, UTA shall have the right to order a suspension for cause if the Work at any time ceases to comply with the workmanship, safety, quality or other requirements of the Contract Documents or any Legal Requirements. Contractor shall not be entitled to seek an adjustment the Contract Price and/or Contract Time(s) with regard to any such suspension.

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

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

9.2.2 The reasonable and demonstrable costs and expenses attributable to such termination, including demobilization costs and amounts due in settlement of terminated contracts with Subcontractors; and

9.2.3 The fair and reasonable sums for overhead and profit on the sum of items 9.2.1.1 and 9.2.1.2 above. UTA shall not be liable for anticipated profits, costs or overhead based upon Work not yet performed as of the date of termination.

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

9.3.1 Subject to the cure provision of Section 9.3.2 below and other limitations set forth in these General Conditions, Contractor shall be in default of its obligations under the Contract Documents if Contractor: (i) fails to provide a sufficient number of skilled workers; (ii) fails to supply the materials required by the Contract Documents; (iii) fails to comply with applicable Legal Requirements; (iv) fails to timely pay its Subcontractors without proper cause; (v) makes a materially false or misleading representation or certification in conjunction with the Contract Documents; (vi) fails to prosecute the Work with promptness and diligence to ensure that the Work is completed by the Contract Time(s), as such times may be adjusted; (vii) fails to satisfy any guaranteed interim or completion milestone set forth in the Contract Documents; or (viii) fails to perform any other material obligations under the Contract Documents. In any such event, UTA (in addition to any other rights and remedies provided in the Contract Documents or by law) shall have the rights set forth in Sections 9.3.2 through 9.3.5 below.

9.3.2 Upon the occurrence of an event of default set forth in Section 9.3.1 above, UTA may provide written notice to Contractor that it intends to terminate the Agreement (in whole or in part) or pursue other available remedies unless the grounds for default are cured within ten (10) Days of Contractor's receipt of such notice. If Contractor fails to cure the grounds for default within such period, then UTA may declare the Agreement, or portions of the Agreement, terminated for default by providing written notice to Contractor of such declaration; provided, however, that to the extent that an item included is the notice of default and demand for cure is capable of cure, but not within the ten-Day cure period,

then the Agreement shall not be terminated so long as Contractor commences actions to reasonably cure such breach within the 10-Day cure period and thereafter continuously and diligently proceeds with such curative actions until completion (such additional period not to exceed 45 Days). UTA may terminate the Agreement without opportunity to cure if the breach involves the Contractor's material failure to comply with any Legal Requirements pertaining to safety or environmental compliance.

933 Upon the continuance of a breach described in Section 9.3.1 for more than ten (10) Days following delivery of written notice to Contractor (and regardless of whether the Agreement, or any portion hereof, has been terminated as provided above), UTA shall be entitled to self-perform (through its own forces or through other contractors) the corrective action necessary to cure Contractor's event of default and deduct all costs so incurred from any amount then or thereafter due to Contractor.

934 Upon the continuance of a breach described in Section 9.3.1 for more than ten (10) Days following delivery of written notice to Contractor (and regardless of whether the Agreement, or any portion hereof, has been terminated as provided above), UTA shall be entitled to seek performance by any guarantor of Contractor's obligations hereunder or draw upon any surety or security provided for in the Contract Documents.

935 Upon declaring the Agreement terminated pursuant to Section 9.3.2 above, UTA may enter upon the premises and take possession, for the purpose of completing the Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon, which have been purchased or provided for the performance of the Work, all of which Contractor hereby transfers, assigns and sets over to UTA for such purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items. In the event of such termination, Contractor shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. At such time, if the unpaid balance of the Contract Price exceeds the cost and expense incurred by UTA in completing the Work, such excess shall be paid by UTA to Contractor. If UTA's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then Contractor shall pay the difference to UTA. Such costs and expenses include not only the cost of completing the Work, but also losses, damages, costs and expenses, including attorneys' fees and expenses, incurred by UTA in connection with the procurement and defense of claims arising from Contractor's default.

936 All rights and remedies set forth in the Contract Documents are cumulative, and unless otherwise specifically provided in the Contract Documents are not exclusive of any other rights or remedies that may be available, whether provided by law, equity, statute, in any other agreement between the Parties or otherwise. Upon the occurrence of any such default, following the applicable process described in this Article, UTA shall be entitled to pursue any and all other rights and remedies, including without limitation damages, that UTA may have against Contractor under the Contract Documents or at law or in equity.

937 If UTA improperly terminates the Agreement for cause, the termination for cause will be converted to a termination for convenience in accordance with the provisions of Section 9.2 above.

9.4 **Bankruptcy of Contractor.**

941 If Contractor institutes or has instituted against it a case under the United States Bankruptcy Code, such event may impair or frustrate the Contractor’s ability to perform its obligations under the Contract Documents. Accordingly, should such event occur:

94.1.1 Contractor, its trustee or other successor, shall furnish, upon request of UTA, adequate assurance of the ability of the Contractor to perform all future material obligations under the Contract Documents, which assurances shall be provided within ten (10) Days after receiving notice of the request; and

94.1.2 Contractor shall file an appropriate action within the bankruptcy court to seek assumption or rejection of the Agreement within sixty (60) Days of the institution of the bankruptcy filing and shall diligently prosecute such action. If Contractor fails to comply with its foregoing obligations, UTA shall be entitled to request the bankruptcy court to reject the Agreement, declare the Agreement terminated and pursue any other recourse available to the UTA under this Article 9.

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

ARTICLE 10 **Value Engineering**

10.1 Value Engineering Change Proposals.

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

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

10.1.3 Contractor must include the following information in any VECP:

10.1.3.1 A narrative description of the proposed change,

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

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

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

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

10.1.3.6 Costs of development and implementation; and

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

10.2 Review and Approval of VECPs

1021 Upon receipt of a VECP, UTA shall process it expeditiously, but will not be liable for any delay in acting upon any VECP. Contractor may withdraw all or part of any VECP at any time prior to approval by UTA, but shall, in any case, be liable for costs incurred by UTA in reviewing the withdrawn VECP, or part thereof. In all other situations, each party will bear its own costs in connection with preparation and review of VECPs.

1022 UTA may approve in whole or in part any VECP submitted. The decision of UTA regarding rejection or approval of any VECP will be at the sole discretion of UTA and will be final and not subject to appeal. Contractor will have no claim for any additional costs or delays resulting from the rejection of a VECP, including development costs, loss of anticipated profits, or increased material or labor costs

10.3 Cost Savings. Except as otherwise stated in the Agreement, any savings resulting from an approved VECP will accrue to the benefit of UTA and Contractor on a 50/50 cost sharing basis.

10.4 Ownership of VECPs. All approved or disapproved VECPs will become the property of UTA and must contain no restrictions imposed by Contractor on their use or disclosure. UTA retains the right to use, duplicate, and disclose, in whole or in part, any data necessary for the utilization of the VECP on any other projects without any obligation to Contractor. This provision is not intended to deny rights provided by law with respect to patented materials or processes.

ARTICLE 11

Health Insurance

11.1 Insurance Coverage for Employees.

11.1.1 If the Contract Price is \$2,000,000 or more, Contractor shall, prior to the effective date of the Agreement, demonstrate to UTA that Contractor has and will maintain an offer of qualified health insurance coverage (as defined by Utah Code Ann. § 17B-2a-818.5) for the Contractor's employees and the employee's dependents during the duration of the Contract.

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

ARTICLE 12

Miscellaneous

121 **Confidential Information.** “Confidential Information” means information that is determined by the transmitting party to be of a confidential or proprietary nature and: (i) the transmitting party identifies in writing as either confidential or proprietary; (ii) the transmitting party takes steps to maintain the confidential or proprietary nature of the information; and (iii) the document is not otherwise available in or considered to be in the public domain. To the extent permitted by law (including specifically UCA Title 63G Chapter 2), the receiving party shall maintain the confidentiality of the Confidential Information and shall use the Confidential Information solely in connection with the Project. The parties agree that the Agreement itself (including all incorporated Contract Documents) does not constitute Confidential Information.

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

123 **Prohibited Interest.** No member, officer, agent, or employee of UTA during his or her tenure or for one year thereafter shall have any interest, direct or indirect, including prospective employment by, Contractor or the proceeds under the Contract Documents without specific written authorization by UTA.

124 **Assignment.** Contractor acknowledges that the Work to be performed by Contractor is considered personal by UTA. Contractor shall not assign or transfer its interest in the Contract Documents without prior written approval by UTA.

125 **Successors.** Contractor and UTA intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors and permitted assigns.

126 **Governing Law.** The Agreement and all Contract Documents are governed by the laws of the State of Utah, without giving effect to its conflict of law principles. Actions to enforce the terms of this Agreement may only be brought in the Third District Court for Salt Lake County, Utah.

127 **Attorneys Fees and Costs.** If any party to this Agreement brings an action to enforce or defend its rights or obligations hereunder, the prevailing party shall be entitled to recover its costs and expenses, including mediation, arbitration, litigation, court costs and attorneys’ fees, if any, incurred in connection with such suit, including on appeal.

128 **Severability.** If any provision or any part of a provision of the Contract Documents is finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable Legal Requirements, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Contract Documents, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

129 **No Waiver.** The failure of either Contractor or UTA to insist, in any one or more instances, on the performance of any of the obligations required by the other under the Contract Documents shall not be construed as a waiver or relinquishment of such obligation or right with respect to future performance.

12.10 **Headings.** The headings used in these General Conditions, or any other Contract Document, are

for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

12.11 **Amendments.** The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.

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

Exhibit A – Scope of Work

Scope of work shall be supplied and submitted by UTA’s project managers with each Task Order.

Exhibit B – Pricing

A. Pre-Construction and Construction Management Fees:

List in the table below the fully loaded hourly rate for the proposed PM and IS for each year of the Contract. In lieu of proposing a defined rate for later years, Proposers may propose a method or process for determining the rate for later years (e.g., an escalation factor or index).

	Contract Year One	Contract Year Two	Contract Year Three	Option Year One	Option Year Two
Infrastructure Project Manager	\$115.00	\$120.00	\$125.50	\$131.00	\$137.00
Infrastructure Superintendent	\$138.00	\$144.00	\$150.50	\$157.25	\$164.50

Payment will be based on actual hours expended (except that no more than 8 hours per day will be charged regardless of the hours worked on that day, nor more than 40 hours per week will be charged, regardless of the hours worked that week), plus appropriate and authorized direct expenses. UTA anticipates needing the IPM and IS on a full-time basis, but that is not guaranteed.

