

PARTNERING AGREEMENT
BETWEEN
UTAH DEPARTMENT OF TRANSPORTATION
AND
UTAH TRANSIT AUTHORITY

THIS MEMORANDUM OF AGREEMENT (the “Agreement”) is made and entered into as of the ____ day of _____ 2015 (the “Effective Date”), by and between the UTAH DEPARTMENT OF TRANSPORTATION, an agency of the State of Utah, (hereinafter “UDOT”) and UTAH TRANSIT AUTHORITY, a public transit district organized pursuant to the laws of the State of Utah (hereinafter “UTA”). UTA and UDOT may be referred to hereafter as an Agency or Agencies, as the context requires.

RECITALS

WHEREAS, UTA and UDOT each play an important role in planning, building, and maintaining the state transportation system; and

WHEREAS, UTA and UDOT desire to enter into this Agreement to better define how they will cooperate and coordinate their respective activities in order to better fulfill their respective roles with respect to the state transportation system.

AGREEMENT

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

ARTICLE I — PARTNERING

The Agencies recognize and agree that while they have different responsibilities with respect to the state transportation system, they share the common goal of providing a safe, efficient, and effective transportation system for the traveling public. UTA and UDOT have different statutory mandates, different funding sources, and different regulatory oversight. These differences lead to different priorities and different constraints, which at times may result in issues, disputes and conflicts between the Agencies. The Agencies hereby agree to treat each other as partners in their common goals with respect to the state transportation system, to

accommodate each other's needs when possible, and to cooperate to reduce the overall cost of providing transportation services to the public.

ARTICLE II — ISSUE RESOLUTION

A. **Issue Resolution Process.** Issues between the Agencies may arise from time to time, in a variety of contexts. Commonly, issues arise when one Agency is planning or delivering a project that impacts the other Agency's property or system, or when one Agency needs to perform maintenance activities near the other Agency's system or facilities. But issues may arise in other areas as well. An "issue" may consist of a difference of opinion between UTA and UDOT employees; a request from one agency to the other to modify or waive a standard rule, policy, or practice; or simply a question as to how to address an interface between the Agencies.

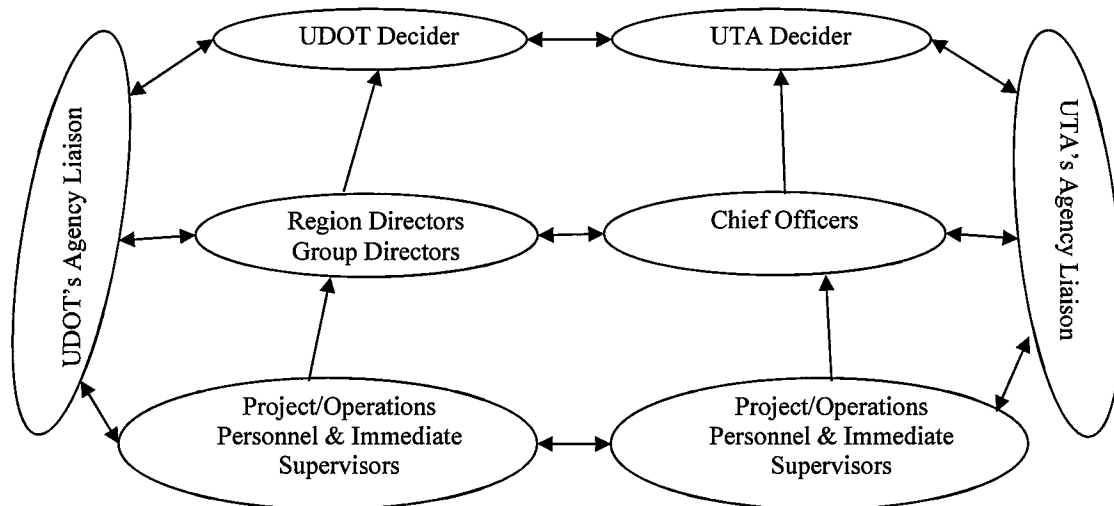
Once an issue is identified, it shall be resolved through the following process:

1) **First Level.** Because issues may arise in different contexts, the first level in the Issue Resolution process will involve different UTA and UDOT personnel depending on the specific issue. Whenever a UTA and UDOT employee identify an issue that they are unable to resolve between themselves, they should consult with their immediate supervisors or managers as soon as reasonably possible, and the supervisors or managers should notify their respective Agency Liaisons of the issue. The supervisors or managers from the respective agencies should discuss the issue and attempt to arrive at a resolution, in coordination with the Agency Liaisons.

