



# CONTRACT ROUTING SHEET

## CONTRACT SECTION

1) Contract No. **18-2398TP** (Assigned by Purchasing) Contract Administrator: **Teresa Pickett**

2) Contract Type  A. A&E/Design  B. Blanket PO  C. Construction  D. Goods  E. Modification  
 E. Option  F. Other  G. Renewal  H. Services  I. Task Orders

3) Procurement Method  RFQ (Quote)  IFB (Low Bid)  RFQ (Qualification)  RFP (Best-value)  Sole source  Other: \_\_\_\_\_

4) Contract Title **TIGER Grant First/Last Mile Connections PHASE 1**

5) Description (of contract/project) **Design and Construction of projects in cities and counties throughout the region, funded in part with a TIGER grant (Transportation Improvement Generating Economic Recovery)**

6) Contractor Name **Granite Construction Company**

7) Effective Dates Beginning: **04/13/18** Ending: **12/31/21**

8) Option to renew?  Yes  No Renewal terms **N/A**

## FINANCIAL SECTION

9) Contract Amount **\$ 297,390.00** Is the amount an estimate?  Yes  No  
*(Estimate if per transaction cost)*

9a) If estimated, how was the estimate calculated? **This amount is only for the Phase 1 portion of the work.**

10) Is the amount a one-time purchase or annual recurring purchase?  One-time  Recurring

11) Account Code **40-3163.68912** Capital Project Code **MSP16318**

12) Budgeted?  Yes  No Budget amount: **\$ 12,777,222.00** 2018 approved budget in IPCS

13) Will this contract require support from another department?  Yes  No

14) If so, is the other department(s) aware of this contract and the required support?  Yes  No

## SIGNATURE SECTION

15) Legal Counsel has determined this contract requires a signature from the CEO/President. Yes

16) If box 2a or 2c is checked has the Qualified Health Insurance Certificate been verified?  Yes  No

17) The attached contract has been reviewed and is approved as to form.

	Route to?	Initials	
Attorney/Legal	<input checked="" type="checkbox"/> Yes	<b>BWS</b>	<u>Bart Simmons</u> Print Name
Accounting Reviewed	<input checked="" type="checkbox"/> Yes	<b>BBS</b>	<u>Bryan Steele</u> Print Name
18) Approval Signatures:			
Manager/Program Manager	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<b>RW</b>	<u>Richard Miller</u> Print Name
SGM, RGM, or Chief/VP <i>(Required up to \$50,000)</i>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<b>N/A</b>	<u>N/A</u> Print Name
Chief/VP <i>(Required up to \$100,000)</i>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<b>WJM</b>	<u>W. Steve Meyer</u> Print Name
President/CEO <i>(Required over \$100,000)</i>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<b>JAB</b>	<u>Jerry Benson</u> Print Name

## RECORDS SECTION

19) To be completed by the Administrative Services Clerk

SIRE ID \_\_\_\_\_

Completion date \_\_\_\_\_

Contract No.: 18-2398TP

**CONSTRUCTION MANAGER / GENERAL  
CONTRACTOR AGREEMENT**

**Phase 1 Pre-Construction Services**

**TIGER Grant First/Last Mile Connections**



**UTAH TRANSIT AUTHORITY  
669 WEST 200 SOUTH  
SALT LAKE CITY, UTAH 84101**

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**CONSTRUCTION MANAGER / GENERAL CONTRACTOR AGREEMENT**  
**Phase 1 Pre-Construction Services**

This Construction Manager / General Contractor Agreement – Phase 1 Pre-Construction Services (“**Agreement**”) is between the Utah Transit Authority, a public transit district organized under the laws of the State of Utah (“**UTA**” or the “**Authority**”), and Granite Construction Company (“**Contractor**”), a Utah Corporation. UTA and the Contractor are each individually a “**Party**” and collectively, the “**Parties**”.

**RECITALS**

A. UTA is engaged in a project to design and construct projects in cities and counties throughout the region, funded in part with a Transportation Investment Generating Economic Recovery (TIGER) Grant (collectively, the “**Program**”). The Program consists of ninety-four (94) separate projects (collectively, the “**Projects**” on individually, a “**Project**”). The list of Projects is attached as Exhibit A.

B. Thirty-three (33) of the Projects received local matching funds from the cities and counties (the “**Local Partners**”) in which the Projects will be constructed. The remaining sixty-one (61) Projects will be funded by UTA. Each Project’s funding source is identified in Exhibit A.

C. On January 5, 2018, UTA issued Request For Proposals No. 18-2398TP (the “**RFP**”), seeking interested parties to submit Proposals to perform the work required by the Project.

D. UTA evaluated the proposals as required under the Utah Procurement Code and determined that the Contractor’s proposal is most advantageous to UTA.

E. UTA and Contractor desire to enter into this Agreement to define their respective roles and responsibilities with respect to the Program.

**AGREEMENT**

Therefore, the Parties agree as follows:

**1. Scope of Work; Standard of Care.** (a) Contractor shall perform the Phase 1 Work. In the Contract Documents, “Phase 1 Work” means all the pre-construction services necessary to assist the Parties in reaching agreement on lump sum construction prices and scope of work for each of the Projects concerning the Phase 2 elements of the Program (construction). The specific tasks that comprise the Phase 1 Work are more particularly set forth on Exhibit B.

(b) Contractor shall perform the Work in a professional manner, using at least that standard of care, skill and judgment which can reasonably be expected from similarly situated professionals.

(c) Contractor acknowledges and understands that the Local Partners providing funds for the Projects listed in Exhibit A may withdraw their funding at any time. In such case, Contractor shall not be entitled to any compensation for any Phase 1 Work not yet performed on the withdrawn Project as of the date of the Local Partner's withdrawal, nor shall UTA be liable to Contractor for any consequential damages alleged to result from such withdrawal, including but not limited to lost profits and/or opportunity costs.

**2. Schedule.** (a) Contractor shall commence the Phase 1 Work within seven (7) days of Contractor's receipt of a Notice to Proceed ("NTP") from UTA. UTA is not required to issue a NTP until all insurance and other required documentation is submitted and deemed acceptable by UTA.

(b) Contractor shall commence Phase 1 Work for each of the four (4) years in which the Projects receive funding: 2018, 2019, 2020 and 2021. For Projects that receive TIGER grant matching funds from one of the Local Partners identified in Exhibit A, Contractor shall perform Phase 1 Work for each Project in the year in which the Local Partner transfers its local matching funds to UTA. For Projects funded by UTA, Contractor shall perform Phase 1 Work for each such Project in 2018 or 2019, in accordance with Section 2(b)(ii). To the extent that Contractor performs any Phase 1 Work on a Project prior to the year in which that Project is funded, Contractor does so at its own risk, and shall not be entitled to any compensation until such time as the Project receives funding.

(i) For purposes of Section 2(b), for all Local Partners, "year" shall refer to the Local Partner's fiscal year of July 1 – June 30. Contractor shall perform the Phase 1 Work on the Projects funded by Local Partners in the Local Partner's fiscal year in which the Project is funded.

(ii) For purposes of Section 2(b), Contractor shall perform the Phase 1 Work for the UTA-funded Projects identified as such in Exhibit A so as to align with a July 1 – June 30 year. For purposes of clarity, Contractor shall commence Phase 1 Work on the UTA-funded Projects allocated to 2018 immediately upon commencement of the Work following receipt of NTP. Contractor may commence Phase 1 Work on UTA-funded Projects that Contractor allocates to 2019 on July 1, 2018, so as to align with the Local Partners' fiscal year 2019.

(c) This Agreement will expire on December 31, 2021 (that date, the "**Phase 1 Completion Date**"), unless (i) UTA and Contractor mutually agree to extend the term of the Agreement through a written Change Order in accordance with Section 10, or (ii) UTA and Contractor execute a Phase 2 Construction Services Amendment for any Projects, the duration of Phase 2 Work for which extends beyond the Phase 1 Completion Date, as set forth in Section 8, below. Contractor shall diligently prosecute the Phase 1 Work, and complete all Phase 1 Work in accordance with one or more critical path schedules approved by UTA from time to time.

**3. Price and Payment.** (a) As full compensation for completing the Phase 1 Work in accordance with the Contract Documents, UTA shall pay the Contractor in accordance with the rates indicated in Contractor's Proposal and subject to the not-to-exceed amount of **\$297,390.00** (the "**Phase 1 Contract Pricing**"). The procedures for invoicing and payment are set forth in Section 9, below.

**4. Contract Documents.** (a) The Contract Documents consist of the following:

- (1) All written amendments and Change Orders to this Agreement executed in accordance with Section 10;
- (2) This Agreement, including its exhibits, and specifically including the Federal Clauses attached as Exhibit D and General Conditions attached as Exhibit E;
- (3) The Contractor's Proposal in response to the RFP;
- (4) The RFP.

(b) The Parties intend that the Contract Documents include and provide for all aspects of the Phase I Work that are necessary for the proper initiation, performance, and completion of the Phase I Work by the Contractor, prior to the Phase I Completion Date set forth in Section 2, and for the Phase I Contract Pricing. The Parties intend that the Contract Documents be interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards.

(c) If any terms of the Contract Documents contradict any other terms, the terms contained in the more recent Contract Document will govern.

(d) Contractor acknowledges that, prior to the execution of this Agreement, it has carefully reviewed the Contract Documents for errors, omissions, conflicts or ambiguities (each, a "**Discrepancy**"), and is not aware of any Discrepancies as of the execution of this Agreement. If the Contractor becomes aware of a Discrepancy, the Contractor shall immediately notify UTA's Project Manager of that Discrepancy in writing. UTA's Project Manager shall promptly resolve the Discrepancy in writing. Contractor's failure to promptly notify UTA of an apparent discrepancy will be deemed a waiver of Contractor's right to seek an adjustment of the Contract Price and Substantial Completion Date due to the discrepancy.

(e) The Contract Documents form the entire contract between UTA and the Contractor and by incorporation in this Agreement are as fully binding on the Parties as if repeated in this Agreement. No oral representations or other agreements have been made by the Parties except as specifically stated in the Contract Documents.