B. Unit Pricing for Typical Tasks:

	<u>Unit</u>
<u>Item 1: Ballasted Grade Crossing Replacement</u>	
Includes complete removal and replacement of grade crossing panels, ties, clips and ballast. Also includes subgrade rework & compaction, track alignment, track tamping and regulating, concrete and/or asphalt paving between tracks if applicable and 2 feet beyond the entire area from the outside edge of the crossing panel to the gate mechanism across the entire crossing. (See drawing included as an Exhibit to the RFP)	\$ <u>685.25/LF</u>
<u>Item 2: Insulated Joint Replacement plug</u>	
Includes cost to remove and replace existing insulated joint with new 25’ long insulated joint plug in ballasted track. Also includes all welding and systems work to tie new plug into the signal system.	
	\$ <u>348.25/LF</u>
<u>Item 3: Embedded (Cast in place) Grade Crossing Replacement</u>	

Includes complete removal and replacement of embedded concrete, boot, ties, clips, subgrade rework and compaction. Also includes rail cutting and re-welding (if needed), track re-alignment, concrete and/or asphalt paving between tracks if applicable 2 feet beyond the entire area from the outside edge of the crossing panel to the gate mechanism across the entire crossing. (See drawing included as an Exhibit to the RFP)	\$501.25/LF
<u>Item 4: Platform Deck and Tactile Replacement without Snowmelt</u>	
Remove and replace concrete within 5' from edge of platform. Placing new tactile on edge of platform. Rebar to be tied into existing platform stem wall and placed on 12' centers. Match existing saw cut lines and seal all saw cuts and joints.	\$231.00/LF
<u>Item 5: Platform Deck and Tactile Replacement with Snowmelt</u>	
Remove and replace concrete within 5' from edge of platform. Placing new tactile on edge of platform. Rebar to be embedded (8" min embedment) into existing platform stem wall and placed on 18" centers. Assume #4 rebar and HIT RE 500 Epoxy. Match existing saw cut lines and seal all saw cuts and joints. Install snow melt cables between 2 and 3 inches beneath finished concrete and tie into existing snowmelt system. (See drawing included as an Exhibit to the RFP)	\$231.00/LF
<u>Item 6: Pedestrian Tactile Replacement in Concrete Sidewalk</u>	
Remove and replace ADA tactile in concrete sidewalk or ramp with up to 20SF of 4" sidewalk and curb and gutter tie-in on each side of tactile.	\$ 23.00/SF
<u>Item 7: Track Tamping Excluding Tamping Equipment</u>	
Supply of tamping operator and ballast rock to lift, tamp, realign, fix super elevation, and regulate track. UTA to supply tamper. Contractor to supply all other equipment and material.	\$ 7.75/LF
<u>Item 8: Ballast Renewal/Replacement</u>	
Remove and replace/renew ballast rock. Assume 1' of new rock placed and 1' of old rock removed.	\$ 68.50/LF
<u>Item 9: Grade Crossing Asphalt Replacement</u>	
Mill and replace up to 5" of Asphalt pavement.	\$ 230.00/Ton
<u>Item 10: Concrete Sidewalk Replacement</u>	
Remove and Replace concrete sidewalk 4" thick.	\$ 14.25/SF
<u>Item 11: Concrete Curb and Gutter Replacement</u>	
Remove and replace concrete curb and gutter. UDOT standard Type B1	\$ 49.00/LF
<u>Item 12: General Concrete Placement</u>	
Remove and replace existing sections of concrete. Assume 4000 psi concrete. Due to varying depth requirements at UTA facilities, please provide pricing in terms of cubic yards.	\$484.50/CY
<u>Item 13: Rail clip and Rail Tie Insulation Pad Replacement</u>	
	\$ 29.18/LF

Remove and replace existing rail tie clips and/or rail insulator pads.	
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C. Fixed Construction Fee: 7.50%

Exhibit C – Office Co-location Expectation

Office Co-Location Expectations

- 1.0- UTA will provide the following items to help facilitate the office co-location arrangement:
 - 1.1- Cubicle space for both the Project Manager and the Track Superintendent
 - 1.2- A desk for both the Project Manager and the Track Superintendent
 - 1.3- An internet connection for both the Project Manager and Track Superintendent
 - 1.4- A storage room for minor equipment and supplies
 - 1.5- Contractor badge with 24/7 access to Jordan River Service Center
- 2.0- Stacy and Witbeck will provide the following to help facilitate the office co-location arrangement
 - 2.1- Own computers
 - 2.2- Own printer
 - 2.2-1. Any supplies needed for the printer
 - 2.2-2. Printer maintenance
 - 2.3- Any wireless routers or other computer hardware deemed necessary.

Exhibit D

Attachments

- Attachment 1 – Federal Clauses for Construction Contracts
- Attachment A – Equal Employment Opportunity and Disadvantaged Business Enterprise Statement
 - Attachment A-1 – Disadvantaged Business Enterprise Participation Form
 - Attachment A-2 – Sample Letter of Intent to Subcontract with a DBE Firm
 - Attachment A-3 – Good Faith Effort Documentation Form
 - Attachment A-5 – Employment Practices / Equal Employment Plan
- Attachment B – Buy America Certification
- Attachment C – Certification Regarding Debarment, Suspension and other Responsibility Matters
- Attachment D – Certification Restrictions on Lobbying
- Attachment E – Cargo Preference – Use of United States Flag Vessels
- Attachment F – Solicitation Statistics Form
- Attachment G – Requirement for Written Subcontracts

FEDERAL CLAUSES FOR CONSTRUCTION CONTRACTS ACCESS

REQUIREMENTS FOR PERSONS WITH DISABILITIES

Contractor shall comply with 49 USC 5301(d), stating federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation services and facilities and that special efforts shall be made in planning and designing those services and facilities to implement that policy. Contractor shall also comply with all applicable requirements of Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC 794, which prohibits discrimination on the basis of disability; the Americans with Disabilities Act of 1990 (ADA) as amended, 42 USC 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities; and the Architectural Barriers Act of 1968, as amended, 42 USC §4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities.

ACCESS TO RECORDS AND REPORTS

Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the Contract, including, but not limited to, data, documents, reports, statistic, sub-agreements, leases, subcontracts, arrangements, other third party agreements of any type, and supporting materials related to those records.

Contractor agrees to comply with the record retention requirements in accordance with 2 CFR §200.333. Contract shall maintain all books, records, accounts and reports required under the Contract for a period equal to the longer of: (i) three (3) years; or (ii) such longer period as may be specified in the Contract (except in the event of litigation or settlement of claims arising from the performance of the Contract, in which case records shall be maintained until the full and final disposition of all such claims or litigation (including appeals related thereto)).

Contractor agrees to provide sufficient access to United States Department of Transportation, Federal Transit Administration (FTA) and its contractors to inspect and audit records and information related to performance of the Contract as reasonably may be required.

Contractor agrees to permit FTA and its contractors access to the sites of performance under the Contract as reasonably may be required.

BONDING REQUIREMENTS [Applicable Only to Contracts valued at more than \$150,000]

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

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

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

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

BUY AMERICA CERTIFICATION [Applicable Only to Contracts valued at more than \$150,000]

Contractor shall comply with 49 USC 5323(j) and 49 CFR 661, as amended by MAP-21 stating that federal funds may not be obligated unless steel, iron and manufactured products used in FTA-funded projects are produced in the United States, unless a ~~waiver~~ waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7. Separate requirements for

rolling stock are set out at 49 USC §5323(j)(2)(C) and 49 CFR §661.11. Rolling stock must be assembled in the United States and have the applicable percentage of domestic content required by 49 USC 5323(j) and 49 CFR 661. Contractor shall be responsible for ensuring the lower tier contractors and subcontractors are in compliance with these requirements. All respondents to the UTA solicitation for the Contract must include the appropriate Buy America certification with their responses and any response that is not accompanied by a completed Buy America Certification will be rejected as nonresponsive.

CARGO PREFERENCE [Applicable Only to Contracts Involving Equipment, Materials or Commodities Transported by Ocean Vessels]

Contractor shall: (i) use privately owned US-Flag commercial vessels to ship at least 50% of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners and tankers) involved, whenever shipping any equipment, materials or commodities pursuant to the Contract, to the extent such vessels are available at fair and reasonable rates for US flag commercial vessels; (ii) furnish, within 20 working days following the loading date of shipments originating within the US or within 30 working days following the loading date of shipments originating outside the US, a legible copy of a rated, "on-board" commercial bill-of-lading in English for each shipment of cargo described herein to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to UTA (through Contractor in the case of a subcontractor's bill-of-lading.); and (iii) include these requirements in all subcontracts issued pursuant to the Contract when the subcontract involves the transport of equipment, material or commodities by ocean vessel.

CHANGES TO FEDERAL REQUIREMENTS

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

CIVIL RIGHTS REQUIREMENTS

In accordance with Federal transit law at 49 USC §5332, Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue including, without limitation the following equal employment opportunity requirements:

(1) Race, Color, Creed, National Origin, Sex – In accordance with Title VII of the Civil Rights Act, as amended, 42 USC §2000e et seq., and federal transit laws at 49 USC §5332, Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Part 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 USC §2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 USC §2000e note. Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, Contractor agrees comply with any implementing requirements FTA may issue.

(2) Age – In accordance with the Age Discrimination in Employment Act, 29 USC §§621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 CFR Part 1625, the Age Discrimination Act of 1975, as amended, 42 USC §6101 et seq., U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving

Federal Finance Assistance,” 45 CFR Part 90, and federal transit law at 49 USC §5332, Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.

(3) Disabilities – In accordance with Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC §794, the Americans with Disabilities Act of 1990, as amended, 42 USC §12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 USC §4151 et seq., and federal transit law at 49 USC §5332, Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.

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

CLEAN AIR [Applicable Only to Contracts valued at more than \$150,000]

Contractor shall comply with all applicable standards, orders or regulations pursuant to the Clean Air Act, 42 USC 7401 et seq. Contractor agrees that it will not use any violating facilities. Contractor shall report each violation UTA and understands and agrees that UTA will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office. Contractor shall include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with FTA assistance.

CLEAN WATER [Applicable Only to Contracts valued at more than \$150,000]

Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq. Contractor shall report each violation to UTA and understands and agrees that UTA will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office. Contractor shall include these requirements in each subcontract exceeding \$150,000 financed whole or in part with FTA assistance.

CONFORMANCE WITH NATIONAL ITS ARCHITECTURE [Applicable Only to Contracts and Solicitations for Intelligent Transportation Systems]

To the extent applicable, Contractor agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by SAFETEA-LU § 5307(c), 23 U.S.C. § 512 note, and comply with FTA Notice, "FTA National ITS Architecture Policy on Transit Projects" 66 Fed. Reg. 1455 et seq., January 8, 2001, and any subsequent further implementing directives, except to the extent FTA determines otherwise in writing.

CONTRACT WORK HOURS AND SAFETY STANDARDS ACT [Applicable Only to Contracts valued more than \$150,000]

1. Overtime Requirements – Neither Contractor nor any subcontractor contracting for any part of the work under the Contract which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; Liability for Unpaid Wages; Liquidated Damages – In the event of any violation of the clause set forth in paragraph (1) of this section, Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, Contractor and such subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

3. Withholding for Unpaid Wages and Liquidated Damages – UTA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by Contractor or any subcontractor under the Contract or any other federal contract with Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by Contractor, such sums as may be determined to be necessary to satisfy any liabilities of Contractor or any subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

4. Subcontracts – Contractor and all subcontractors shall insert in any subcontracts the clauses set forth paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses any lower tier subcontracts. Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

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

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

Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be post at all times by Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

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

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

1. The classification is utilized in the area by the construction industry; and
2. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
3. With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

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

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

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

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

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

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

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

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

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

Compliance Office or will notify UTA's Civil Rights Compliance Office within the 30-day period that additional time is necessary.

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

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

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

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

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

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

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

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

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

(iii) Contractor and any subcontractor shall make the records required under paragraph (3) of this section available for inspection, copying, or transcription by authorized representatives of the FTA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If Contractor or subcontractor fails to submit the required records or to make them available, the federal agency may, after written notice to Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR §5.12.

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

(ii) Trainees – Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor. Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be great than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted

under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, Contractor will no longer permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

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

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

(7) **Contract Termination: Debarment** – A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the Contract, and for debarment of Contractor as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) **Compliance with Davis-Bacon and Related Act Requirements** – All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in the Contract.

(9) **Disputes Concerning Labor Standards** – Disputes arising out of the labor standards provisions of the Contract shall not be subject to the general disputes clause of the Contract. Such disputes shall be resolved accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) **Certification of Eligibility** – (i) By entering into the Contract, Contractor certifies that neither Contractor nor any person or firm who has an interest in Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1). (ii) No part of the Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1). (iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 USC 1001.

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

Contractor shall comply and facilitate compliance with U.S. DOT regulations, “Nonprocurement Suspension and Debarment,” 2 CFR Part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) “Guidelines to Agencies on Government wide Debarment and Suspension (Nonprocurement),” 2 CFR Part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for federally required audit (irrespective of the Contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the Contract amount. As such, Contractor shall verify that its principals, affiliates and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any federal department or agency to be: (i) debarred from participation in any federally assisted award; (ii) suspend from participation in any federally assisted award; (iii) proposed for debarment from participation in any federal assisted award; (iv) declared ineligible to participate in any federally assisted award; (iv) voluntarily excluded from participation in any federally assisted award; and/or (v) disqualified from participation in any federally assist award. By submitting a response to UTA’s solicitation for the Contract, Contractor has certified that the foregoing items (i) through (v) are true. The certification in this clause is a material representation of fact relied upon by UTA. If it is later determined by UTA that Contractor knowingly rendered an erroneous certification, in addition to other remedies available that may be available to UTA, the federal government may

pursue available remedies, including but not limited to suspension and/or debarment. Contractor agrees to comply with the requirements of 2 CFR Part 180, subpart C, as supplemented by 2 CFR Part 1200, during the Contract term. Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

DISADVANTAGED BUSINESS ENTERPRISES

(1) **FTA Policy** – The Contract is subject to 49 CFR Part 26. Therefore, Contractor must satisfy the requirements for DBE participation as set forth herein. These requirements are in addition to all other equal opportunity employment requirements of the Contract. UTA shall make all determinations with regard to whether or not Contractor is in compliance with the requirements stated herein.