**5. Representatives of the Parties.** (a) UTA designates Richard Miller as its Project Manager, and W. Steve Meyer as its Senior Representative. UTA's Contract Administrator for this Agreement is Teresa Pickett. Questions or correspondence regarding the contractual aspects of this Agreement should be directed to Ms. Pickett, at the address set forth in Section 14. UTA's Project Manager, Senior Representative, and Contract Administrator are referred to collectively as the "**UTA Representatives**."

(b) Contractor designates Casey Green as its Project Manager and Eric Wells as its Senior Representative (collectively, the "**Contractor Representatives**").

**6. Key Personnel.** (a) Contractor shall ensure that the following Key Personnel remain assigned to the Program until Final Completion:

(1) Project Manager and

(2) Construction Manager.

(b) Contractor must obtain permission, in writing, from UTA's Senior Representative or his/her designee, prior to removal of the Key Personnel identified above. In connection with a request to replace Key Personnel, the Contractor must identify a proposed replacement, who must meet the requirements of the position stated in the RFP.

**7. Insurance.** Contractor shall obtain and maintain the insurance coverages set forth in Exhibit C, and comply with the obligations set forth in Exhibit C, for the entirety of the Program.

**8. Phase 2 Construction Services Amendment.** At the conclusion of Phase 1 Work for the Projects in each year of the Program, the Contractor shall submit to UTA, in one joint submission, a separate lump sum construction price for each of the Projects. UTA and Contractor shall negotiate the cost of each Project individually. For those Projects on which UTA and Contractor agree on a scope of construction services and a lump sum construction price, UTA and Contractor may execute an amendment to this Agreement (a "**Phase 2 Construction Services Amendment**"). UTA and Contractor may execute a separate Phase 2 Construction Services Amendment for each Project on which UTA and Contractor agree on the scope of construction services and a lump sum construction price. The Phase 2 Construction Services Amendment will detail the scope, schedule, and lump sum price of the Phase 2 construction work for the Project in question, and will include other terms and conditions applicable to construction work. Execution of this Agreement in no way obligates UTA to execute a Phase 2 Construction Services Amendment for any of the Projects included in the Program.

**9. Invoicing and Payment.** (a) To receive payment, Contractor shall submit to UTA an Application for Payment requesting payment for all Phase 1 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 contain an invoice for the period of work for which the Contractor is seeking payment. The invoice must identify the number of hours worked per each Task stated in the Scope of Work attached as Exhibit B. The total hours worked on each Task must be further broken down by the title or position of the individual(s) performing the work and their hourly rates. The Application for Payment may be accompanied by other supporting documentation sufficient to establish Contractor's entitlement to receive payment. The total sum requested for the Phase 1 Work shall not exceed the Not to Exceed price stated in Section 3, including any amendments thereto properly issued in accordance with Section 10 herein.

(b) The Application for Payment will constitute Contractor's representation that the Phase 1 Work described therein has been performed consistent with the Contract Documents, and that the hours submitted are accurate.

(c) UTA shall pay Contractor all amounts properly requested and documented within thirty (30) days of receipt of an Application for Payment. Notwithstanding the preceding sentence, 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 hereunder, UTA will notify Contractor in writing at least five (5) days prior to the date payment is due. The notice must indicate the specific amounts UTA intends to withhold, the reasons and contractual basis for the withholding, and the specific measures Contractor must take to rectify UTA's concerns. Contractor and UTA will attempt to resolve UTA's concerns prior to the date payment is due. If the Parties cannot resolve such concerns, Contractor may pursue its rights under the Contract Documents, including those under Section 12. Contractor shall continue to perform the Phase 1 Work pending the resolution of any such dispute.

**10. Change Orders.** Contractor shall not undertake any activity that materially changes the Phase 1 Work, or materially deviates from the requirements of the Contract Documents, except as authorized by a Change Order or DAP (as defined by, and to be issued in accordance with the provisions set forth in, the attached General Conditions).

**11. Indemnity.** Contractor, to the fullest extent permitted by law, shall indemnify, hold harmless and defend UTA, its officers, directors, 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 to the extent resulting from the negligence or willful misconduct of Contractor, Contractor's consultants and subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable.

**12. Dispute Resolution; Forum.** The Parties shall attempt in good faith to resolve through negotiation any dispute arising out of or relating to this Agreement. If the Parties cannot resolve a dispute through good faith negotiation, UTA's Project Manager and Contractor's Project Manager shall meet at least once to negotiate and attempt to resolve the dispute. Such meeting shall be at the request of either Party within seven (7) Days of dispute arising. If UTA's Project Manager and Contractor's Project Manager are not able to resolve the dispute within fourteen (14) Days of their first meeting, UTA's Senior Representative and the Contractor's Senior Representative shall meet at least once to attempt to resolve the dispute before either Party may commence litigation to resolve the dispute. The exclusive forum for any such litigation is the Third District Court in and for Salt Lake County, Utah. If UTA's Senior Representative and Contractor's Senior Representative are unable to resolve a dispute, the Parties may, upon mutual agreement, submit such dispute to non-binding mediation, to be governed by terms acceptable to both Parties.

**13. Termination.** (a) Upon ten (10) days' written notice to Contractor, UTA may, for its convenience and without cause, elect to terminate this Agreement. If UTA terminates the Agreement for its convenience, UTA shall pay Contractor for Phase 1 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.

(b) If Contractor materially fails to perform any of its obligations under this Agreement, and such failure is not cured within ten (10) days of written notice from UTA identifying the breach, then UTA may terminate the Agreement for default. If UTA terminates the Agreement for default, UTA shall pay Contractor for Phase 1 Work satisfactorily performed up to the date of the notice of



termination, less costs and expenses incurred by UTA as a result of the default. Notwithstanding the foregoing, no cure period shall be required if the 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.

**14. Notices.** (a) To be deemed valid, all notices, requests, claims, demands and other communications between the Parties ("Notices") must be in writing and addressed as follows:

If to the Utah Transit Authority:

Utah Transit Authority  
ATTN: Teresa Pickett  
669 West 200 South  
Salt Lake City, UT 84101

With a required copy to:

Utah Transit Authority  
ATTN: General Counsel  
669 West 200 South  
Salt Lake City, UT 84101

If to the Contractor:

**Granite Construction Company**  
ATTN: Eric Wells  
1108 E South Union Ave.  
Midvale, UT 84047

(b) To be deemed valid, Notices must be given by one of the following methods: (i) by delivery in person, (ii) by a nationally recognized next day courier service, or (iii) by first class, registered or certified mail, postage prepaid. Notice shall be deemed received when received in hand by the Party, as set forth above.

(c) Either Party may change the address at which that Party desires to receive written notice by delivery of Notice of such change to the Party as set forth above. Notices will be deemed 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 that was not properly communicated shall not defeat or delay the effectiveness of a Notice.

**15. Work Product.** All data and deliverables developed and furnished by Contractor pursuant to this Agreement including, but not limited to, design drawings, specifications, construction plans, safety plans, schedules, construction contracting plans, cost estimates and training materials (collectively and generically referred to in this Article as "Work Product") are the property of UTA when produced. All Work Product must be delivered to UTA in accordance with the timetables set forth in the Agreement. In the event this Agreement is terminated prior to completion of the Work, or if, upon completion of the Phase I Work, the Parties do not for any reason execute a Phase 2 Construction Services Amendment for a Project, then Contractor shall transmit all Work Product completed or in-process as of the date of termination. UTA shall not be construed to be the owner of any intellectual property contained in the Work Product that was owned or created by Contractor outside of the scope of this Agreement. However, with respect to such intellectual property of Contractor, Contractor hereby grants UTA a non-exclusive perpetual license to use such intellectual property to the full extent reasonably necessary for UTA's use and enjoyment of the

Work Product furnished under this Agreement. Such license shall be assignable by UTA as necessary for the use and enjoyment of the Work Product, including to the Local Partners or stakeholders that will be responsible for the operations and maintenance of a completed Project.

**16. Prohibited Interest.** No member, officer, agent, or employee of UTA during his or her tenure or for one year thereafter shall have any interest in, direct or indirect, including prospective employment by, Contractor or the proceeds under this Contract without specific written authorization by UTA, which UTA may withhold in its sole discretion.

**17. 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 this Contract without prior written approval by UTA.

**18. Successorship.** Contractor and UTA intend that the provisions of the Contract Documents are binding upon the Parties, their employees, agents, heirs, successors and permitted assigns.

**19. Governing Law.** The Agreement is 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.

**20. 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, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provisions or parts of the provision of the Contract Documents, which will remain in full force and effect as if the unenforceable provision or part were deleted.

**21. 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.

**22. Headings.** The headings used in this Agreement, 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.

**23. 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.

**24. Counterparts.** The Parties may execute this Agreement in any number of counterparts, each of which when executed and delivered will constitute a duplicate original, but all counterparts together will constitute a single agreement.

**25. Effectiveness; Date.** The Agreement will become effective when all Parties have fully signed it. The date of this Agreement will be the date it is signed by the last individual to sign it (as indicated by the date associated with that individual's signature).

**26. General Conditions.** Contractor shall be further bound by the General Conditions attached as Exhibit E to this Agreement. In the event of a conflict between this Agreement and the General Conditions, the terms of this Agreement shall govern.

Each individual is signing this Agreement on the date stated opposite that individual's signature.

**UTAH TRANSIT AUTHORITY**

By: [Signature]  
Jerry Benson  
President and CEO

Date: 4-11-18

By: [Signature]  
~~Fodd Provost~~ Steve Meyer  
Acting VP of Operations, Capital, & Assets

Date: 4/11/18

By: [Signature]  
Richard Miller  
Project Manager

Date: 4/10/2018

Approved as to Legal Form:

By: [Signature]  
Utah Transit Authority  
Legal Counsel

**Granite Construction Company**

By: [Signature]  
Name: Jigisha Desai

Date: April 3, 2018

Title: Vice President

Contractor's Federal ID Number:  
94-0519552



## **EXHIBIT A**

### List of Projects

Project ID	Project Description	Project Type	MUNICIPALITY	Project Status Cost	Year Funds Available
AMF_BKP_1	Bike Racks (x5) FR Station	Bike Parking	American Fork	\$3,923	2018
AMF_BKR_1	Repair Stand FR Station	Bike Repair Stand	American Fork	\$1,997	2018
AMF_WAY_1	Message Board FR Station	Wayfinding	American Fork	\$5,606	2018
BOU_ADA_1	ADA Ramps (x 50)	ADA	Bountiful	\$255,932	2018
CLE_BKP_1	Bike Racks FR Station	Bike Parking	Clearfield	\$3,923	2018
CLE_BKR_1	Repair Stand FR Station	Bike Repair Stand	Clearfield	\$1,997	2018
CLE_BSL_1	Bus Shelter (x2) FR Station	Bus Shelter	Clearfield	\$41,050	2018
CLE_WAY_1	Message Board FR Station	Wayfinding	Clearfield	\$5,606	2018
DRA_BKL_5	On FrontRunner Blvd to Vista Station	Bike Lane	Draper	\$14,215	2018
DRA_BKP_1	Draper FR Station: expand bike racks	Bike Parking	Draper	\$3,923	2018
DRA_BKR_1	Draper FR Station: add bike repairs stands	Bike Repair Stand	Draper	\$1,997	2018
DRA_WAY_1	Draper FR Station: install new larger message boards	Wayfinding	Draper	\$5,606	2018
FAR_ADA_1	ADA Ramps (x9) Glovers and 650 West	ADA	Farmington	\$38,841	2018
FAR_BKL_1	State Street; 1100 W to 400 W	Bike Lane	Farmington	\$27,589	2018
FAR_CWI_1	400 W State St - Solar flashing lights	Crosswalk Improvement	Farmington	\$28,528	2018
FAR_CWI_3	W Promontory & 100 N (Clark Lane) Rectangular Rapid Flashing Beacon (KFAT)	Crosswalk Improvement	Farmington	\$29,398	2018
FAR_SWK_3	I-15 Frontage Road (East of I-15)	Sidewalk	Farmington	\$180,463	2019
FAR_SWK_4	650 West (Tippetts Lane); 100 North to 1st intersection south of Glovers	Sidewalk	Farmington	\$693,763	2018
FAR_CWI_6	380 Station Pkwy- ADA ramps with striped crossing from south by Nordstrom's to north UTA Farmington Station	Crosswalk Improvement	Farmington	\$10,939	2020
FAR_SWK_7	Glovers Lane; Davis County Rd to S 325W	Sidewalk	Farmington	\$195,478	2018
FAR_WAY_1	FR Station - Wayfinding	Wayfinding	Farmington	\$8,968	2018
LEH_BKP_1	Bike Lockers Lehi FR Station	Bike Parking	Lehi	\$3,923	2018
LEH_BKP_2	Bike Racks Lehi FR Station	Bike Parking	Lehi	\$11,411	2018
LEH_BKR_1	Repair Stand Lehi FR Station	Bike Repair Stand	Lehi	\$1,997	2018
LEH_OP_1	Bridge - Pedestrian Overpass - Lehi Rail Trail @ SR 92	Overhead Pedestrian	Lehi	\$5,282,740	2020
LEH_WAY_1	Message Board Lehi FR Station	Wayfinding	Lehi	\$5,606	2018
MID_BKP_1	Midvale Ft Union-bike locker Midvale Center Trax Station	Bike Parking	Midvale	\$15,405	2018
MID_CWI_1	7628 S Center St; Install Hawk signal or other high visibility treatment at N Center Square crosswalk.	Crosswalk Improvement	Midvale	\$198,278	2021
MIL_SWK_1	Main Street: 3900 South to Big Cottonwood Creek/Murray City Boundary; Main Street Connecting Sidewalk and Protected/Buffered Bike Way; Sidewalk, Signing and Striping, ADA Ramps, Raised Pedestrian Crossings	Sidewalk	Millcreek	\$394,712	2020
MUR_BKP_1	Murray FR Station	Bike Parking	Murray	\$3,923	2018
MUR_BKR_1	Murray FR Station	Bike Repair Stand	Murray	\$1,997	2018
MUR_WAY_1	Murray FR Station	Wayfinding	Murray	\$5,606	2018
OGD_BKL_1	23rd St; Wall Ave to Washington Blvd	Bike Lane	Ogden	\$1,922,846	2019
OGD_BKL_4	Grant Avenue Promenade Bike Lane; 22nd St - 24th St	Bike Lane	Ogden	\$1,894,949	2018
OGD_BSL_1	Bus Shelter; 2155 South @ Wall Ave	Bus Shelter	Ogden	\$20,525	2018
ORE_BKP_1	Bike Racks - FR Station	Bike Parking	Orem	\$3,923	2018
ORE_BKR_1	Repair Stand -FR Station	Bike Repair Stand	Orem	\$1,997	2018
ORE_WAY_1	Message Board - FR Station	Wayfinding	Orem	\$5,606	2018
PLV_BKP_1	Bike Racks - FR Station	Bike Parking	Pleasant View	\$3,923	2018
PLV_BKR_1	Repair Stand -FR Station	Bike Repair Stand	Pleasant View	\$1,997	2018
PLV_BSL_1	Bus Shelter x2 @ FR Station	Bus Shelter	Pleasant View	\$34,876	2018
PLV_BSL_4	Sidewalk & Bus Stop 2700 North & Highway 89	Bus Shelter	Pleasant View	\$20,525	2018
PLV_WAY_1	Message Board FR Station	Wayfinding	Pleasant View	\$5,606	2018
PRO_BKP_1	Bike Racks - FR Station	Bike Parking	Provo	\$3,923	2018
PRO_BKR_1	Bike Racks - FR Station	Bike Repair Stand	Provo	\$1,997	2018
PRO_OP_1	Bridge - Pedestrian Overpass - Provo FR Station	Overhead Pedestrian	Provo	\$4,337,804	2020
PRO_WAY_1	Message Board - FR Station	Wayfinding	Provo	\$5,606	2018
ROY_BKP_1	Bike Lockers - FR Station	Bike Parking	Roy	\$23,108	2018
ROY_BKP_2	Bike Racks - FR Station	Bike Parking	Roy	\$3,923	2018
ROY_BKR_1	Repair Stand -FR Station	Bike Repair Stand	Roy	\$1,997	2018
ROY_WAY_1	Message Board - FR Station	Wayfinding	Roy	\$5,606	2018
SAN_BKP_1	Bike Racks - Expo Trax	Bike Parking	Sandy	\$785	2018
SAN_BKP_2	Bike Racks - Sandy Civic	Bike Parking	Sandy	\$3,923	2018
SAN_BKR_1	Repair Stand - Sandy Civic	Bike Repair Stand	Sandy	\$1,997	2018
SAN_MUP_1	Dry Creek Trail (Tunnel Connection Porter Rockwell Trail to Jordan Canal Trail) – Expose the existing Tunnel that is under the TRAX line at 10200 S and extend it under the Future Beatdigger Blvd.	Multi Use Path	Sandy	\$2,721,726	2018
SAN_WAY_1	Message Board - Sandy Civic	Wayfinding	Sandy	\$5,606	2018
SLC_BKP_2	10 North Mario Capecchi Drive-Bike Lockers Medical TRAX	Bike Parking	Salt Lake City	\$22,822	2018
SLC_BKP_1	875 East 400 South-Bike racks TRAX station	Bike Parking	Salt Lake City	\$6,276	2018
SLC_BKP_3	SL Central-Bike racks	Bike Parking	Salt Lake City	\$3,923	2018
SLC_BKR_1	North Temple-Repair Stand	Bike Repair Stand	Salt Lake City	\$1,997	2018
SLC_BKR_2	SL Central-Repair Stand	Bike Repair Stand	Salt Lake City	\$1,997	2018
SLC_BKS_1	GREENbike Expansion	Bike Share Station	Salt Lake City	\$850,566	2019
SLC_OP_1	Pedestrian Overpass Bridge 300 North	Overhead Pedestrian	Salt Lake City	\$6,034,797	2020
SLC_MUP_1	Folsom Trail; Jordan River to North Temple	Multi Use Path	Salt Lake City	\$2,413,958	2019
SLC_WAY_1	North Temple FR Station-Message Board	Wayfinding	Salt Lake City	\$5,606	2018
SLC_WAY_2	SL Central FR station-Message Board	Wayfinding	Salt Lake City	\$5,606	2018
SOJ_BKL_8	114th; Mountain View Corridor to Mustang Way	Bike Lane	South Jordan	\$17,052	2018