(2) **Nondiscrimination** – Neither Contractor nor any subcontractor shall discriminate on the basis of race, color national origin, or sex in the performance of the Contract. Contractor shall carry out applicable requirements of CFR Part 26 in the award and administration of FTA-assisted contracts. Failure by Contractor to carry out the requirements is a material breach of the Contract, which may result in the termination of the Contract or such other remedy as UTA deems appropriate, which may include, but is not limited to: (i) withholding monthly progress payments in whole or in part; (ii) assessing any liquidated damages as may be provided in the Contract; (iii) requiring Contractor to stand-down with respect to the Work (without an increase in the Contract cost or adjustment to the Contract schedule) until Contractor achieves compliance with respect to these requirements and/or (iv) disqualifying Contractor from future participation in UTA contracts.

DBE Goals and Good Faith Efforts – The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The recipient's overall goal for DBE participation will be determined per the Task orders that utilize federal funds by UTA's Civil Rights Compliance Officer. If a separate contract goal for DBE participation has been established for the Contract, it is listed in the solicitation documents that have been incorporated into the Contract. Contractor is required to document sufficient DBE participation to meet the applicable goal. If Contractor is unable to meet the applicable goal, Contractor must alternatively document adequate good faith efforts to meet the DBE Goal. The types of actions that the UTA will consider as part of the Bidder/Offeror's good faith efforts include, but are not limited to, the following: (i) **Contractor's attendance at a pre-bid meeting (as applicable) scheduled by UTA to inform DBEs of subcontracting opportunities;** (ii) advertisement of subcontracting opportunities in general circulation media, trade association publications, and minority-focus media; (iii) written notification to capable DBEs that their interest in the Contract is solicited; (iv) documentation of efforts to negotiate with DBEs for specific subcontracts including the names, addresses, and telephone numbers of DBEs that were contacted and the date(s) of contact, a description of the information provided to DBEs regarding the work to be performed and a statement explaining why additional agreements with DBEs were not reached; (v) for each DBE Contractor contacted but rejected as unqualified, the reason for Contractor's conclusion; (vi) documentation of efforts made to assist the DBEs contacted that needed assistance in obtaining required bonding or insurance; (vii) documentation of efforts to utilize the services of small business organizations, community and contractor groups to locate qualified DBEs; (viii) documentation of Contractor's efforts to break out Contract work items into economically feasible units in fields where there are available DBE firms to perform the work; (ix) evidence that adequate information was provided to interested DBEs about the plans, specifications and requirements of the Contract, and that such information was communicated in a timely manner; and (x) documentation of any efforts made to assist interested DBEs in obtaining necessary equipment, supplies, materials or related assistance or services.

3 Race-Neutral Procurements – If no separate contract goal has been established, the successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

4 Verification of Compliance – Contractor shall assist UTA in verifying compliance with the DBE requirements of the Contract by submitting status reports itemizing payments to all DBEs with each monthly request for payment. Upon Contract completion, Contractor shall submit a summary of payments, by subcontract, made to all subcontractors to UTA's Civil Rights Compliance Officer.

5 Prompt Payment of Subcontractors – Contractor is required to pay all of its subcontractors performing work related to the Contract for satisfactory performance of that work no later than 30 days after Contractor's receipt of payment for that work from UTA. In addition, Contractor may not hold retainage from its subcontractors or must return any retainage payments to those subcontractors within 30 days after the subcontractor's work related

to the Contract is satisfactorily completed or must return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by UTA and Contractor's receipt of the partial retainage payment related to the subcontractor's work. The failure to make prompt payment to subcontractors as required above shall constitute a material breach of the Contract and shall give rise to remedies including, without limitation, the Authority's right to withhold amounts payable to the Contract and make direct payments (including interest) to subcontractors.

6 Termination of a DBE Subcontractor – Contractor shall not terminate any DBE subcontractor identified in the Contract (or Contractor's response to the Contract solicitation) without UTA's prior written consent. UTA may provide such written consent only if Contractor has good cause to terminate the DBE subcontractor. Before transmitting a request to terminate, Contractor shall give notice in writing to the DBE subcontractor of its intent to terminate and the basis for the termination. Contractor shall give the DBE subcontractor five days to respond to the notice and advise of the reasons why the DBE subcontractor believes there is not good cause to terminate the subcontract. When a subcontract with the DBE subcontractor is terminated or when a DBE subcontractor fails to complete its work on the Contract for any reason, Contractor shall make good faith efforts to find another DBE subcontractor to substitute for the original DBE subcontractor and immediately notify UTA in writing of its efforts to replace the original DBE subcontractor. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the Contract as the DBE subcontractor whose subcontract was terminated, to the extent needed to meet the applicable goal.

ENERGY CONSERVATION

Contractor shall comply with mandatory standards and policies relating to energy efficiency, stated in the state energy conservation plan issued in compliance with the Energy Policy & Conservation Act.

FALSE STATEMENTS OR CLAIMS CIVIL AND CRIMINAL FRAUD

Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC 3801 et seq. and USDOT regulations, "Program Fraud Civil Remedies," 49 CFR 31, apply to its actions pertaining to this project. Upon execution of the Contract, Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the Contract or FTA assisted project for which the Contract work is being performed. In addition to other penalties that may be applicable, Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification, the US Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act (1986) on Contractor to the extent the US Government deems appropriate.

Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the federal government under the Contract, the federal government reserves the right to impose the penalties of 18 USC §1001 and 49 USC §5323(l) on Contractor, to the extent the federal government deems appropriate.

Contractor shall include the above two clauses in each subcontract financed in whole or in part with FTA assistance. The clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

FLY AMERICA REQUIREMENTS [Applicable Only to Contracts Involving Transportation of Persons or Property, by Air between the U.S. and/or Places Outside the U.S.]

Contractor shall comply with 49 USC 40118 (the "Fly America" Act) in accordance with General Services Administration regulations 41 CFR 301-10, stating that recipients and subrecipients of federal funds and their contractors are required to use US Flag air carriers for US Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a US flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. Contractor shall include the requirements of this section in all subcontracts that may involve international air transportation.

INCORPORATION OF FTA TERMS

The Contract includes certain Standard Terms and Conditions required by the FTA, whether or not expressly stated in the Contract. All FTA-required contractual provisions, as stated in 2 CFR Part 200 or FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in the Contract. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any request that would cause UTA to be in violation of FTA terms and conditions.

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

Byrd Anti-Lobbying Amendment, 31 USC 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 USC §1601, et seq.] – Contractors who apply or bid for an award of \$150,000 or more shall file the certification required by 49 CFR Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 USC 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-federal funds with respect to that federal contract, grant or award covered by 31 USC 1352. Such disclosures are forwarded from tier to tier up to UTA.

NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES

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

RECYCLED PRODUCTS

Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 USC §6962, and U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 CFR Part 247.

RESOLUTION OF DISPUTES, BREACHES AND OTHER LITIGATION

UTA and Contractor intend to resolve all disputes under the Contract to the best of their abilities in an informal manner. To accomplish this end, the parties will attempt to resolve disputes through communications between their respective staffs, and, if resolution is not reached at that level, a procedure for review and action on such disputes by appropriate management level officials within UTA and Contractor's organization.

Unless otherwise directed by UTA, Contractor shall continue performance under the Contract while matters in dispute are being resolved.

Unless the Contract provides otherwise, all claims, counterclaims, disputes and other matters in question between UTA and Contractor arising out of or relating to the Contract or its breach will be decided by alternative dispute resolution if the parties mutually agree, or in a court of competent jurisdiction within the State of Utah.

Duties and obligations imposed by the Contract and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by UTA or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

SEISMIC SAFETY [Applicable Only to Contracts Involving Construction of new buildings or additions to existing buildings]

Contractor agrees that any new building or addition to an existing building shall be designed and constructed in accordance with the standards required in USDOT Seismic Safety Regulations 49 CFR 41 and shall certify compliance to the extent required by the regulation. Contractor shall also ensure that all work performed under the Contract, including work performed by subcontractors, complies with the standards required by 49 CFR 41 and the certification of compliance issued on the project.

TERMINATION

Upon ten (10) days' written notice to Contractor, UTA may, for its convenience and without cause, elect to terminate the Contract. If UTA terminates the Contract for its convenience, UTA shall pay Contractor for that portion of the work performed up to the date of the notice of termination, plus Contractor's actual, reasonable and documented costs attributable to the termination, including those incurred to terminate applicable subcontracts and leases, but excluding consequential damages, which includes, but is not limited to, lost profits and/or opportunity costs associated with the terminated portion of the work.

If Contractor materially fails to perform any of its obligations under the Contract, and such failure is not cured within ten (10) days of written notice from UTA identifying the breach, then UTA may terminate the Contract by delivering to Contractor a Notice of Termination specifying the nature of the default. In such event, UTA may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances and equipment on the work site necessary for completing the work. Contractor and its sureties shall be liable for any damages to UTA resulting from Contractor's refusal or failure to complete the work within specified time, whether or not Contractor's right to proceed with the work is terminated. Notwithstanding the foregoing, no cure period shall be required if Contractor's default is due to its failure to satisfy any legal requirement concerning workplace safety or environmental compliance, or if Contractor's action(s) and/or omission(s) materially jeopardize safety.

Company: Stacy and Witbeck, Inc.

By:  _____

Name: Clayton Gilliland

Title: Executive Vice President

Date: November 2, 2020

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

The undersigned states on behalf of the Bidder / Proposer Stacy and Witbeck, Inc.

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

B. Bidder / Proposer designates --

Name Brian Sena

Title Corporate Risk and Human Resource

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

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

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

Company Name: Stacy and Witbeck, Inc.

Address: 1958 W North Temple,
Salt Lake City, UT 84116

Signed:  _____

Title: Executive Vice President

Phone Number: (801) 301-2090

Per Addendum 1 - Not Applicable

ATTACHMENT A-1: DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION FORM

The Winning Proposer will be required to fill out this form for every Task Order assigned a DBE Goal.

DBE PROJECT GOAL: Race Neutral

The recipient’s DBE participation will be determined per the Task orders that utilize federal funds by UTA’s Civil Rights Compliance Officer.

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



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

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

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

(Attach additional sheets if necessary)

Bidder / Proposer *does not* meet the DBE goal for this contract. **Bidder / Proposer certifies that it has made good faith efforts** in accordance with the bid/proposal instructions to meet the DBE goal, but, despite those efforts, has been unable to meet the goal. The Good Faith Efforts Documentation Form (Attachment A-3) is attached to this DBE Participation Form. Please list above ANY DBE participation your firm has committed to.

Bidder / Proposer *does not* meet the DBE goal for this contract. **Bidder / Proposer certifies that there exists no opportunity for subcontracting as part of this project.** It is the general practice of Bidder / Proposer's firm to perform all work of this nature solely with its own work force and to do otherwise would constitute a violation of industry standards. Attachment A-3, Good Faith Effort Documentation Form, is not required under this selection.

Date: _____

Company Name: _____

Signature: _____

Printed Name: _____

Title: _____

Per Addendum 1 - Not Applicable

ATTACHMENT A-2: SAMPLE LETTER OF INTENT TO SUBCONTRACT WITH DBE FIRM

The winning Proposer will be required to fill out this form for every Task Order assigned a DBE Goal

(COMPANY LETTERHEAD)

(DATE)

(DBE)

(Name and Address)

Reference: (Project Name and Bid/Proposal Number)

(Appropriate Salutation)

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

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

DBE firm has read and certifies to the above:

Prime Contractor:

Signature

Signature

Printed Name

Printed Name

Title

Title

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

Per Addendum 1 - Not Applicable

ATTACHMENT A-3: GOOD FAITH EFFORTS DOCUMENTATION FORM

The winning Proposer will be required to fill out this form for every Task Order assigned a DBE Goal

Whether a Bidder / Proposer meets or does not meet the DBE goal, the Bidder / Proposer must submit this form with its DBE Participation Form (Attachment A-1). **In the case of a race neutral project, the Bidder / Proposer is not required to submit good faith efforts documentation.** The Bidder / Proposer must submit a copy of the document(s) sent to DBE's. Failure to submit this form with its bid/proposal and requested additional documentation may render the bid/proposal non-responsive. UTA's DBE Liaison Officer may require that the Bidder / Proposer provide additional substantiation of good faith efforts.

Firm Name	Contact Person	Area of Expertise	Date	Response
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

By submitting and signing this form, including any continuation form(s), the Bidder / Proposer certifies that it has contacted the identified DBE firms in good faith (per 49 CFR 26 Appendix A or see DBE Requirements, Terms and Conditions) to discuss contracting opportunities.

Date: _____

Signature: _____

Printed Name: _____

Title: _____

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

Prepared By: _____

(Print name & title)

Solicitation No. _____

Name of Project _____

Location of Workforce _____

Prime Contractor _____

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

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

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



Executive Vice President
Signature and Title of Company Official (Contractor)

Equal Employment Opportunity Policy and Affirmative Action Program

It is the policy of Stacy and Witbeck, Inc. (the “Company”) to provide Equal Employment Opportunity to all employees and applicants for employment in accordance with all applicable Equal Employment Opportunity and Affirmative Action laws, directives and regulations of Federal, State and Local governing bodies or agencies thereof. In order to provide equal employment and advancement opportunities to all individuals, employment decisions at the Company are based on merit, qualifications, and abilities. The Company does not discriminate in employment opportunities or practices on the basis of race, color, sex/gender (including gender identify, pregnancy, childbirth and related medical conditions), marital status, age, religion, veteran status, registered domestic partner status, national origin, genetic characteristics, sexual orientation, mental and physical disability, medical condition, ancestry, or any other consideration made unlawful by federal, state or local laws. This policy applies to every aspect of employment, including but not limited to: hiring, advancement, transfer, demotion, lay-off or returns from layoff, termination, compensation, benefits, training or selection for training, working conditions, and recruitment or recruitment advertising. Decisions will not be influenced by a perception an employee falls within any of these categories or an employee’s association with a person falling within any of these categories.

The objective of Stacy and Witbeck, Inc.’s Equal Employment Opportunity (“EEO”) policy and Affirmative Action program is, wherever possible, to actively recruit and include in consideration for employment members of minority groups and females. Steps will be taken to encourage members of these groups to seek employment with the Company. Current employees are also encouraged to recruit minorities and females for positions within the Company. Equal employment opportunity is also extended to veterans of the U.S. Armed Forces.

Every supervisor and member of management will carry forward Stacy and Witbeck, Inc.’s policy of non-discrimination, equal employment opportunity and affirmative action within his or her designated area of responsibility. All Company employees who are authorized to hire, supervise, promote or discharge employees, or to recommend such action, or who are substantially involved in such actions, are accountable for complying with all aspects of the EEO policy and Affirmative Action program and its goals and objectives, and will be evaluated on their contributions to implementation of this policy each year.

Caroline Kim has been designated Stacy and Witbeck, Inc.’s Equal Employment Opportunity Officer. Inquiries concerning the application of federal and state laws and regulations should be referred to the EEO Officer, who is responsible for administering the program’s progress and initiating corrective action when appropriate. All personnel actions are monitored and analyzed to ensure the adherence to the policies. All questions, concerns and correspondence regarding the Company’s EEO policy and Affirmative Action program should be directed to Caroline Kim at:

2800 Harbor Bay Parkway
Alameda, CA 94502
510-748-1870

Any employees with questions or concerns about any type of discrimination in the workplace are encouraged to bring these issues to the attention of their immediate supervisor, any member of management, the Human Resources department, and/or the EEO Officer. Employees can raise concerns and make reports without fear of reprisal. The Company will promptly and thoroughly investigate all claims of discrimination. If the Company determines that a violation of this policy has occurred, effective remedial action will be taken. Anyone found to be engaging in any type of unlawful discrimination or who retaliates against any employee for reporting concerns or participating as a witness in any investigation is subject to disciplinary actions, up to and including termination of employment.

Stacy and Witbeck, Inc.’s EEO policy and Affirmative Action program include mandatory specifications and steps to be taken at all Company facilities and job sites in order to maintain the existence of equal employment opportunity and the continued absence of discrimination throughout the Company. The Company carries out its EEO policy and Affirmative Action program according to the following sixteen specifications:

Stacy and Witbeck, Inc. and Joint Venture Companies

1. The Company will maintain a work environment free of harassment, intimidation, and coercion at all sites and in all facilities at which the Company's employees are assigned.

Stacy and Witbeck, Inc. will take specific steps to ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Company's contractual obligation to maintain such a working environment, with specific attention to minorities and women working at all work sites and facilities.

The above specification will be implemented, for example, as follows:

The Company will produce and distribute copies of policy statements prohibiting harassment to all employees.

EEO policy statements will be posted at all construction job sites and will be posted at other facilities of the Company as well. The Company will give supervisory personnel and other employees memoranda and other written instructions addressing the need to maintain a work environment free of harassment, intimidation, and coercion. Copies of such written materials will be retained.

The Company will hold meetings to inform supervisory personnel of their duty to carry out the Company's obligation to maintain a workplace free of harassment, intimidation, or coercion. Minutes or other records of such meetings will be retained.

Where more than one woman is assigned to a construction project, the Company will retain records of such assignments. Stacy and Witbeck, Inc. will develop formal procedures to handle complaints of harassment and maintain records of such complaints and how the Company handled them.

The Company's EEO Officer(s) will prepare and retain reports, diaries, analyses, etc., of specific efforts made to monitor the work environment for the presence of any forms of harassment, intimidation, or coercion, such as: verbal, visual or written abuse; physical aggressiveness; assigning women and/or minorities to more difficult or dangerous work than men/non-minorities; or sabotaging of an individual's work.

The Company will provide harassment awareness training to supervisors and/or employees. The Company will retain records of such training which indicate the dates of the training, the names of those conducting the training, the names of those attending the training, and a copy or description of the training materials.

2. The Company will establish and maintain current lists of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Company or its unions have employment opportunities available, and maintain a record of the organizations' responses.

The above specification will be implemented, for example, as follows:

Recruitment sources will include the state employment offices serving the recruitment areas for the Company's construction projects, and may also include organizations such as the Job Corps, Urban League, YWCA, National Association of Women in Construction, Neighborhood Youth Corps, Equal Opportunity Programs, Inc., National Organization of Women, LULAC, and Aspira, and others. In addition, local community organizations are extremely effective as employer/employee linkage resources.

The Company will maintain files of letters to minority and female recruitment sources announcing the employment opportunities and application procedures. In order to maintain a record of recruitment organizations' responses, the Company will retain any written responses received from the sources or log or otherwise record the responses.

An applicant flow log will be used by the Company to identify employment solicitations and referrals, and to track the results of the applications. Applicant flow documentation will include copies of correspondence from recruitment sources, copies of job announcements from state employment offices, and copies of notes, diaries, phone logs and/or other written records of contacts with recruitment organizations.

Stacy and Witbeck, Inc. and Joint Venture Companies

3. The Company will maintain current files containing the names, addresses and telephone numbers of each minority or female off-the-street applicant and minority or female referral from a union, recruitment source or community organization and of what action was taken with respect to each individual. Occasionally, the Company will send individuals to the union hiring hall for referral back to the Company. If the union did not refer the individual to the Company or if the individual was referred but was not hired, the Company will keep a record of all actions taken, along with the reasons why the referral or hiring did not occur.

The above specification will be implemented, for example, as follows:

The Company will establish files that show the names, addresses, telephone numbers and trades of each minority and female applicant and referral.

In addition to an applicant flow log, the Company will note on the actual employment application forms what action was taken with respect to each applicant and the reason for non-hire.

Where an applicant has been referred to the union for referral back to Stacy and Witbeck, Inc., the Company will document this action and its results or any follow-up contacts made with the applicant or the union.

4. The Company will immediately notify the Deputy Assistant Secretary in writing when the union or unions with which the Company has a collective bargaining agreement has not referred a woman or minority individual sent by the Company. Similarly, the Company will notify the Office of Federal Contract Compliance Programs (OFCCP) when the Company has other information that the union referral process has impeded the Company's efforts to meet its EEO and Affirmative Action obligations.

The above specification will be implemented, for example, as follows:

The Company will keep copies of all letters to and from the unions, minutes of meetings, etc., related to any claims that the union has impeded Stacy and Witbeck, Inc.'s efforts to comply with its EEO obligations.

The Company will also keep copies of any letters sent to the OFCCP that contain claims of non-referral or claims that a union has impeded the Company's efforts to comply with EEO obligations.

5. The Company will develop on-the-job training opportunities or participate in training programs for the job area(s) which expressly include minorities and women. The Company's actions will include upgrading programs, apprenticeships and trainee programs relevant to the Company's employment needs, especially those programs approved by the Department of Labor. The Company will provide notice of these training opportunities and job programs to recruitment sources, state employment offices and other referral sources that the Company has compiled under Specification 2 above.

The above specification will be implemented, for example, as follows:

The Company will maintain records of employees' participation in training programs, including those that are approved or funded by the Department of Labor's Bureau of Apprenticeship and Training.

The Company will document any contributions of cash, equipment or personnel provided in support of training or apprenticeship programs.

The Company will inform minority and female recruitment sources and schools of these programs in writing, and will retain copies of any such letters or correspondence.

6. The Company will disseminate EEO policies by: providing notice of the policies to unions and training programs and requesting their cooperation and assistance in meeting EEO obligations; including EEO policy statements in all policy manuals and collective bargaining agreements; publicizing these policies in any Company newsletters, annual reports, etc.; specifically reviewing the policy with all management personnel and with all minority and female employees at least once a year; and, posting the EEO Policy on bulletin boards

Stacy and Witbeck, Inc. and Joint Venture Companies

accessible to all employees at each location where construction work is performed.

The above specification will be implemented, for example, as follows:

In addition to including EEO policies in all policy manuals, the Company will include EEO policies in employee handbooks provided to each employee when they are hired.

Copies of the Company's EEO policies will be posted on bulletin boards that are accessible to all employees at each location where construction work is performed.

The Company will document discussions that it has with women and minority employees about EEO policies. For example, employees will be asked to sign a receipt for an employee handbook that contains EEO policies. Employees can be asked to sign a form at a new employee orientation indicating that Stacy and Witbeck, Inc.'s EEO policies have been reviewed with them.

The Company will also keep copies of letters, memoranda and notices to unions and training programs notifying them of the Company's EEO policies and requirements and requesting their assistance in meeting those obligations.

The Company will keep a file containing any newsletters and/or annual reports which contain descriptions of EEO policies.

7. At least once a year, the Company will review EEO policies and Affirmative Action obligations (under these specifications) with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions. These EEO policies and Affirmative Action obligations will be specifically reviewed with on-site supervisory personnel such as superintendents, general foremen, etc., prior to starting construction work at any job site. Company personnel will maintain records that identify the time and place of these meetings, persons attending, subject matter discussed and disposition of the subject matter.

The above specification will be implemented, for example, as follows:

The Company will have written records (memoranda, diaries, minutes of meetings, etc.) that identify the time and place of these meetings, persons attending, subject matter discussed and disposition of the subject matter.

8. The Company will disseminate EEO policies externally by including them in any advertising in the news media (including minority and female news media). The Company will also provide written notification to and discuss EEO policies with, other contractors and subcontractors with whom the Company does or anticipates doing business.