<u>Project ID</u>	<u>Project Description</u>	<u>Project Type</u>	<u>MUNICIPALITY</u>	<u>Project Status Cost</u>	<u>Year Funds Available</u>
SOJ_BKL_2	South Jordan Gateway; 106th to 114th	Bike Lane	South Jordan	\$44,255	2018
SOJ_BKL_4	South Jordan Gateway & 106th-North on Jordan Gateway	Bike Lane	South Jordan	\$1,499	2018
SOJ_BKL_5	South Jordan Gateway & 106th-South on Jordan Gateway	Bike Lane	South Jordan	\$1,499	2018
SOJ_BKL_6	South Jordan Parkway (106th); 5510 W (Trax Station) to Split Rock Road	Bike Lane	South Jordan	\$6,177	2018
SOJ_BKL_7	114th South; Grandville to Mountain View Corridor	Bike Lane	South Jordan	\$8,948	2018
SOJ_BKP_1	South Jordan FR Station	Bike Parking	South Jordan	\$3,923	2018
SOJ_BKR_4	11405 S Grandville Ave; South Jordan Trax Station	Bike Repair Stand	South Jordan	\$1,997	2018
SOJ_BKR_2	10351 South Jordan Gateway; FR Station	Bike Repair Stand	South Jordan	\$1,997	2018
SOJ_BKR_1	10605 S Grandville Ave; South Jordan Trax Station	Bike Repair Stand	South Jordan	\$1,997	2018
SOJ_BKR_3	10351 South Jordan Gateway; FR Station	Bike Repair Stand	South Jordan	\$1,997	2018
SOJ_WAY_1	FR Station	Wayfinding	South Jordan	\$5,606	2018
SSL_BKP_1	Central Pointe- Bike Rack (x7) Trax Station	Bike Parking	South Salt Lake	\$5,492	2018
SSL_MUP_2	Parley's Trail Connection from Main to West Temple via street car corridor	Multi Use Path	South Salt Lake	\$615,498	2018
SUCo_BKS_1	Bike Share Program	Bike Share Station	Summit Co	\$860,437	2018
TOCo_BKL_1	100 E; Vine Street to 1000 North	Bike Lane	Tooele	\$332,507	2018
TOCo_BKL_2	Vine Street; 1100 West to 100 E	Bike Lane	Tooele	\$127,280	2019
WEJ_BKP_1	3400 West 8600 South-Bike Lockers Trax Station	Bike Parking	West Jordan	\$17,117	2018
WEJ_BKR_1	5651 West Old Bingham Highway Trax Station	Bike Repair Stand	West Jordan	\$1,997	2018
WEJ_BKR_2	4773 West Old Bingham Highway Trax Station	Bike Repair Stand	West Jordan	\$1,997	2018
WEJ_BKR_3	3400 West 8600 South Jordan Valley Trax Station	Bike Repair Stand	West Jordan	\$1,997	2018
WEJ_RRX_2	Sidewalk and RR ped crossing- 4773 West Old Bingham Highway	RR Crossing	West Jordan	\$101,499	2020
WEJ_WAY_1	Wayfinding signage to Gardner Village and Jordan River Parkway Trail	Wayfinding	West Jordan	\$2,692	2018
WOC_BKP_1	Bike Racks - FR Station	Bike Parking	Woods Cross	\$5,492	2018
WOC_BKP_2	Bike Racks - FR Station	Bike Parking	Woods Cross	\$3,923	2018
WOC_BKR_1	Bike Repair -FR Station	Bike Repair Stand	Woods Cross	\$1,997	2018
WOC_WAY_1	Message Board - FR Station	Wayfinding	Woods Cross	\$5,606	2018
WVC_BKL_5	2700 West Bike Lanes- 4700 South to 4100 South	Bike Lane	West Valley City	\$1,721,308	2021
				<b>\$31,771,432</b>	

ADA = ADA Ramps  
 BKL = Bike Lanes  
 BKP = Bike Parking  
 BKR = Bike Repair Stand  
 BKS = Bike Share Stations  
 BSI = Bus Stop Improvement

CWI = Crosswalk Improvement  
 OP = Overhead Pedestrian Bridge  
 RRX - Railroad Crossing  
 SWK = Sidewalk  
 MUP = Multi-Use Path  
 WAY = Wayfinding

## EXHIBIT B

### Scope of Phase 1 Work

TASK	DESCRIPTION
1	The Contractor shall provide a PM and associated staff.
2	The Contractor, the Sponsors and the Local Partners shall attend a meeting to develop a professionally facilitated partnering process. The partnering process will be implemented as soon as possible to facilitate the year's Phase 1 work, including the early resolution of potential disputes.
3	<p>The Contractor shall review the Concept Reports for the year's Projects provided by UTA on the Program Website. The Contractor's review shall recommend whether any of the designs are sufficiently complete and ready for construction and shall submit such recommendations to UTA for consideration and, if accepted, approval. For those designs that are not sufficiently complete or that do not have a design, the Contractor shall prepare to work with the separately-procured Designer to complete the designs. For those Projects that are sufficiently complete, the Contractor shall commence preparing the construction cost estimates that will factor into the lump sum construction price for those designs.</p> <p>The Contractor shall consult with, advise, assist and provide recommendations to the Sponsors, the Local Partners and the design team(s) on all aspects of the planning, design, and proposed construction. This task includes recommendations on design packaging to advance construction.</p>
4	The Contractor shall participate in a kickoff meeting and goal setting session(s) with UTA, the Local Partners with Projects funded in the particular year, the other Sponsors and Designer. The outcome of this session will be to review the Projects funded that year, develop a schedule and determine how best to meet the goals stated in this RFP. The kickoff meeting will additionally discuss logistics of the year's Projects and other issues attendant to Phase 1 work.
5	The Contractor, UTA and the Designer shall conduct a pre-design meeting to address such issues as: which of the year's Projects require design beyond what is provided in the Concept Reports, design milestones, design reviews, scheduling, open-book cost estimating, long lead material procurement, and other related issues. During this meeting, the Contractor will prepare to work with the separately procured Designer to develop the designs for the Projects requiring such with the goal of determining the construction costs (and lump sum construction price) for each of the year's Projects.
6	The Contractor shall create the plans identified in the subtasks to this Task 6. (In the Phase 1 Price Proposal work plan [the requirements for which are provided in this RFP], this Task 6

	header will have no specific hours dedicated to it. All hours for work associated with the subtasks to this Task 6 must be allocated in the appropriate subtasks as indicated on Form F.)
6a	The Contractor shall make any modifications necessary to its general safety plan, in compliance with UTA's Construction Safety and Security Program Manual, that addresses specific safety needs for a particular Project.
6b	<p>The Contractor shall make any adjustments necessary to adapt its general Quality Plan to the specific needs of a Project. The goal is to have a Quality Control (QC) plan that ensures equipment and material conformance to the applicable requirements of a Project's specifications. A Project specific QC plan should address such issues as: education, training, tool box meetings, meetings with subcontractors and suppliers, and other activities designed to accomplish the following:</p> <ul style="list-style-type: none"> <li>A) Emphasize the importance of high-quality work;</li> <li>B) Stress the concept that quality is best achieved during initial fabrication and/or installation of the work (i.e., "Do it right the first time");</li> <li>C) Enhance the exchange of technical and other information pertaining to quality throughout the Contractor's Project organization; and</li> <li>D) Eliminate non-complying work requiring rework or replacement.</li> </ul> <p>The Quality Plan must include the Contractor's assurance of the quality of the work of subcontractors at all tiers. UTA will provide Quality Assurance (QA) and oversight for the Projects for which the Contractor and UTA enter into a Phase 2 Construction Services Amendment. The Resident Engineer or its designee will perform QA inspection and testing and will audit the Contractor to verify that work and materials comply with the Concept Reports, drawings, specifications, and all referenced standards, as applicable. Audits will be performed on a systematic basis, coordinated with the Quality Plan or as warranted by general quality trends.</p>
6c	For each of the year's Projects requiring such, the Contractor shall prepare and submit a plan to handle identified hazardous materials during construction and indicate how unanticipated hazardous materials that may be encountered during construction will be mitigated. During the kickoff meeting specified in Task 4 above, this issue shall be discussed with the Local Partners to determine which Projects may require plans to handle hazardous materials.
6d	The Contractor shall prepare and submit a plan to manage storm water runoff during construction in accordance with local jurisdiction criteria for each of the year's Projects requiring such. During the kickoff meeting specified in Task 4 above, this issue shall be discussed with the Local Partners to determine which Projects may require plans for storm water runoff.
6e	The Contractor shall work with UTA to prepare a safety certification plan for use during and for close out of construction of each of the year's Projects.



6f	<p>The Contractor shall prepare and submit a plan to comply with Utah Department of Environmental Quality (DEQ) regulations regarding equipment emissions and dust during construction for each of the year's Projects. During the kickoff meeting specified in Task 4 above, compliance with this requirement will be discussed with the Local Partners and UTA.</p>
7	<p>For those Projects that require design beyond that contained in the Concept Reports, the Contractor shall work with the Designer to develop and finalize the designs. The Contractor shall provide constructability and material availability reviews, along with written reports and recommendations concerning the Concept Reports and designs developed for each of the year's Projects.</p> <p>The VE process during the Phase 1 - Pre-Construction Services Agreement will be considered an ongoing, integrated process as the design progresses, instead of a more "typical" process that would utilize discrete, timetable-based VE reviews (i.e., subsequent to design packages of 30% or 60%). The Contractor shall provide ongoing constructability reviews and VE for each of the Projects, including written reports, comment logs and recommendations of the conceptual drawings and of the preliminary and release for construction design drawings. During the Phase 1 - Pre-Construction Services Agreement in each year, the Sponsors, Designer, Local Partners, and the Contractor will meet on a regular basis to review the major cost elements of each Project. The meetings and follow up assignments will be structured to reduce the cost of the particular Project and/or to improve the value of the Project. This process is intended to provide an interactive and cooperative forum to generate value and to ensure that all Projects are constructed within the allotted budget approved in the TIGER grant.</p>
7a	<p>The Contractor shall review Concept Reports, preliminary and release for construction design drawings and specifications, identify revisions to improve clarity for bidding or competitive procurement, and propose revisions that reduce construction costs and time of performance in written reports submitted to UTA upon request.</p> <p>The Contractor shall prepare a constructability report at specified design milestones as determined in the pre-design meeting specified in Task 5.</p>
8	<p>The Contractor shall develop a Construction Plan for each Project that addresses the needs of each Project. The Construction Plan shall include, but not be limited to, as applicable: proposed construction phasing, staging and field office needs; parking requirements during construction; construction equipment storage; use of public roadways, including haul routes; utility disruptions; protection of properties; dirt/debris mitigation; known hazardous material remediation; storm water drainage management; temporary facilities; traffic management; noise and vibration control; work hours, including, number of shifts and weekends; temporary road closures or detours; emergency vehicle provisions; maintenance of access to all properties; public and worker safety protections; security; coordination with UDOT and the Local Partners to provide temporary signals; and maintenance of construction work zones.</p> <p>The Contractor shall focus on techniques and plans to mitigate impacts to vehicle traffic, and auto/bicycle/pedestrian traffic at road crossings.</p>