The above specification will be implemented, for example, as follows:

The Company will have copies of any employment advertisements or job announcements which specifically include the EEO "tagline." The tagline may state that the Company is "an equal opportunity employer," or it may alternately state that all qualified applicants will receive consideration for employment without regard to race, color, religion, gender, or national origin. The tagline will appear in advertisements placed in media targeted towards minority and female readership.

The Company will maintain copies of correspondence with subcontractors that notify them of EEO contractual obligations and the Company's commitment to compliance.

The Company will document meetings with construction industry associations and organizations where the Federal EEO and Affirmative Action contract obligations and methods for facilitating compliance have been discussed or acted upon.

Stacy and Witbeck, Inc. and Joint Venture Companies

9. The Company will direct recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Company's recruitment area and employment needs. The Company will send notice to its recruitment sources for women and minorities announcing acceptance of applications for apprenticeship or other training. This notice will be sent no later than one month before publication of apprenticeship and training announcements. Notices will describe the openings, screening procedures and tests to be used in the selection process.

The above specification will be implemented, for example, as follows:

The Company will have written records of contacts (such as written communications, telephone calls or personal meetings) with minority and female community organizations, recruitment sources, schools and training organizations. Records will specify the date of contact, individuals contacted, results of the contact and any follow-up efforts.

The Company will also document their contacts with local offices of the state employment service, Private Industry Council, vocational/technical schools or high schools with construction related training programs, Displaced Homemaker Programs, Urban League or OIC training and referral programs or other community based organizations.

If a union is responsible for acceptance into the training programs, the Company will ensure that information is obtained from the union on individuals who were referred from the recruitment sources/organizations that were accepted in the program.

The Company will maintain records of written contacts to recruitment sources announcing training and apprenticeship opportunities. Recruitment sources will be notified one month before the Company begins accepting applications.

10. The Company will encourage current minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both at the work site and in other areas of the Company's work force.

The above specification will be implemented, for example, as follows:

The Company will have copies of diaries, telephone logs or memos indicating contacts (both written and oral) with minority and female employees requesting their assistance in recruiting other minorities and women, and records of the results. The Company will specifically discuss recommendations for referral with minority and female trade employees.

Supervisors and crew leaders will keep a log of worker referrals from minority or female employees or recruitment sources.

Where after-school, summer and vacation employment is provided to minority and female youth, the Company will maintain records of such employment. The Company will also retain on file any letters and other documentation of contact with recruitment sources or local state employment agencies regarding these youth employment programs.

11. The Company will validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3, the "Uniform Guidelines on Employee Selection Procedures (1978)." Actions for demonstrating compliance will vary according to the number of people employed by the Company.

This specification will be implemented, for example, as follows:

Where the Company employs 100 or fewer employees, the Company will collect data to help determine if the test or selection requirement has a possible adverse impact on any race, sex, or ethnic group. The Company will maintain and have available records showing, for each year:

The number of persons hired, promoted and terminated in each trade (e.g., carpenter, brick masons, concrete finishers, ironworkers, mechanics, equipment operators), by sex (gender), and where appropriate, by race and national origin;

Stacy and Witbeck, Inc. and Joint Venture Companies

The number of applicants for hire and promotion by trade and sex, and where appropriate, by race and national origin; and

The selection procedures used (such as standardized testing or unstructured interviews and qualifications review) for each trade.

Where the Company employs more than 100 employees, the Company will maintain the records listed above and maintain records for each job that show whether the total selection process for each job has an adverse impact on either gender or on any of the following race and ethnic groups: Blacks, American Indians, Asians, Hispanics, and whites other than Hispanics. The Company will perform adverse impact analyses at least once a year for each group that comprises at least two percent of the labor force in the relevant area or two percent of the applicable workforce. Where a total selection process does adversely impact any of the above referenced groups, the Company will maintain and have available records showing which components of the selection process have an adverse impact. Records regarding individual components of the selection process will be collected for at least two years after the adverse impact has been eliminated. The Company will validate selection procedures that have an adverse impact, in accordance with the Uniform Guidelines.

12. At least once a year, the Company will inventory and evaluate all minority and female personnel for promotional opportunities. The Company will also encourage these employees to seek or prepare for, through appropriate training, etc., promotional opportunities.

The above specification will be implemented, for example, as follows:

The Company will keep written records (memoranda, letters, personnel files, etc.) showing promotional opportunities for women and minorities are reviewed annually.

The Company will keep written records documenting that the participation of women and minorities in promotional opportunities is encouraged.

13. The Company will ensure that seniority practices, job classifications, work assignments and other personnel practices do not have a discriminatory effect, by continually monitoring all personnel and employment related activities to ensure that EEO policies and the Company's obligations under the contract specifications are being carried out.

The above specification will be implemented, for example, as follows:

The Company will use data collected under Specification 11 (above) to determine if seniority practices, job classifications, work assignments or other personnel practices have an adverse impact on women and minorities.

The Company will audit or examine existing personnel practices periodically or convene an EEO task force when developing new personnel practices to ensure that EEO obligations are being adequately addressed and incorporated.

The Company will ensure current policies are reviewed on a regular basis to identify factors that are not equally applied.

14. Stacy and Witbeck, Inc. will ensure that Company facilities and activities are non-segregated except that separate or single-user toilets and necessary changing facilities designed to assure privacy between the sexes will be provided.

The term "facilities" refers to waiting rooms, work areas, eating areas, time clocks, rest rooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or transportation, and housing facilities provided for employees.

The above specification will be implemented, for example, as follows:

The Company will offer adequate toilet and changing facilities to all employees to guarantee privacy between the sexes.

Stacy and Witbeck, Inc. and Joint Venture Companies

The Company will compile documents (e.g., flyers, posters, announcements) indicating that information concerning parties, picnics and other Company-sponsored events has been disseminated equally to all employees.

15. The Company will document and maintain records of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

The above specification will be implemented, for example, as follows:

The Company will keep letters or other direct solicitations for subcontracts from minority or female contractors, with a record of the specific responses and any follow-up activities done to obtain price quotations.

The Company will have a list of subcontracts they have awarded to minority or female contractors or suppliers, showing the dollar amounts involved.

The Company will retain copies of solicitations sent to minority and women's contractor associations or other business associations and state or local governmental agencies.

16. At least once a year, the Company will conduct a review of all supervisors' adherence to and performance under the Company's EEO policies and Affirmative Action obligations.

The above specification will be implemented, for example, as follows:

The Company will keep copies of performance evaluations, memoranda, letters, reports, and/or minutes of meetings or interviews with supervisors and management personnel about their employment practices as they relate to EEO policy and Affirmative Action obligations.

The Company will also compile any written evidence that supervisors and managers have been notified when their employment practices adversely or positively affected the Company's EEO and Affirmative Action posture.

Exhibit _____

UTAH TRANSIT AUTHORITY

BUY AMERICA CERTIFICATE

(Federally-assisted Contract)

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

CERTIFICATE OF COMPLIANCE WITH SECTION 165(a). The offeror hereby certifies that it *will comply* with the requirements of Section 165(a) of the Surface Transportation Assistance Act of 1982, as amended, and the applicable regulations of 49 CFR Part 661;

--OR--

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

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

CERTIFICATE OF COMPLIANCE WITH SECTION 165(b)(3). The offeror hereby certifies that it *will comply with* the requirements of Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, and the applicable regulations of 49 CFR Part 661.11;

-OR-

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

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



November 2, 2020

Signature

Date

Executive Vice President

Title

Stacy and Witbeck, Inc.

Name of Company/Offerer

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

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

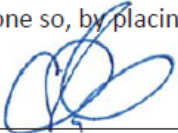
This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

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

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

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

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



Signature of the Bidder or Proposer Authorized Official

Clayton Gilliland, Executive Vice President

Name and Title of the Bidder or Proposer Authorized Official

FEDERAL ID # 94-2787950

November 2, 2020

Date

Instructions for Certification

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

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

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

I, Clayton Gilliland, hereby certifies

(Name and Title of Company Official)

on behalf of Stacy and Witbeck, Inc. that:

(Name of Company)

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

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

Executed this 2 day of November, 2020.

By  _____

(Signature of Authorized Official)

Executive Vice President

(Title of Authorized Official)

10.0 ATTACHMENT E: CARGO PREFERENCE -- USE OF UNITED STATES-FLAG VESSELS

Pursuant to Maritime Administration regulations, "Cargo Preference -- U.S.-Flag Vessels", 46 C.F.R. Part 381, the Contractor shall insert the following clauses in contracts it awards in which equipment, materials or commodities may be transported by ocean vessel in carrying out the Project:

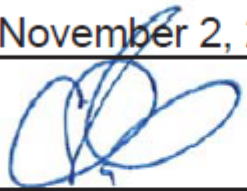
AS REQUIRED BY 46 C.F.R. PART 381, THE CONTRACTOR AGREES --

(1) TO UTILIZE PRIVATELY OWNED UNITED STATES-FLAG COMMERCIAL VESSELS TO SHIP AT LEAST 50 PERCENT OF THE GROSS TONNAGE (COMPUTED SEPARATELY FOR DRY BULK CARRIERS, DRY CARGO LINERS, AND TANKERS) INVOLVED, WHENEVER SHIPPING ANY EQUIPMENT, MATERIALS, OR COMMODITIES PURSUANT TO THIS CONTRACT TO THE EXTENT SUCH VESSELS ARE AVAILABLE AT FAIR AND REASONABLE RATES FOR UNITED STATES-FLAG COMMERCIAL VESSELS.

(2) TO FURNISH WITHIN 20 DAYS FOLLOWING THE DATE OF LOADING FOR SHIPMENTS ORIGINATING WITHIN THE UNITED STATES, OR WITHIN 30 WORKING DAYS FOLLOWING THE DATE OF LOADING FOR SHIPMENT ORIGINATING OUTSIDE THE UNITED STATES, A LEGIBLE COPY OF A RATED, "ON-BOARD" COMMERCIAL OCEAN BILL-OF-LADING IN ENGLISH FOR EACH SHIPMENT OF CARGO DESCRIBED IN PARAGRAPH (1) ABOVE TO THE AUTHORITY (THROUGH THE PRIME CONTRACTOR IN THE CASE OF SUBCONTRACTOR BILLS-OF-LADING) AND TO THE DIVISION OF NATIONAL CARGO, OFFICE OF MARKET DEVELOPMENT, MARITIME ADMINISTRATION, 400 SEVENTH STREET, S.W., WASHINGTON, D.C. 20590, MARKED WITH APPROPRIATE IDENTIFICATION OF THE PROJECT.

(3) TO INSERT THE SUBSTANCE OF THE PROVISIONS OF THIS CLAUSE IN ALL SUBCONTRACTS ISSUED PURSUANT TO THIS CONTRACT.

Date November 2, 2020

Signature 

Title Executive Vice President



ATTACHMENT F: SOLICITATION STATISTICS

The Winning Proposer will be required to fill out this form for every Task Order where Subcontractors will be utilized.

Dear Subcontractor:

The Utah Transit Authority maintains bidding statistics, regarding **ALL** firms bidding on prime contracts and **subcontracts** on DOT-assisted projects in accordance to the federal regulation 49 CFR Part 26.11. Include copies of this form with your bid package to **ANY SUBCONTRACTORS**. Return the form from each proposer **with your bid package**, both Disadvantaged Business Enterprises' (DBE) and non-DBEs (A DBE is a firm that meets the criteria in 49 CFR 26). Thank you for your assistance with this request. If you have any questions, comments or suggestions, please contact Raymond Christy, UTA's DBE Liaison Officer (801) 262-5626 extension 3537.

This information will only be used for statistical purposes as allowed under 49 CFR Part 26.

Firm Name: Stacy and Witbeck, Inc.

Firm Address: 1958 W North Temple

Salt Lake City, UT 84116

Status: Non-DBE DBE

Company's Type of Work: Heavy Civil Construction

Month/Year firm started: November 1981

<u>Company Owner(s) Ethnic Background (optional)</u>		
<input type="checkbox"/> African American	<input type="checkbox"/> Asian	<input type="checkbox"/> Male
<input type="checkbox"/> Hispanic	<input type="checkbox"/> Native American	<input type="checkbox"/> Female
<input type="checkbox"/> Polynesian	<input type="checkbox"/> Caucasian	<input type="checkbox"/> Other

Annual Gross Receipts of the Firm: (check one)

0 to \$500,000 \$500,000 - \$1,000,000

\$1 Million - \$5 Million \$5 Million - \$10 Million

\$10 Million - \$16.7 Million Above \$16.7 Million

Name of Solicitation: On-Call Transit Infrastructure Construction, Maintenance and Repair



12.0 ATTACHMENT G: Requirement for Written Subcontracts

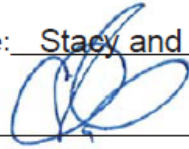


12.0 ATTACHMENT G: Requirement for Written Subcontracts

(To be submitted with Bid or Proposal)

Provided that your firms Bid or Proposal is determined to be the winner for this Procurement, UTA Number 20-03349VW, Bidder/Proposer: Stacy and Witbeck, Inc., does hereby acknowledge and agree to comply with by signing below, the Authority’s requirement to have written subcontracts for all the Work provided for by subcontractors at any tier for the Work awarded to them through this Procurement, and that Bidder/Proposer will pass along all applicable requirements, federal or otherwise, but not limited thereto to all sub tier contractors.

Company Name: Stacy and Witbeck, Inc.

Signed by:  _____

Title: Executive Vice President

Date: November 2, 2020



MEMORANDUM TO THE BOARD

TO: Utah Transit Authority Board of Trustees
THROUGH: Carolyn Gonot, Executive Director
FROM: Eddy Cumins, Chief Operating Officer
PRESENTER(S): Eddy Cumins, Chief Operating Officer
 Kyle Stockley, Veh Overhaul & Bus Support Manager

BOARD MEETING DATE: January 27, 2021

SUBJECT: 2021 Transit Bus Replacement – Eighth Order (Gillig, LLC)		
AGENDA ITEM TYPE:	Expense Contract Change Order	
RECOMMENDATION:	Approve contract change order and associated disbursements with Gillig LLC for 23 replacement low floor diesel buses in the amount of \$11,660,265.	
BACKGROUND:	<p>UTA released a request for proposal (RFP) on May 20, 2016 for Diesel or CNG transit buses, trolleys and canyon service buses, including option quantities. Gillig LLC was awarded a five-year contract on October 17, 2016. The initial order on the contact was for forty-seven diesel buses, leaving 128 options.</p> <p>This is the eighth order on the contact and is for 23 diesel buses with 31 options remaining. This contract with Gillig LLC expires on October 13, 2021.</p>	
DISCUSSION:	<p>UTA staff is requesting approval of the eighth order on a contract with Gillig LLC in the amount of \$11,660,265. This order will bring the total five-year contract amount to \$71,545,409. The requested low floor diesel buses will replace the following vehicles:</p> <ul style="list-style-type: none"> • Fourteen - 2007 Gillig Transit buses (14 years old in 2021) • Five - 2007 Gillig Suburban buses (14 years old in 2021) • Four - 2009 Vanhool BRT buses (12 years old in 2021) <p>The requested replacement buses are part of UTA’s state of good repair program and are budgeted in the 2021 capital budget. If approved, buses will go into production in the 4th quarter of 2021.</p>	
CONTRACT SUMMARY:	Contractor Name: Gillig LLC	Contract Number: 16-1680PP
	Base Contract Effective Dates: 2016-2021	Extended Contract Dates: N/A

	Existing Contract Value: \$59,885,144	Amendment Amount: \$11,660,265
	New/Total Amount Contract Value: \$71,545,409	
	Procurement Method: RFP	Funding Sources: Local (Lease/Financed) with Federal Clauses
ALTERNATIVES:	Defer replacements and rearrange the bus replacement schedule to accommodate.	
FISCAL IMPACT:	The project is approved in the 2021 capital budget and will be covered by REV211 Capital project code.	
ATTACHMENTS:	<ol style="list-style-type: none"> 1) Eighth Order 2) Original Contract 	



Contract 16-1680PP
 30'-40' Diesel or CNG Buses,
 Trolleys and 35' Canyon Service Buses

November 9, 2020

Gillig LLC
 25800 Clawiter Road
 Hayward, CA 94545

RE: CONTRACT 16-1680PP 30'-40' Diesel or CNG Buses, Trolleys and 35' Canyon Service Buses

**EIGHT ORDER NOTICE TO PROCEED
 For Twenty Three (23) 40' Diesel Transit Buses**

Dear Mr. Joseph Policarpio,

This letter shall serve as the Eight Order against contract 16-1680PP wherein the Authority made award of the contract from the Gillig LLC Contract Effective October 17, 2016.

These Diesel Buses shall be manufactured as outlined in the Authority's Updated Red-Lined Technical Requirements, the above reference contract and Gillig LLC's Price Summary dated September 28, 2020.

The cost of the Twenty Three (23) Vehicles are as follows:

ACTION	QTY	DESCRIPTION	U/PRICE	TOTAL PRICE
Base	23	Purchase Forty (40) Foot Diesel Bus Low Floor Bus	\$ 456,625.00	\$ 10,502,375.00
	23	PPI Preliminary 9.54% (2020 Oct PPI)	\$ 500,177.05	\$ 11,504,072.15
	23	Delivery	\$ 1,734.00	\$ 39,882.00
Changes from Last Order				
Delete	23	Meritor Brake Wear Indicators	\$ (220.00)	\$ (5,060.00)
Delete	23	10 Straps Per Bus Leaving 8 Per Bus	\$ (100.00)	\$ (2,300.00)
Delete	23	2 Auxiliary Brake Lamps on HVAC Door	\$ (100.00)	\$ (2,300.00)
Delete	23	Amerex Fire Suppression	\$ (1,800.00)	\$ (41,400.00)
Add	23	Fuel Master AIM 2	\$ 367.00	\$ 8,441.00
Add	23	To Breeze Clamps	\$ -	\$ -
Add	23	Hitech Duravent	\$ -	\$ -
Add	23	Sunrise 2 Line Amber Sign	\$ 1,574.00	\$ 36,202.00
Add	23	Warranty Extended Steering Box Coverage to 5 Years/300,000 miles	\$ 500.00	\$ 11,500.00
Add	23	Nichoff Smart Regulator A2-368	\$ 125.00	\$ 2,875.00

Delete	23	E-Stroke	\$ (2,481.00)	\$ (57,063.00)
Delete	23	Bike Rack Ad Frame	\$ (200.00)	\$ (4,600.00)
Add	23	Curbside Wheelwell Storage Box	\$ 546.00	\$ 12,558.00
Add	23	Special Chime For Seat Alarm	\$ 40.00	\$ 920.00
Add	23	(2) Extra Strip Lamps to HVAC Door (4 total)	\$ 200.00	\$ 4,600.00
Add	23	(2) Additional 4: Brake Lamps to Upper HVAC Door	\$ 115.00	\$ 2,645.00
Delete	23	Bike Rack & Pivot Plate	\$ (1,000.00)	\$ (23,000.00)
Add	23	(2) 7" Brake Lamps to Engine Door Centered	\$ 115.00	\$ 2,645.00
Add	23	Kidde Armored Fire Wire	\$ 275.00	\$ 6,325.00
Add	23	56" rear door	\$ 2,601.00	\$ 59,823.00
Add	23	Insert Heater 3rd Step	\$ 458.00	\$ 10,534.00
Delete	23	Curbside Automotion Remote Sun Shade	\$ (175.00)	\$ (4,025.00)
Add	23	GILLIG Plexiglass Driver's Barriers Due to Covid-19	\$ 1,317.00	\$ 30,291.00
Add	23	2021 EPA mandated Emission (Change Budgetary)	\$ 2,900.00	\$ 66,700.00
	23	Total Current Price for 40' Diesel Low Floor Bus	\$506,968.05	\$ 11,660,265.15

The award of this eighth order is a total amount of **\$11,660,265.15** Delivery of the twenty three (23) forty (40) Foot Low Floor Diesel Bus will be December 31, 2021 **and subject to adjustment based upon final requisition approval date as determined below.**

Notwithstanding the forgoing, **this is a contingent order which is NOT BINDING on UTA until final approval is received by the UTA Board of Trustees** once the FY 2021 budget has been finalized and a requisition is approved. **The Parties understand and acknowledge that UTA incurs no financial liability by its issuance of this contingent order.**

If you are in agreement to the above, please sign on the line indicated below and return one copy to Amanda Burton at aburton@rideuta.com A fully executed copy will be provided after all signatures are obtained.

GILLIG LLC

Signature



JOSEPH POLICARPIO

Printed Name

VICE PRESIDENT, SALES

Title

UTAH TRANSIT AUTHORITY

Carolyn A. Gonot
Executive Director

Eddie D. Cumins
Chief Operating Officer

David Hancock
Director of Asset Management

Approved As to Form:

Michael Bell Digitally signed by Michael Bell
Date: 2020.12.10 17:11:39 -0700

UTA Legal Counsel

**BUS PURCHASE CONTRACT
16-1680PP**

THIS BUS PURCHASE CONTRACT ("Contract") is entered into effective the 17th day of October, 2016 (the "Effective Date") by and between the **UTAH TRANSIT AUTHORITY**, a public transit district organized under the laws of the State of Utah (the "Agency"), and **GILLIG LLC**, a corporation with a place of business at 25800 Clawiter Road, Hayward, CA 94545 (the "Contractor")

RECITALS

WHEREAS, on May 20, 2016, the Agency issued a Request for Proposals (RFP No. 16-1680PP and hereinafter the "RFP") for 30'-40' Diesel or CNG Buses, Trolleys and 35' Canyon Service Buses (the "Vehicles"), including option quantities, and all associated hardware, software, transportation, tools, training and documentation (together with the Vehicles, collectively the "Goods and Services"); and

WHEREAS, on June 30, 2016, the Agency received an initial proposal from Contractor; and;

WHEREAS, Contractor is willing to furnish the Goods and Services as set forth in the RFP (as modified by this Contract); and

WHEREAS, on August 31, 2016, the Agency issued to Contractor an award notification for the Goods and Services.

AGREEMENT

NOW, THEREFORE, on the stated premises, 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 therefrom, and for other valuable consideration, the receipt and sufficiency of which the parties acknowledge, it is hereby agreed as follows:

1. TO BE PROVIDED BY CONTRACTOR

The Agency hereby retains Contractor to furnish the Goods and Services and Contractor will to the best of its ability and in a professional manner, provide the labor, equipment and materials necessary to furnish, deliver, and test the Goods and Services subject to the terms and conditions of: (i) RFP 16-1680PP; and (ii) Contractor's proposal dated June 28, 2016 (the "Proposal"). This Contract includes an initial order quantity of forty-seven (47) forty (40) foot diesel Vehicles, two (2) spare power trains and (2) spare wheelchair ramps with the features and options described in an initial notice to proceed issued concurrently with this Contract.

2. TERM

Subject to the provisions for termination as hereinafter provided, this Contract shall be effective with respect to the purchase of any Goods and Services (up to the aggregate number of base and option Vehicle quantities set forth in the RFP) ordered prior to October 13, 2021 (the "Term"). All warranties, indemnities and other obligations of either party with respect to the Goods and Services shall continue after the Term in accordance with the provisions of this Contract.

3. COMPENSATION AND FEES

For the initial order, the Agency agrees to pay Contractor a sum of \$22,650,318.00 determined in accordance with Attachment 1. This sum includes all hardware, software, equipment, materials, labor, shipping costs, and other items necessary to supply the Goods and complete the Services in a satisfactory manner in compliance with this Contract.

The Agency (at its sole and exclusive election to be exercised in its sole discretion) may purchase up to one hundred twenty eight (128) additional 30 to 40 foot Vehicles, to include Canyon Service and Trolley alternative Vehicles (in any combination of Vehicles powertrain configurations, and option packages) during the Term of this Contract. The price for option Vehicles shall be based on the prices indicated in Attachment 1 (hereinafter the "Base Order Prices"). The Base Order Prices shall remain firm for any option Vehicles ordered within one hundred eighty (180) days of following the Effective Date. The price of any Vehicles ordered more than one hundred eighty (180) days following the Effective Date shall be the Base Order Price, subject to adjustment as provided in the following paragraph.