9	<p>The Contractor shall prepare, with assistance from the Sponsors and the Local Partners, the necessary documentation to obtain permits for the construction of the year’s Projects.</p> <p>It is anticipated that the Contractor will be responsible for obtaining storm water pollution prevention, construction dewatering, construction, traffic control, and building permits, where applicable. The Contractor shall include the cost for these permits in the lump sum construction price for each Project and will be responsible to develop exhibits for these permits, as necessary. The Contractor shall pay the cost of these permits during the Phase 1 work. If UTA and the Contractor do not enter into a Phase 2 Amendment for a Project on which the Contractor has paid the cost of a permit, UTA will reimburse the cost of the permit to the Contractor, without markup.</p>
10	<p>The Contractor shall participate in on-going risk analysis. The outcome of the ongoing risk analysis should be allocations of risks during any work conducted under a Phase 2 - Construction Services Amendment. UTA anticipates that this Task 10 will include risk workshops during which risk philosophy, issues, and allocation will be discussed by the Sponsors, the Contractor, Designer, Local Partners and other relevant stakeholders.</p>
11	<p>The Contractor shall prepare, in coordination with UTA, a Contracting Plan for accomplishment of construction and to maximize Disadvantaged Business Enterprise (DBE) opportunities, in accordance with UTA's DBE program. The Contractor shall recommend division of the work to facilitate bidding and award of trade contracts.</p> <p>The Contractor shall identify construction work that the Contractor proposes to self-perform, and how the Contractor will ensure that the pricing of self-performed work will be most advantageous to the Sponsors and the Local Partners. The Contractor shall identify a plan to manage any subcontract that is not performing in accordance with the Project's requirements for budget control, on-time schedule performance, safety, or Quality Control during construction.</p> <p>As a part of the Contracting Plan, the Contractor shall also be required to identify the process it would use to select subcontractors, including with input from UTA, where applicable. The Contractor shall ensure that its process for selecting subcontractors conforms to Utah’s procurement laws and regulations, as well as applicable federal laws and regulations.</p>
12	<p>For the Farmington High School sidewalk, the Contractor shall prepare and submit a lump sum construction price as soon as possible in a timeframe that facilitates completion of construction of the Project by August 1, 2018.</p> <p>For all Projects other than the Farmington High School sidewalk, upon reaching various design milestones established during the pre-design meeting for each Project, the Contractor shall prepare and submit a lump sum construction price to UTA. Cost estimates shall be based on open-book cost estimating and will be on-going during the Phase 1 pre-construction services work.</p>

	<p>The Contractor shall submit a separate lump sum construction price for each Project that receives funding in a particular year. However, the estimates shall all be submitted at the same time to UTA.</p> <p>If agreed to by UTA, the lump sum construction price for a Project will become the price in the Phase 2 - Construction Services Amendment for the Project. If the initial lump sum construction price for a Project exceeds UTA's established construction budget, the Contractor shall notify UTA accordingly and propose how to complete the work within budget. If UTA and the Contractor cannot agree on a lump sum construction price for the Phase 2 - Construction Services Amendment for a Project, UTA reserves the right to terminate the CM/GC Contract for the Project in question and procure the construction of the Project in an alternative manner, as UTA deems appropriate.</p> <p>The Contractor shall identify the risks that it assumed when preparing the cost estimates at preliminary and release for construction design and submit such assumptions with the lump sum construction price to UTA.</p>
12a	<p>In conjunction with development of each lump sum construction price for the Phase 2 - Construction Services Amendment, the Contractor shall prepare a detailed, baseline, cost-loaded, Critical Path Method (CPM) schedule for schedule management and progress payment processing during the Phase 2 - Construction Services Amendment. In addition, the Construction Plan and Contracting Plan for each Project will become part of the Phase 2 amendment for that Project. Where a Phase 2 - Construction Services is entered for a Project, this information shall be incorporated into the amendment and NTP for the year's Phase 2 Projects, if any. In addition to the schedule, the Contractor shall submit a finalized budget and schedule control management plan to ensure completion of construction within each Project's budget and in accordance with the applicable baseline schedule.</p>
13	<p>The Contractor shall provide Local Partner coordination and outreach services. The Contractor shall assist UTA and the Local Partners with coordination with residents, businesses, utilities, potential developers, and other Project Local Partners on an as needed basis.</p>

## **EXHIBIT C**

### Insurance Requirements



## Utah Transit Authority

### Exhibit C – Insurance Requirements

Contractor shall procure and maintain for the duration of the contract, and for 6 years thereafter, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees, or subcontractors.

#### MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$10,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this Program or the general aggregate limit shall be twice the required occurrence limit. The policy shall provide \$10,000 medical payments coverage.
2. **Automobile Liability:** Insurance Services Office Form Number CA 0001 covering Code 1 (any auto), with limits no less than \$5,000,000 per accident for bodily injury and property damage.
3. **Workers’ Compensation** insurance as required by the State of Utah, with Statutory Limits, and Employers’ Liability insurance with a limit of no less than \$1,000,000 per accident for bodily injury or disease.
4. **Builder’s Risk** (Course of Construction) insurance utilizing an “All Risk” (Special Perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions.
5. **Professional Liability**, with limits no less than \$1,000,000 per occurrence or claim, and \$1,000,000 policy aggregate.
6. **Contractors’ Pollution Legal Liability** and/or Asbestos Legal Liability and/or Errors and Omissions (if project involves environmental hazards) with limits no less than \$2,000,000 per occurrence or claim, and \$4,000,000 policy aggregate.
7. **Railroad Protective Liability:** For any work to be performed within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, roadbed, tunnel, underpass or crossing or otherwise required by the applicable requirements of the affected railroad (including UTA), the contractor shall provide railroad protective liability insurance naming the affected railroad(s) as insured(s) with minimum limits for bodily injury and property damage of \$2,000,000 per occurrence, \$6,000,000 aggregate and property damage of 2,000,000 per occurrence, \$6,000,000 aggregate, or such other limits as required by the affected railroad.

If the contractor maintains higher limits than the minimums shown above, Utah Transit Authority requires and shall be entitled to coverage for the higher limits maintained by the contractor. Any available insurance

proceeds in excess of the specified minimum limits of insurance and coverage shall be available to Utah Transit Authority.

### **Deductibles and Self-Insured Retentions**

Any deductibles or self-insured retentions must be declared to and approved by Utah Transit Authority. At the option of Utah Transit Authority, either: the contractor shall cause the insurer to reduce or eliminate such deductibles or self-insured retentions as respects Utah Transit Authority, its officers, officials, employees, and volunteers; or the Contractor shall provide a financial guarantee satisfactory to Utah Transit Authority guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

### **Other Insurance Provisions**

The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. *Utah Transit Authority, the Local Partners, and their respective officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy* with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations and automobiles owned, leased, hired, or borrowed by or on behalf of the Contractor. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10, CG 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used).
2. For any claims related to this project, *the Contractor's insurance coverage shall be primary* insurance as respects Utah Transit Authority, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by Utah Transit Authority, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
3. Each insurance policy required by this clause shall provide that coverage shall not be canceled, except with notice to Utah Transit Authority.

### **Builder's Risk (Course of Construction) Insurance**

Contractor may submit evidence of Builder's Risk insurance in the form of Course of Construction coverage. Such coverage shall **name Utah Transit Authority as a loss payee** as their interest may appear.

If the project does not involve new or major reconstruction, at the option of Utah Transit Authority, an Installation Floater may be acceptable. For such projects, a Property Installation Floater shall be obtained that provides for the improvement, remodel, modification, alteration, conversion or adjustment to existing buildings, structures, processes, machinery and equipment. The Property Installation Floater shall provide property damage coverage for any building, structure, machinery or equipment damaged, impaired, broken, or destroyed during the performance of the Work, including during transit, installation, and testing at Utah Transit Authority's site.

### **Claims Made Policies**

If any coverage required is written on a claims-made coverage form:

1. The retroactive date must be shown, and this date must be before the execution date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of contract work.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective, or start of work date, the Contractor must purchase extended reporting period coverage for a minimum of five (5) years after completion of contract work.
4. A copy of the claims reporting requirements must be submitted to Utah Transit Authority for review.
5. If the services involve lead-based paint or asbestos identification/remediation, the Contractors Pollution Liability policy shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification/remediation, the Contractors Pollution Liability policy shall not contain a mold exclusion, and the definition of Pollution shall include microbial matter, including mold.

### **Acceptability of Insurers**

Insurance is to be placed with insurers with a current A.M. Best rating of no less than A: VII, unless otherwise acceptable to Utah Transit Authority.

### **Waiver of Subrogation**

Contractor hereby agrees to waive rights of subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of Utah Transit Authority for all work performed by the Contractor, its employees, agents and subcontractors.

### **Verification of Coverage**

Contractor shall furnish Utah Transit Authority with original certificates and amendatory endorsements, or copies of the applicable insurance language, effecting coverage required by this contract. All certificates and endorsements are to be received and approved by Utah Transit Authority before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. Utah Transit Authority reserves the right to require complete, certified copies of all required insurance policies, including endorsements, required by these specifications, at any time.

### **Subcontractors**

Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that Utah Transit Authority is an additional insured on insurance required from subcontractors. For CGL coverage subcontractors shall provide coverage with a form at least as broad as CG 20 38 04 13. Contractor may adopt a Contractor Controlled Insurance Program to meet this requirement.

### **Special Risks or Circumstances**

Utah Transit Authority reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other circumstances.



## **EXHIBIT D**

### **Federal Clauses**

#### **NO GOVERNMENT OBLIGATION TO THIRD PARTIES**

The Authority and the 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 this Contract and shall not be subject to any obligations or liabilities to the Authority, the Contractor or any other party (whether or not a party to the Contract) pertaining to any matter resulting from the Contract. The Contractor agrees to include the above clause in each subcontract or purchase order financed in whole or in part with federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the Subcontractor or Supplier who will be subject to its provisions.

#### **PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS**

The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC §3801, et seq. and United States Department of Transportation regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to the Contract. Upon execution of the underlying Contract, the 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 underlying Contract or the FTA assisted project for which the Work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious or fraudulent claim, statement, submission, or certification, the federal government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the federal government deems appropriate. The 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 a contract connected with a project that is financed in whole or in part with federal assistance originally awarded by FTA under the authority of 49 USC §5307, the federal government reserves the right to impose the penalties of 18 USC §1001 and 49 USC §5307(n)(1) on the Contractor, to the extent the federal government deems appropriate. The Contractor agrees to include the above two clauses in each subcontract or purchase order financed in whole or in part with federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the Subcontractor or Supplier who will be subject to the provisions.

#### **ACCESS TO RECORDS AND REPORTS**

The Contractor agrees to provide the Authority, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts and transcriptions. The Contractor also agrees, pursuant to 49 CFR 633.17 to provide the FTA Administrator or his authorized representatives including any project management oversight auditor access to the Contractor's records and construction sites pertaining to a major capital project (defined at 49 USC §5302(a)(1)), which is receiving federal financial assistance through the programs described at 49 USC §§5307, 5309 or 5311. The Contractor further agrees to include in all of its subcontracts and purchase orders under the Contract a provision to the effect that the Subcontractor or Supplier agrees that the Authority, the United States Department of Transportation and the Comptroller General of the United States, the project management oversight auditor, or any of their duly authorized representatives shall, until the expiration of three (3) years after final payment under the subcontract, have access to and the right to examine any directly pertinent books, documents, papers, and other records of the Subcontractor or Supplier.

#### **FEDERAL CHANGES**

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

#### **CIVIL RIGHTS REQUIREMENTS**

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with

Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the 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 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The 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, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, 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, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) The 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

#### **DISADVANTAGED BUSINESS ENTERPRISES (DBE)**

a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is **6.2 %**.

b. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Authority deems appropriate. **Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph** (see 49 CFR 26.13(b)).

c. The Phase 1 Pre-Construction Services Agreement shall not be subject to a specific DBE requirement due to the nature of the Work thereunder. The Authority has established a DBE goal of 7.5% for all Phase 2 Construction Services. Bidders/offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53. Award of this contract is conditioned

on submission of acknowledgement that Contractor will provide the following information to the Authority as required to determine compliance with DBE requirements:

1. The names and addresses of DBE firms that will participate in this contract;
2. A description of the work each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;
5. Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
6. If the contract goal is not met, evidence of good faith efforts to do so.

**Proposers** must present the information required above as a matter of responsiveness (see 49 CFR26.53(3)).

The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

d. The Contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the Authority. In addition, the contractor is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.

e. The Contractor must promptly notify the Authority whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the Authority.

#### **INCORPORATION OF FTA TERMS**

All contractual provisions required by the United States Department of Transportation, as set forth in the most recent edition and revisions of FTA Circular 4220.1F, "Third Party Contracting Guidance," are incorporated by reference into the Contract Documents. All FTA mandated terms shall take precedence over other conflicting terms, if any, in the Contract Documents. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Authority requests that would cause the Authority to be in violation of any FTA terms and conditions.

#### **TERMINATION**

*(For contracts over \$10,000.00)*

a. Upon ten (10) days' written notice to Contractor, the Authority may, for its convenience and without cause, elect to terminate this Agreement. If the Authority terminates the Agreement for its convenience, the Authority shall pay Contractor for Phase 1 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.

b. If Contractor materially fails to perform any of its obligations under this Agreement, and such failure is not cured within ten (10) days of written notice from the Authority identifying the breach, then the Authority may terminate the Agreement for default. If the Authority terminates the Agreement for default, the Authority shall pay Contractor for Phase 1 Work satisfactorily performed up to the date of the notice of termination, less costs and expenses incurred by the Authority as a result of the default. Notwithstanding the foregoing, no cure period shall be required if the 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.

### **GOVERNMENT-WIDE DEBARMENT AND SUSPENSION**

The 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 subcontract or purchase order that it enters into. *(A certification is to be submitted with each bid or offer of \$25,000 or more.)*

### **BUY AMERICA REQUIREMENTS**

The Contractor agrees to comply with 49 USC §5323(j) and 49 CFR Part 661, which provide 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 has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, software, and small purchases (currently less than \$100,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 49 USC §5323(j)(2)(C) and 49 CFR 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content. The Contractor agrees to include these requirements in each subcontract or purchase order financed in whole or in part with federal assistance provided by the Authority.

### **BREACHES AND DISPUTE RESOLUTION**

**Disputes** – Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of The Authority. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the authorized Authority Representative. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the authorized Authority Representative shall be binding upon the Contractor and the Contractor shall abide by the decision.

**Performance During Dispute** – Unless otherwise directed by The Authority, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

**Claims for Damages** – Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within reasonable time after the first observance of such injury or damage.

**Remedies** – Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the Authority and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which The Authority is located.

**Rights and Remedies** – The duties and obligations imposed by the Contract Documents 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 laws. No action or failure to act by The Authority or Authority's authorized representative 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.

### **LOBBYING**

Modifications have been made to the Clause pursuant to Section 10 of the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, *et seq.*]

- Lobbying Certification and Disclosure of Lobbying Activities for third party contractors are mandated by 31 U.S.C. 1352(b)(5), as amended by Section 10 of the Lobbying Disclosure Act of 1995, and DOT implementing regulation, "New Restrictions on Lobbying," at 49 CFR § 20.110(d)

- Language in Lobbying Certification is mandated by 49 CFR Part 19, Appendix A, Section 7, which provides that contractors file the certification required by 49 CFR Part 20, Appendix A.

Modifications have been made to the Lobbying Certification pursuant to Section 10 of the Lobbying Disclosure Act of 1995. Use of "Disclosure of Lobbying Activities," Standard Form-LLL set forth in Appendix B of 49 CFR Part 20, as amended by "Government wide Guidance For New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96) is mandated by 49 CFR Part 20, Appendix A.

**Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.]** - Contractors who apply or bid for an award of \$100,000 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 U.S.C. 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 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

#### APPENDIX A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING

##### Certification for Contracts, Grants, Loans, and Cooperative Agreements

*(To be submitted with each bid or offer exceeding \$100,000)*

The undersigned [Contractor] certifies, to the best of his or her knowledge and belief, that:

(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 an 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 making lobbying contacts to 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 [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*.)]

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was 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 31 U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). 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.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

\_\_\_\_\_ Signature of Contractor's Authorized Official

\_\_\_\_\_ Name and Title of Contractor's Authorized Official

\_\_\_\_\_ Date

#### **CLEAN AIR REQUIREMENTS**

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 USC §§ 7401, et seq. The Contractor agrees to report each violation to the Authority and understands and agrees that the Authority will, in turn, report each violation as required to assure notification to the FTA and the appropriate EPA Regional Office. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with federal assistance provided by FTA.

#### **CLEAN WATER REQUIREMENTS**

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC §1251, et seq. The Contractor agrees to report each violation to the Authority and understands and agrees that the Authority will, in turn, report each violation as required to assure notification to FTA and the appropriate Regional Office of the United States Environmental Protection Agency. The Contractor also agrees to include these requirements in each subcontract or purchase order exceeding \$100,000 financed in whole or in part with federal assistance provided by FTA.

#### **CARGO PREFERENCE**

The Contractor agrees. to: (a) use 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, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; (b) furnish within twenty (20) working days following the date of loading for shipments originating within the United States or within thirty (30) working days following the date of loading for shipments 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 to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the Contractor in the case of a Subcontractor's or Supplier's bill-of-lading.); and (c) include these requirements in all subcontracts and purchase orders issued pursuant to the Contract Documents when the subcontract may involve the transport of equipment, material or commodities by ocean vessel. (*A certification is to be submitted with each bid or offer exceeding \$500,000 if shipping is applicable.*)

#### **FLY AMERICA REQUIREMENTS**

The Contractor agrees to comply with 49 USC §40118 and 41 CFR Part 301-10, which provide that contractors are required to use United States -Flag air carriers for federally 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 49 USC §40118 and CFR Part 301-10.

#### **DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS**

(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. The applicable wages at the time of the solicitation for each of the counties in which Project work will take place are attached to the RFP. The applicable wage rates at the time and for the county in which Phase 2 Work will take place will be attached to the relevant Phase 2 Construction Services Amendment. The wages will apply regardless of any contractual relationship which may be alleged to exist between the 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 a 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 posted at all times by the 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) The contracting officer 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 in conformance with the wage determination. The contracting officer shall approve an additional 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 requested 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 the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer 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 the contracting officer 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 the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

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

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this 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, the 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 the contractor does not make payments to a trustee or other third person, the 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 the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(v)(A) The contracting officer 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. The contracting officer 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 the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer 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 the contracting officer 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 the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

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

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

(2) **Withholding** - The Authority 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 the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime 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 the 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, the Authority may, after written notice to the 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 the 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, the 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. Contractors employing apprentices or trainees under approved programs 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) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Authority for transmission to the Federal Transit Administration. 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. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the 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;

(3) 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 (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the 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) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job.

If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the 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. 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 registered 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 the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed 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 a contractor is performing construction on a project in a 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 the 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 of 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 of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the 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 a 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 greater 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 as 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, the contractor will no longer be 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 29 CFR part 30.

**(5) Compliance with Copeland Act requirements** - The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

**(6) Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime 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 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 this contract.

**(9) Disputes concerning labor standards** - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in 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 the 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 this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the 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 this 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).  
The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

#### **CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

For all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, the Contractor shall comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708), as supplemented by the DOL regulations at 29 C.F.R. part 5. Under 40 U.S.C. § 3702 of the Act, the Contractor shall compute the wages of every mechanic and laborer, including watchmen and guards, on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or to contracts for transportation or transmission of intelligence.

In the event of any violation of the clause set forth herein, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, the Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), 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 this clause 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 this clause.

The FTA 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 the Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same

prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in this section.

The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this agreement.

## **BONDING REQUIREMENTS**

### **Bid Bond Requirements (Construction)**

#### (a) Bid Security

A Bid Bond must be issued by a fully qualified surety company acceptable to (Recipient) and listed as a company currently authorized under 31 CFR, Part 223 as possessing a Certificate of Authority as described thereunder.