Adjustments to the Base Order Prices will be calculated based on the following formula which - utilizes the U.S. Department of Labor/Bureau of Labor Statistics Producer Price Index ("PPI") Category 1413, "Truck and Bus Bodies". In no event will the price (s) for any order placed exceed by more than five percent (5%) the price(s) that would have been in effect twelve (12) months prior to the date of the release. The Base Order Price will be multiplied by the positive or negative percentage change in this index (subject to the five (5) percent cap on annual price increases to determine pricing for option Vehicles).

FORMULA:

<u>Index Point Change</u>	<u>Example</u>
PPI Index: Future Award Month	141.1
Less PPI Index: Base Award Month	<u>137.6</u>
Index Point Change	3.5
Index Percent Change	3.5
Index Point Change	<u>137.6</u>
Divided by PPI Index: Base Award Month	.0254
Results Multiplied by 100 = Percent Change	2.54%
Base Order Price	\$50,000.00
Plus Percent Change (2.54% x \$50,000)	<u>1,270.00</u>

Revised Price for Future Order \$51,270.00

There is no guarantee that options with respect to any Vehicles will be exercised.

4. INCORPORATED DOCUMENTS

This Contract consists of the documents listed below. In case of any conflict among these documents, the order of precedence shall be:

1. This form of Contract.
2. "Section 4: Special Provisions" of the RFP.
3. "Section 3: General Conditions," and "Section 5: Federal Requirements" of the RFP.
4. "Section 6: Technical Specifications," "Section 7: Warranty Requirements," and "Section 8: Quality Assurance" of the RFP.
5. Contractor's Proposal

A modification or change to any document that is part of this Contract shall take its precedence from the term it amends. All other documents and terms and conditions shall remain unchanged.

As used herein, all referenced sections of RFP are deemed to include the modifications made pursuant to addenda issued by the Agency prior to the due date for proposals.

5. DELIVERY

Contractor hereby agrees to furnish, deliver, install, and test the Vehicles with associated spare parts and manuals within seventy-two (72) weeks after notice to proceed is issued by the Agency. Contractor shall, no later than ten (10) days after the execution of this Contract, provide the Agency with a proposed delivery schedule that satisfies the requirements of Special Provision 2.2 (Delivery Schedule). Once approved by the Agency's Project Manager, such delivery schedule (including agreed modifications thereto) shall constitute the "Delivery Schedule" against which Contractor's performance shall be monitored.

6. PAYMENT

Contractor shall submit to the Agency's Contract Administrator for approval, invoices, after acceptance of the Vehicles, for which Contractor seeks payment from the Agency under this Contract. Within thirty (30) days after receipt of an invoice, the Agency shall: (i) approve and pay the invoice in accordance with Special Provision 5.1 (Payment Terms); or (ii) notify Contractor that it disapproves, in whole or in part, Contractor's invoice and the reasons for such disapproval. The Agency shall not be liable to Contractor for any expenses paid or incurred by Contractor unless listed herein or otherwise agreed to in advance, in writing, by the parties hereto.

7. WARRANTY OF TITLE

Contractor warrants that title to all Vehicles delivered as part of the Goods and Services and

covered by an invoice for payment will pass to the Agency upon acceptance by the Agency. Contractor further warrants that upon payment, all equipment and/or work for which invoices for payment have been previously issued and payments received from the Agency shall be free and clear of liens, claims, security interests or encumbrances in favor of Contractor or any subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided equipment, materials, and labor related to the equipment and/or work for which payment is being requested. Contractor shall indemnify, defend, and hold the Agency harmless from and with respect to any claims, costs, fees (including attorneys' fees), liens, judgments or other losses sustained as a result of the breach of this warranty by Contractor.

8. USE OF SUBCONTRACTORS

Contractor shall not subcontract any services to be performed by it under this Contract other than those listed and identified in the Proposal without prior approval of the Agency. Contractor shall pay all subcontractors for satisfactory performance of their contracts no later than ten (10) days from receipt of each payment the Agency makes to Contractor, unless other arrangements are agreed to in writing by the parties involved. The Agency shall have no obligations to any subcontractors retained by Contractor.

9. CONTRACTOR SAFETY COMPLIANCE

The Agency is an ISO 14001 for Environmental Management Systems, ISO 9001 Quality and Performance Management, and OSHAS 18001 Safety Systems Management Company. Contractor, including its employees, subcontractors, authorized agents, and representatives, shall comply with all of the Agency's and industry safety standards, NATE, OSHA, EPA and all other State and Federal regulations, rules and guidelines pertaining to safety, environmental Management and will be solely responsible for any fines, citations or penalties it may receive or cause the Agency to receive while working on this project. Each employee, contractor and subcontractor must be trained in the Agency's EMS and Safety Management principles.

10. BUY AMERICA REQUIREMENTS

The phase increases in domestic content was included in the FAST Act, 49 U.S.C. Section 5323(j)/FAST Section 3011). The phase increases apply to this contract and are as follows:

- FY16 & 17: more than 60% domestic content
- FY18 & 19: more than 65% domestic content
- FY20 & beyond: more than 70% domestic content

With respect to any option Vehicles delivered after December 31, 2017, Contractor will ensure and certify compliance with the then applicable domestic content requirements without additional charges to the Agency.

11. AUDIT

The Agency and its authorized agents or representatives may, during the term of this Contract and

for a period of six (6) years thereafter, upon giving reasonable notice and during usual business hours, audit and inspect all Contractor's files and records pertaining to the handling of the Agency's account and the products and services provided or performed under this Contract including, without limitation, all cost and profit data required to be provided to comply with General Condition 9.9 (Maintenance of Records; Access by Agency; Right to Audit Records).

12. AMENDMENTS TO GENERAL CONDITIONS AND SPECIAL PROVISIONS

This Contract includes the following changes to the General Conditions and Special Provisions:

- a. Special Provision 5.2 (Performance Guarantee (Optional) Alternatives Disputes is hereby deleted in its entirety.
- b. Special Provision 10 (Software Escrow Account) is hereby deleted in its entirety.
- c. The combined single limits for Automobile Liability Insurance stated in Special Provision 9 (Insurance) is hereby changed from "\$1,000,000" and amended to read "\$2,000,000".

13. PROJECT MANAGER

The Agency's Project Manager for this Contract is Jesse Rogers, or designee. All questions and correspondence relating to the technical aspects of this Contract should be directed to Mr. Rogers, at Utah Transit Authority, office located at 669 West 200 South, Salt Lake City, Utah 84101, office phone (801) 237-4674.

14. CONTRACT ADMINISTRATOR

The Agency's Contract Administrator for this Contract is Pat Postell, Senior Grants & Contracts Administrator, or designee. All questions and correspondence relating to the contractual aspects of this Contract should be directed to Ms. Postell, or designee, phone (801) 287-3060.

15. NOTICES OR DEMANDS

Any and all notices, demands or other communications required hereunder to be given by one party to the other shall be given in writing and will be personally delivered, mailed by US Mail, postage prepaid, or sent by overnight courier service and addressed to such party as follows:

If to the Agency:
Utah Transit Authority
ATTN: Grants & Contracts Administrator
669 West 200 South
Salt Lake City, UT 84101

If to Contractor:
Utah Transit Authority
Attn: General Counsel
669 West 200 South
Salt Lake City, UT 84101

If to Contractor:
Gillig LLC

16-1680PP
30'-40' Diesel or CNG Transit Buses,
Trolleys and 35' Canyon Services Buses

Attn: Joseph Policarpio, Vice President
25800 Clawiter Road
Hayward, CA 94545

Either party may change the address at which such party desires to receive written notice of such change to any other party. 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.

16. GOVERNING LAW

The validity, interpretation and performance of this Contract shall be governed by the laws of the State of Utah, without regard to its law on the conflict of laws. Any dispute arising out of this Contract that cannot be solved to the mutual agreement of the parties shall be brought in a court of competent jurisdiction in Salt Lake County, State of Utah.

17. SEVERABILITY

In the event any one or more of the provisions contained in this Contract are for any reason held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not effect any other provisions of this Contract. This Contract shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

18. AMENDMENTS


This Contract sets forth the entire understanding between the parties. Any amendments must be in writing, signed by the party against whom enforcement of the amendment is sought.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

16-1680PP
30'-40' Diesel or CNG Transit Buses,
Trolleys and 35' Canyon Services Buses

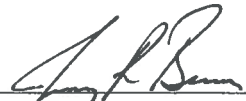
IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed by officers duly authorized to execute the same as of the day and year first above written.

GILLIG LLC



Printed Name: JOSEPH POLICARPIO
Title: VICE PRESIDENT

UTAH TRANSIT AUTHORITY



Jerry R. Benson
President and General Manager



Steve Meyer
Chief Development Officer

Approved As To Form:



UTA Legal Counsel

CER 6. Pricing Schedule Revised

	All prices are to be in United States dollars	
	- Unit Price	- Extension
Forty (40) Foot Diesel Transit Buses Pilot Bus – Quantity One (1)	\$456,625.00	\$456,625.00*
Forty (40) Foot Diesel Transit Buses - Base Quantity Forty-Six (46)	\$456,625.00	\$21,004,750.00*
Spare Power Trains – Quantity Two (2)	\$89,469.00	\$178,938.00*
Spare Wheelchair Ramps – Quantity Two (2)	\$7,787.00	\$15,574.00*
OPTIONS- Quantity up to On Hundred Twenty Eight (128) as follows:	OPTIONS	--
a. Purchase Thirty (30) Foot Diesel Buses	\$446,500.00	--
b. Purchase Thirty (30) Foot CNG Buses	\$498,562.00	--
c. Purchase Thirty-Five (35) Foot Diesel Buses	\$452,425.00	--
d. Purchase Thirty-Five (35) Foot CNG Buses	\$504,487.00	--
e. Purchase Forty (40) Foot Diesel Buses	\$456,625.00	--
f. Purchase Forty (40) Foot CNG Buses	\$508,687.00	--
g. Purchase Thirty-Five (35) Foot Diesel Canyon Service Buses	\$450,529.00	--
h. Purchase Thirty-Five (35) Foot CNG Canyon Service Buses	\$502,591.00	--
i. Purchase Trolley Alternatives	See Trolley Package Options Page	--
OPTION: Spare Powertrains ISL 330HP/VOITH D864.6	\$89,469.00	--

16-1680PP
 30'-40' Diesel or CNG Transit Buses,
 Trolleys and 35' Canyon Services Buses

OPTION: Wheelchair Ramps LIFT-U LU18	\$7,787.00	--
OPTION: 2 Position Bike Rack Part of Original Bid Pricing		
Training in the Maintenance and Operation of the Contracted Buses and Training Materials as follows	--	--
a. Operations Department	See Training Proposal	--
b. Maintenance Department	See Training Proposal	--
OPTION: Training proposal showing pricing and number of hours for individual courses.	See Training Proposal	--
Updated training and training materials when in the scope of contract, changes or modifications result. See TR 5.6	--	--
Special Tools (provide itemized list with tool manufacturer's name and price for all specialty tools)	See Optional Tools Diagnostic List	--
Deliverables in accordance with Section 6 Technical Requirements (provide itemized list)	Not Separately Priced	--
Electronic/Radio Compartment Keys. – Quantity Two (2)/Bus	\$0.00	Included
Alternate for fully AC high-voltage electric-driven A/C system.	\$13,689.00	--
Compartment access door key (5/16" square key). Quantity Two (2)/Bus	\$0.00	Included
Alternative BRT Front Caps	\$9,790.00	--
Alternative BRT Rear Caps	\$3,460.00	--
Alternative BRT Streamlined Roof Line	\$18,950.00	--
Alternative BRT Style Aerodynamic Exterior Mirrors (Power Adjusted and Heated) Class A RS & CS	\$776.00	--
Alternative Two-Piece BRT Style Front Windshield	No cost change with selection of BRT Front Cap Option	--

16-1680PP
 30'-40' Diesel or CNG Transit Buses,
 Trolleys and 35' Canyon Services Buses

Alternative Any Other BRT Styling Provisions As May Be Offered - Identify	\$1,250.00 (Each)	--
Extended Warranty – Operator’s Seat – Two (2) Years or 100,000 miles, 100% parts and labor except foam and fabric	\$0.00	Included
Extended Warranty – Exterior Paint and Finish – Two (2) Years, unlimited miles, 100% parts and labor	\$0.00	--
– Sales tax (if applicable)	N/A	N/A*
Base Order Qty (47) – Delivery charges	\$1,734.00	\$81,498.00*
– TOTAL PROPOSED PRICE		\$21,737,385.00
– ADA equipment (included in above unit prices) Base Order Qty (47)	\$24,665.00	\$1,159,255.00

– This form is to be completed and included in the Price Package.