#### (b) Rights Reserved

In submitting this Bid, it is understood and agreed by bidder that the right is reserved by (Recipient) to reject any and all bids, or part of any bid, and it is agreed that the Bid may not be withdrawn for a period of [ninety (90)] days subsequent to the opening of bids, without the written consent of (Recipient).

It is also understood and agreed that if the undersigned bidder should withdraw any part or all of his bid within [ninety (90)] days after the bid opening without the written consent of (Recipient), shall refuse or be unable to enter into this Contract, as provided above, or refuse or be unable to furnish adequate and acceptable Performance Bonds and Labor and Material Payments Bonds, as provided above, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, he shall forfeit his bid security to the extent of (Recipient's) damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefor.

It is further understood and agreed that to the extent the defaulting bidder's Bid Bond, Certified Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check (excluding any income generated thereby which has been retained by (Recipient) shall prove inadequate to fully recompense (Recipient) for the damages occasioned by default, then the undersigned bidder agrees to indemnify (Recipient) and pay over to (Recipient) the difference between the bid security and (Recipient's) total damages, so as to make (Recipient) whole.

The undersigned understands that any material alteration of any of the above or any of the material contained on this form, other than that requested, will render the bid unresponsive.

### **Performance and Payment Bonding Requirements (Construction)**

The Contractor shall be required to obtain performance and payment bonds as follows:

#### (a) Performance and Payment bonds

1. The penal amount of performance and payment bonds shall be 100 percent of the original contract price, unless the (Recipient) determines that a lesser amount would be adequate for the protection of the (Recipient).
2. The (Recipient) may require additional performance and payment bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The (Recipient) may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

## **SEISMIC SAFETY REQUIREMENTS**

The Contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The Contractor also agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

### **ENERGY CONSERVATION REQUIREMENTS**

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

### **RECYCLED PRODUCTS**

**Recovered Materials** - The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

### **ADA ACCESS**

**ADA Access for Individuals with Disabilities** – The Contractor agrees to comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The Recipient also agrees to comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of programs or activities receiving Federal financial assistance; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities; with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities; and with other laws and amendments thereto pertaining to access for individuals with disabilities that may be applicable. In addition, the Recipient agrees to comply with applicable implementing Federal regulations, and any later amendments thereto, and agrees to follow applicable Federal implementing directives, except to the extent FTA approves otherwise in writing. Among those regulations and directives are: (1) U.S. DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 C.F.R. Part 37; (2) U.S. DOT regulations, “Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,” 49 C.F.R. Part 27; (3) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB)/U.S. DOT regulations, “Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 C.F.R. Part 1192 and 49 C.F.R. Part 38; (4) U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability in State and Local Government Services,” 28 C.F.R. Part 35; (5) U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities,” 28 C.F.R. Part 36; (6) U.S. General Services Administration (U.S. GSA) regulations, “Accommodations for the Physically Handicapped,” 41 C.F.R. Subpart 101-19; (7) U.S. EEOC, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 C.F.R. Part 1630; (8) U.S. Federal Communications Commission regulations, “Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled,” 47 C.F.R. Part 64, Subpart F; (9) U.S. ATBCB regulations, “Electronic and Information Technology Accessibility Standards,” 36 C.F.R. Part 1194; (10) FTA regulations, “Transportation for Elderly and Handicapped Persons,” 49 C.F.R. Part 609; and (11) Federal civil rights and nondiscrimination directives implementing the foregoing Federal laws and regulations, except to the extent the Federal Government determines otherwise in writing.

### **SEAT BELT USE**

In accordance with Executive Order No. 13043, “Increasing Seat Belt Use in the United States,” April 16, 1997, 23 U.S.C. § 402 note, the Recipient is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned, rented, or personally operated vehicles, and to include this provision in any third party contracts, third party subcontracts, or subagreements involving the Project.

### **DISTRACTED DRIVING, INCLUDING TEXT MESSAGING WHILE DRIVING**

In accordance with Executive Order No. 13513, "Federal Leadership on Reducing Text Messaging While Driving," October 1, 2009, 23 U.S.C. § 402 note, the Recipient is encouraged to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messages while using an employer supplied electronic device and driving a vehicle you own or rent, a company owned, rented or leased vehicle, a privately owned vehicle when performing any company work on behalf of the project or any vehicle on or off duty. This provision is to be included in any third party contracts, third party subcontracts or subagreements at each tier financed with federal funds.

## **EXHIBIT E**

### General Conditions

## **ARTICLE 1**

### **General**

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, or other applicable 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.

“Change Order” has the meaning indicated in Section 7.1 of these General Conditions.

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

“CM/GC” means Construction Manager/General Contractor, which has the meaning stated in Utah Code Annotated (UCA) § 63G-6a-103(15).

“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, and may include a single project or series of projects, as applicable.

“Punchlist” means 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, or the elements or components thereof, 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.** The General Services set forth herein shall apply to govern Contractor’s Work to the extent they do not conflict with specific tasks in the Scope of Work included in the Agreement. In the event of a conflict or ambiguity between the General Services and the specific Scope of Work, the specific Scope of Work shall apply.

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).

2.1.3 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, or the Agreement otherwise provides for the manner in which a schedule is to be developed, 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.

2.2.1 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.

2.2.2 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.

2.2.3 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.

2.2.4 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

2.2.5 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.

2.2.6 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.

2.2.7 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.

2.2.8 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 perpetual, non-revocable 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.**

2.3.1 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.

2.3.2 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, subject to any minimum or maximum concerning the amount of Work that may be self-performed, 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 and UDOT's Safety and Health Manual, as updated from time to time (UTA's Construction Safety and Security Program Manual and UDOT's Safety and Health Manual are incorporated into the Contract Documents by reference). However, Contractor shall be responsible for all additional measures as necessary to protect persons and property and comply with applicable Legal Requirements related to safety. If applicable, Contractor shall be responsible for its and its subcontractor's compliance with all Federal Railroad Administration regulations applicable to Work to be performed in UTA railroad corridors including, without limitation, those set forth in 49 CFR Parts 214, 219, 228, 234 and 236.

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 construction quality control plan as contemplated in UTA's Quality Management Plan and Construction Quality Plan and shall comply with any further requirements to develop and implement a quality control plan if specified in greater detail in the Scope of Work attached to the Agreement. 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 UTA'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.

2.5.4 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 therefor shall relieve Contractor from any of its obligations under the Contract Documents.

2.5.5 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.

2.5.6 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 to 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 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, including an assignment to UTA, if necessary, of the right to prosecute or pursue such warranty. 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 (2) 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 incurred in doing so. If the nonconforming Work creates an emergency requiring an immediate response by UTA, 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.

2.6.6 Contractor shall assign the right to prosecute any and all warranties herein, including the Contractor's warranty and any manufacturer's warranty, to UTA and/or the agency, entity or jurisdiction that owns and/or maintains a completed Project.

## **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 unknown 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, nor do these provisions apply to Hazardous Materials at the Site disclosed to the Contractor or of which the Contractor was aware, or should reasonably have been aware, in developing a price for construction. Those provisions also exclude Hazardous Materials that were properly stored and/or contained at the Site but thereafter released as a result of the negligent performance of the Work by Contractor, its Subcontractors, or anyone for whose acts Contractor is responsible. To the extent that Hazardous Materials are introduced and/or released at the Site by Contractor, its Subcontractors, or anyone for whose acts Contractor is responsible, 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. This Section shall not apply to the extent that UTA and the Contractor have agreed to a method of payment for which a Schedule of Values is unnecessary; in such case, the Contractor shall follow the agreed-upon method of submitting an Application for Payment.

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, and shall contain such information as required by the agreed-upon method of invoicing and 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.

4.4.5 Without limiting the breadth of Section 4.4.4 above, Contractor specifically acknowledges that Contractor's submission of certified payrolls demonstrating full compliance with the applicable federal Davis-Bacon wage rates is a condition to Contractor's payment. UTA may withhold payment of Contractor invoices, in whole or in part, as UTA deems necessary to ensure compliance with the Davis-Bacon Act. In addition to any and all additional remedies contained in the Contract, UTA may withhold a \$50 disincentive fee for each copy of a subcontractor payroll not timely submitted to UTA in accordance with the Contract.

#### **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 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 a 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 must 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.

4.6.4 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.**

4.7.1 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.

4.7.2 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, or in connection with a CM/GC contract, pre-construction 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.

5.1.2 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.

5.1.3 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 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**

6.1 **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.

6.2 **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); (vii) 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.

6.3 **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 may 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.

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. At a minimum, the supporting information and documentation shall consist of: (a) a written statement of facts constituting the basis for the Potential Change Notice, (b) the relevant Contract provisions, (c) an explanation of how the

direction(s), circumstance(s) or condition(s) at issue deviate from the Contract's requirements, (d) mitigation measures taken to date and (e) as applicable, a cost estimate and/or preliminary time impact analysis. Contractor shall promptly respond to all UTA inquiries about the Potential Change Notice and the supporting information and documentation, and shall be required to provide any further information requested by UTA to evaluate the Potential Change Notice.

7.3.4 Contractor shall submit with each Potential Change Notice a sworn certification in a form acceptable to UTA that the amount of time and/or compensation requested includes all known and anticipated impacts or amounts, direct, indirect and consequential, which may be incurred as a result of the events constituting the Potential Change Notice and that Contractor has no reason to believe and does not believe that any information submitted in the Potential Change Notice is falsely represented.

7.3.5 A Potential Change Notice shall not be considered delivered, and UTA shall have no obligation to review such Potential Change Notice until Contractor has provided to UTA all information and other materials required by Sections 7.3.3 and 7.3.4. UTA may, in its sole discretion, waive any submission requirement as UTA may deem appropriate. Any such waiver must be in writing to be valid.

7.3.6 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 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 that 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, provided that Contractor has submitted all information and materials required by Sections 7.2 through 7.6, as applicable, to UTA and UTA has had a reasonable time to review such information. 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 dispute 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 7. Claims must be made by written notice setting forth the basis for the claim, including, at a minimum, all facts known that constitute the claim and applicable Contract provisions affording the relief requested or otherwise at issue. 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 arises, 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 to resolve the Claim. UTA’s Senior Representative and the Contractor’s Management Representative must meet at least once to attempt to resolve a Claim as a condition precedent to a Claim proceeding to mediation and/or litigation.