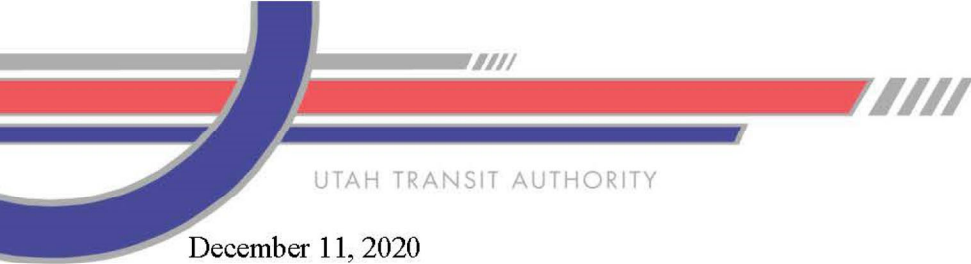
MEMORANDUM TO THE BOARD

TO: Utah Transit Authority Board of Trustees
THROUGH: Carolyn Gonot, Executive Director
FROM: Eddy Cumins, Chief Operating Officer
PRESENTER(S): Eddy Cumins, Chief Operating Officer
Kyle Stockley, Veh Overhaul & Bus Support Manager

BOARD MEETING DATE: January 27, 2021

SUBJECT: S70 Light Rail Vehicle Wraps (Turbo Images)		
AGENDA ITEM TYPE:	Change Order	
RECOMMENDATION:	Approve Change Order to existing contact and associated disbursements with Turbo Images in the amount of \$370,000.	
BACKGROUND:	UTA entered into a contract with Turbo Images on August 19, 2020 to remove the existing vinyl wrap, produce, and install a new wrap on 74 S70 Light Rail Vehicles (LRV's). Due to the COVID-19 pandemic, UTA did not allow vendors on site to evaluate the LRV fleet prior to estimating wrap removal time. During the removal process on the first two LRV vehicles, Turbo Images reported removal of the wrap took over twice as long as originally estimated. As a result, Turbo Images requested UTA increase the amount to remove the wraps from \$5,000 to \$10,000 per vehicle. This is an increase of \$5,000 per vehicle bringing the change order amount to \$370,000.	
DISCUSSION:	UTA staff is requesting approval of a change order to the existing contract with Turbo Images in the amount of \$370,000. The UTA Project Manager monitored the actual wrap removal process on six vehicles and agreed with the contactor's assessment. Actual time to remove the vinyl wrap took approximately 125 hours, which is more than double the quoted number of hours. The difficulty associated with wrap removal is due to the heavy material and strong adhesive. The wrap-removal process is labor intensive and requires a significant amount of chemicals to properly remove the wraps. Based on these findings, UTA staff recommends increasing the amount associated with wrap removal by \$5,000 per vehicle on UTA's 74 S70 LRVs. The total cost of this increase is \$370,000.00, bringing the total value of the Contract to \$1,589,892.00.	
CONTRACT SUMMARY:	Contractor Name: Turbo Images	Contract Number: 20-03257
	Base Contract Effective Dates: 2020-2025	Extended Contract Dates: N/A

	Existing Contract Value: \$1,219,892	Amendment Amount: \$370,000
	New/Total Amount Contract Value: \$1,589,892	
ALTERNATIVES:	Cancel contract and rerelease RFP.	
FISCAL IMPACT:	The project is approved and will be covered by SGR040.	
ATTACHMENTS:	1) Contract Change Order	



December 11, 2020

Turbo Images
Pier Veilleux

pier@turbo-images.com

SENT VIA E-MAIL ONLY

RE: RFP 20-03257 S70 Vehicle Wrap

Contract Modification No. 2

Dear Mr. Veilleux,

The purpose of this letter is to modify the current Independent Contractor Agreement (“Agreement”) between Turbo Images (contractor) and Utah Transit Authority (UTA) dated August 27, 2020 (UTA Contract Number 20-03257). This letter (Modification No. 2) makes the following modifications to the agreement:

1. Increase the amount for the removal of the vinyl wrap from \$5,000 to \$10,000 per vehicle (74). This will be a not to exceed amount. The total amount for this Modification is \$370,000.00, which brings the total amount of the entire contract to \$1,589,892.00

All other terms and conditions of this contract shall continue in full force and effect.

If you are in agreement with the above referenced amendment, please sign on the line indicated below.

UTAH TRANSIT AUTHORITY

TURBO IMAGES

By: _____ Date: _____
Carolyn M. Gonot
Executive Director

By: _____ Date: _____
Pier Veilleux
President & CEO

By: _____ Date: _____
Eddy D. Cumins
Chief Operating Officer

Approved as to form and content

Michael Bell Digitally signed by Michael Bell
Date: 2020.12.11 09:02:33 -07'07'

Michael Bell
Assistant Attorney General
UTA Counsel





MEMORANDUM TO THE BOARD

TO: Utah Transit Authority Board of Trustees
THROUGH: Carolyn Gonot, Executive Director
FROM: Mary DeLoretto, Chief Service Development Officer
PRESENTER(S): Mary DeLoretto, Chief Service Development Officer

BOARD MEETING DATE: January 27, 2021

SUBJECT:	Pass-Through Funds Agreement for Environmental Analysis (Point of the Mountain State Land Authority and Utah Department of Transportation)
AGENDA ITEM TYPE:	Revenue Contract
RECOMMENDATION:	Authorize the Executive Director to execute the pass-through funding agreement with Point of the Mountain State Land Authority (POMSLA) and Utah Department of Transportation (UDOT) for \$750,000 to help fund an environmental study.
BACKGROUND:	During the 2020 legislative session, \$750,000 was appropriated to the Governor's Office of Economic Development for POMSLA from the Transit Transportation Investment (TTIF) fund. The legislation for the funds specifies that the funding will be used by UDOT to perform an environmental analysis. UDOT intends for UTA to conduct the environmental study. Transfer of the funds to UTA requires execution of an agreement between the affected State agencies (POMSLA & UDOT) and UTA.
DISCUSSION:	<p>This revenue contract is for transfer of the \$750,000 from the Point of the Mountain State Land Authority to the Utah Department of Transportation and then to the Utah Transit Authority to begin an environmental study.</p> <p>The Point of the Mountain Transit Study began in August 2019 and recently identified a locally preferred alternative between Draper FrontRunner on the north end and Lehi near Traverse Mountain and Adobe on the south end, with two potential stations at The Point. The recommended mode is bus rapid transit with almost 90% exclusive lane. The next phase of the project is completion of an environmental study for the recommended locally preferred alternative. The \$750,000 included in this revenue contract will assist with completion of the environmental study.</p> <p>Transfer of the TTIF funds is contingent upon receiving matching funds from non-State sources. UTA will provide the matching funds from local funds programmed in UTA's 2021 capital budget.</p>

	<p>In December 2020, UTA applied for \$3M from WFRC through their STBG program to help fund completion of the environmental study. The total cost for the environmental study is estimated at \$4M.</p>
ALTERNATIVES:	<p>If this pass-through agreement is not executed, completion of the environmental study may be delayed, and the associated rapid transit connection between southern Salt Lake County and Northern Utah County with a connection to The Point will be delayed.</p>
FISCAL IMPACT:	<p>These legislative funds will offset the costs that UTA would otherwise incur as part of the environmental study for the POM Transit project. The POM Transit project is included in UTA's approved 5-year Capital Plan.</p>
ATTACHMENTS:	<ol style="list-style-type: none">1. Project Reimbursement Agreement – POMSLA, UDOT, UTA

This PROJECT REIMBURSEMENT AGREEMENT ("Agreement") is entered into between the Point of the Mountain State Land Authority, an Independent State Entity of the State of Utah ("POMSLA"), the Utah Department of Transportation, an agency of the State of Utah ("UDOT") and Utah Transit Authority, a public transit district organized pursuant to the Utah Public Transit District Act ("UTA"). POMSLA, UDOT, and UTA may be referred to hereafter as an Agency or Agencies, as the context requires.

RECITALS

Whereas, House Bill (HB) 3 from the 2020 Legislative Session, Item 164, appropriates \$750,000 to the Governor's Office of Economic Development for the Point of the Mountain State Land Authority from the Transit Transportation Investment Fund and specifies that the funding will be used by UDOT to perform an environmental analysis of the locally preferred alternative for transit near Point of the Mountain;

Whereas, UDOT intends that UTA conduct the study identified in HB 3;

Whereas, Utah Code Section (UCA) 63J-1-220(2) mandates that state agencies may not provide UTA with state pass through funding unless the agency executes an agreement with UTA. In addition, the agreement must require that UTA provide a written description and itemized report at least annually detailing the expenditure of the state money or the intended expenditure of any state money that has not been spent and a final written itemized report when all the state money is spent; and

Whereas, the Parties enter into this Pass Through Funds Agreement in order to comply with UCA 63J-1-220(2). The Parties do not intend to create any type of Interlocal cooperative agreement or endeavor under UCA 11-13-101 et. seq.

AGREEMENT

The parties agree as follows:

1. For FY 2021 POMSLA will transfer the \$750,000 it has received from the Transit Transportation Investment Fund to UDOT, consistent with HB 3 and UDOT will transfer that \$750,000 to UTA to use toward completion of an environmental analysis of the locally preferred alternative. These transfers will occur within 10 days of the execution of the Agreement.

2. Consistent with the requirements of HB 3, the transfer of funds is contingent on receiving matching funds from non-State sources. UTA will provide the matching funds from local funds programmed in the agency's 2021 capital budget.

3. UTA will spend the money only for the identified environmental analysis. UTA shall provide a written description and itemized report annually detailing the expenditure of the state money or the intended expenditure of any state money that has not been spent and a final written itemized report when all the state money is spent; and

4. Each party agrees to undertake and perform all further acts that are reasonably

necessary to carry out the intent and purposes of this Agreement at the request of the other party.

5. The failure of any party to insist upon strict compliance of any of the terms and conditions, 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.

6. This Agreement constitutes the entire agreement between the parties and supersedes any prior understandings, agreements, or representations, verbal or written. No subsequent modification or amendments will be valid unless in writing and signed by both parties.

7. Each party represents that it has the authority to enter into this Agreement and the Agreement may be signed in counterparts.

POINT OF THE MOUNTAIN STATE LAND AUTHORITY

By:
Alan Matheson, Executive Director

Date:

UTAH TRANSIT AUTHORITY

By:
Carolyn Gonot, Executive Director

Date:

By:
Mary DeLoretto, Chief Serv. Dev. Officer

Date:

Approved as to Form  1/11/2021
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UTAH DEPARTMENT OF TRANSPORTATION

By:

Date:



MEMORANDUM TO THE BOARD

TO: Utah Transit Authority Board of Trustees
FROM: Carolyn Gonot, Executive Director
PRESENTER(S): Carlton Christensen, Chair Board of Trustees

BOARD MEETING DATE: January 27, 2021

SUBJECT:	Closed Session
AGENDA ITEM TYPE:	Closed Session
RECOMMENDATION:	Approve moving to closed session for discussion of pending or reasonably imminent litigation
DISCUSSION:	<p>Utah Open and Public Meetings Act allows for the Board of Trustees to meet in a session closed to the public for various specific purposes. The purpose for this closed session is:</p> <ul style="list-style-type: none">• Strategy session to discuss pending or reasonably imminent litigation