8.2.3 If the Claim is not resolved within sixty (60) days after the claim is made, either Party may commence litigation to resolve the Claim, provided that all conditions precedent to doing so, including but not limited to those specified in Sections 8.2.1 and 8.2.2, have been satisfied. The exclusive forum for any such litigation is the Third District Court in and for Salt Lake County, Utah.

8.2.4 If the Claim has not been resolved following completion of the meeting specified in Section 8.2.2, the Parties may, upon mutual agreement, refer the Claim to non-binding mediation.. 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. The referral of a Claim to mediation shall not be a condition precedent to litigation, nor shall the referral of a Claim to mediation preclude the Parties from subsequent litigation if mediation does not resolve a Claim.

## **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 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, and subject to the cure provision and its exceptions therein, 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 consequential damages, including but not limited

to, 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 UTA may in its sole discretion, extend the applicable cure period. An extension of the period to cure shall only be valid if given by UTA in writing, and shall only thereafter be effective so long as Contractor continuously and diligently proceeds with such curative actions until completion. UTA may terminate the Agreement without opportunity to cure if the Contractor's breach involves the Contractor's material failure to comply with any Legal Requirements pertaining to safety or environmental compliance, or if Contractor's action(s) and/or omission(s) materially jeopardize safety.

9.3.3 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), and subject to any extension of the cure period provided by UTA in accordance with Section 9.3.2, 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 and/or pursue any other available remedies.

9.3.4 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), and subject to any extension of the cure period provided by UTA in accordance with Section 9.3.2, 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.

9.3.5 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, and the Contractor shall be liable for all damages suffered by UTA as a result of Contractor's breach.

9.3.6 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.

9.3.7 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.**

9.4.1 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:

9.4.1.1 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

9.4.1.2 Contractor shall file an appropriate action with the appropriate 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 UTA under this Article 9.

9.4.2 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**

### **Health Insurance**

#### **10.1 Insurance Coverage for Employees.**

10.1.1 If (a) the Contract Price is \$2,000,000 or more, or (b) the Contract is for CM/GC services, regardless of amount, then 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.

10.1.2 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 11**

### **Miscellaneous**

11.1 **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 such information 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.

11.2 **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.

11.3 **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.

11.4 **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.

11.5 **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.

11.6 **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.

11.7 **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.

11.8 **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.

11.9 **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.



# CONTRACT ROUTING SHEET

Agenda Item No.: \_\_\_\_\_  
 Board Review Date: \_\_\_\_\_

## CONTRACT SECTION

- 1) Contract/P.O. No. **18-2398TP** (Assigned by Purchasing) Contract Administrator: **Teresa Pickett**  
 Project Manager: **Richard Miller**
- 2) Contract Type  A. A&E/Design  B. Blanket PO  C. Construction  D. Goods  E. Modification  
 F. Other \_\_\_\_\_  G. Renewal  H. Services  I. Task Orders
- 3) Procurement Method  RFQ (Quote)  IFB (Low Bid)  RFQU (Qualification)  
 RFP (Best-value)  Sole source  Other: \_\_\_\_\_
- 4) Contract Title **Phase 1 TIGER Ogden Grant Ave Project**
- 5) Description / Purpose (of contract or project) **Amendment to Terms and Conditions set forth in Phase 1 Pre-Construction Services Agreement - Applies to Work performed under all phase 2 amendments**
- 6) Contractor Name **Granite Construction**
- 7) Effective Dates Beginning: **07/30/18** Ending: **05/14/19**
- 8) Option to renew?  Yes  No Renewal terms \_\_\_\_\_

## FINANCIAL SECTION

- 9) Total Board Approval Amount: \_\_\_\_\_
- 9a) Current Contract Value: \$ **3,752,910.56**
- 9b) Amendment Amount: \_\_\_\_\_
- 9d) New Contract Value (including all amendments) \$ **3,752,910.56**
- 9e) Is the amount an estimate?  Yes  No  
 (Estimate if per transaction cost)
- 9f) If estimated, how was the estimate calculated? **N/A**
- 10) Is the amount a one-time purchase or annual recurring purchase?  One-time  Recurring
- 11) Account Code **40-3163.68912** Capital Project Code **MSP20518**
- 12) Budgeted?  Yes  No Budget amount: \$ **4,200,000.00**
- 13) Will this contract require support from another department?  Yes  No
- 14) If so, is the other department(s) aware of this contract and the required support?  Yes  No
- 15) If box 2a or 2c is checked, has the Qualified Health Insurance Certificate been verified?  Yes  No

## SIGNATURE SECTION

	Route to?	Initials	
Attorney/Legal	<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/>	<u>Bart Simmons</u>
Accounting Review	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/>	<u>Bryan Steele</u>
IT Review (IT software or hardware)	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/>	<u>N/A</u>
Up to \$10K Manager/Program Manager	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/>	<u>Richard Miller</u>
Up to \$50K Dir, Sr. Mgr, RGM, or Chief/VP	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/>	<u>N/A</u>
Up to \$100K Chief/VP, or Dir, Sr. Mgr, RGM (Capital, Maint., Ops. only)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<u>RKB</u>	<u>Robert Biles</u>
Over \$100K Executive Director	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<u>W. Meyer</u>	<u>W. Steve Meyer</u>
Over \$200K Board Approval	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/>	<u>6/27/18 2018-06-02</u> Approval Date

If Yes, route to the Sr. Supply Chain Manager for board meeting agenda and approval



**AMENDMENT TO CONSTRUCTION**

**MANAGER / GENERAL CONTRACTOR AGREEMENT**

**(Amendment to Terms and Conditions Set Forth in Phase 1 Pre-Construction Services Agreement - - Applies to Work Performed Under All Phase 2 Amendments)**

This Amendment (“**Amendment**”) to the Construction Manager / General Contractor Agreement (Phase 1 Pre-Construction Services) is hereby entered this 8<sup>th</sup> day of Aug 2018 by and between the Utah Transit Authority, a public transit district organized under the laws of the State of Utah (“**UTA**”), and Granite Construction Company, a Utah corporation (“**Contractor**”).

**RECITALS**

- A. UTA is engaged in a Program to construct first and last mile improvements (collectively, the “**Program**”).
- B. Pursuant to Request for Proposals No. 18-2398TP, UTA and Contractor entered into the Construction Manager/General Contractor Agreement (Phase 1 Pre-Construction Services) dated April 11, 2018 (UTA Contract No. 18-2398TP and hereinafter the “**Phase 1 Agreement**”).
- C. The Phase 1 Agreement sets forth the general terms and conditions pursuant to which the Contractor will provide preconstruction services for, and then ultimately construct, up to ninety-four separate projects (collectively the “**Projects**”).
- D. The Phase 1 Agreement specifies minimum insurance requirements that the Contractor must maintain for the duration of the Program.
- E. The Phase 1 Agreement provides that UTA and the Contractor will negotiate multiple Phase 2 Construction Services Amendments from time-to-time to reflect the scope, schedule and price for the Projects, as the design work for the Program proceeds.
- F. UTA and Contractor have previously executed a Phase 2 Construction Services Amendment for the Ogden Grant Avenue Construction Project (Project No. OGD\_BKL\_4) and are in the process of negotiating the Phase 2 Construction Services Amendments for additional Projects.
- G. UTA and the Contractor desire to modify one paragraph of the insurance requirements set forth in Exhibit C of the Phase 1 Agreement to better reflect the intent of the parties.
- H. The parties intend that the modification set forth in this Amendment will apply to all past, present and future Phase 2 Construction Services Amendments that are issued pursuant to the Phase 1 Agreement, whether or not issued prior to the date of this Amendment.

**AGREEMENT**

NOW, THEREFORE, on the stated 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. Amendment to Exhibit C Insurance Requirements for Subcontractors.** The second to last paragraph of Exhibit C (under the heading "Subcontractors") is hereby deleted in its entirety and replaced by the following paragraph:

***Subcontractors***

*Contractor shall require subcontractors to maintain insurance policies that are appropriate for their respective subcontracted scope, but which shall in all events meet the following minimum requirements: (i) commercial general liability with limits no less than \$2 million occurrence; (ii) auto liability insurance with a combined single limit of no less than \$2 million; (iii) workers' compensation meeting statutory requirements; and (iv) employers' liability of no less than \$1 million. Contractor shall ensure that Utah Transit Authority is an additional insured on insurance required from subcontractors. For commercial general liability coverage, subcontractors shall provide coverage with a form at least as broad as CG 20 38 04 13. Contractor may adopt a Contractor Controlled Insurance Program to meet this requirement. Contractor shall remain liable for all claims, lawsuits, losses and expenses that exceed such limits and for all uninsured claims and losses. The minimum insurance requirements for Contractor and subcontractors shall not in any way be construed as a maximum limitation on Contractor's liability or indemnity obligations under the contract.*

**2. Application and Construction.** Each Phase 2 Construction Services Amendment incorporates the Phase 1 Agreement as a contract document. The modification set forth in Section 1 shall apply to all Phase 2 Construction Services Amendments, regardless of whether such Phase 2 Construction Services Amendments were issued before or after the date of this Amendment.

**3. Other Terms Remain in Effect.** Except to the extent expressly modified by this Amendment, all terms and conditions of the Phase 1 Agreement and all previously executed Phase 2 Construction Services Amendments shall continue in full force and effect.

IN WITNESS WHEREOF, the parties have executed and delivered this Amendment as of the date written above.

**UTAH TRANSIT AUTHORITY**

By:   
Steve Meyer, Interim Executive Director

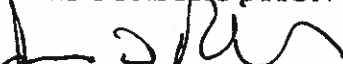
By:   
Robert Biles, VP of Finance

By:  8/2/2018  
Richard Miller, Project Manager

Approved as to Legal Form:

By:   
Legal Counsel

**GRANITE CONSTRUCTION COMPANY**

By:   
Dave Richards  
Senior Vice President Granite  
Construction Northwest Group