2) **Second Level.** Issues that are not resolved at the first level should be promptly escalated to the second level, which consists of the applicable Chief Officer at UTA and the applicable Region or Group Director at UDOT, each of whom shall have authority to bind their respective agency. The Agency Liaisons shall remain involved in the discussions.

3) **Third Level.** Any issues unresolved at the second level in the Issue Resolution process should be promptly escalated to the third and final level, which consists of the UTA Decider and the UDOT Decider. The Agency Liaisons shall remain involved in the discussions. The Deciders shall have the authority to bind their respective agencies.

The Issue Resolution process is summarized in graphical format below:



B. Resolving Issues Efficiently. At all levels of the Issue Resolution process, UTA and UDOT personnel shall work together in good faith to resolve the issue in as efficient a manner as possible by adhering to the following practices:

1) Assemble Information. Assemble all the facts about the issue. Obtain copies of relevant agreements, maps, drawings, etc. that relate to the issue. Consult with people at the agency to understand their positions, perspectives, and constraints. If someone says that something cannot be done, find out why.

2) Understand the Other Side's Perspective. Understand the position and perspective of the other agency, and pass that understanding along to others involved in the Issue Resolution process, specifically including the Agency Liaison. Clearly communicate your agency's position to the other agency.

3) Act with Appropriate Diligence. Understand the level of importance of the issue to both agencies. Identify relevant deadlines, time periods, windows of opportunity, etc. If the issue is urgent for one Agency, it should be deemed urgent for both Agencies.

4) Don't Hold Hostages. Do not use one issue as leverage to secure advantage on another issue. For example, don't withhold approval of one agreement in an attempt to secure approval by the other Agency on another agreement. Evaluate each issue on its own merits.

5) Put it in Writing. Document the resolution of each issue, and make sure all parties understand and agree to the resolution as described. The purpose is not so much to make a formal legal agreement (though that may be warranted in some cases), as to make sure that everyone is on the same page.

C. **Resolving Issues Fairly.** At all levels of the Issue Resolution process, UTA and UDOT personnel shall work together in good faith to resolve issues in as fair a manner as possible by adhering to the partnering principles described above.

D. **Role of Agency Liaisons.** The Agency Liaisons shall act as a clearinghouse for all issues between the Agencies; regardless of where the issue arose or who addressed it previously, the Liaisons should be made aware of all issues and involved in the resolution process. The Liaisons shall meet on a monthly basis, if required (or sooner if necessary) to discuss and attempt to resolve issues between the Agencies.

E. **Identifying Roles.** The current UTA and UDOT Deciders, and the current UTA and UDOT Liaisons are identified in Exhibit A hereto, and may be changed from time to time by written notice to the other Agency. Upon such a change, the Liaisons, with the assistance of legal counsel, shall prepare an updated Exhibit A for execution by the Deciders.

ARTICLE III — PROJECT IMPACTS

A. **Project Impacts Defined.** A “Project Impact,” as the term is used here, means an impact to the facilities, property, or system of one Agency (the “Impacted Agency”), caused by a new project, operational change, or other action undertaken by the other agency (“the Impacting Agency”). A common Project Impact is the need to construct facilities on, or otherwise use or occupy property that is owned by the other agency, such as when UDOT is constructing or widening a roadway across, over, or along a UTA right-of-way, or when UTA is constructing a fixed guideway across, over, or along a UDOT right-of-way.

B. **Avoiding and Minimizing Project Impacts.** The Agencies will each endeavor to design their new projects in such a way as to avoid the property and facilities of the other Agency whenever reasonably possible, and to minimize the impact to the property and facilities of the other agency to the extent reasonably possible. Whenever an Agency anticipates the need to construct a facility or otherwise use or occupy the property of the other Agency, the Agencies shall meet as early in the planning, environmental or design phase as is reasonably practicable in order to discuss design concepts and identify Project Impacts. Design of such projects shall be coordinated by the Agencies in an effort to balance factors such as: safety, cost of the project, cost and safety of maintenance of the project, the need for acquisition of private property, capacity and efficiency of each Agency’s system, and reasonably foreseeable future need for the property by the Impacted Agency.

C. **Accommodating Project Impacts.** Some project impacts, such as new highway/railway crossings, are unavoidable as each Agency builds out its system. The Agencies mutually agree to accept and accommodate unavoidable Project Impacts.

Other impacts, such as encroachments into the other agency’s right-of-way, may be avoidable only at great cost. In the interest of reducing as much as possible the overall cost of providing transportation services to the public, the Agencies mutually agree to accept such impacts to their respective property and facilities whenever reasonably possible. By way of

example only, if one Agency can avoid building a \$1,000,000 retaining wall by extending a fill slope onto property owned by the other Agency that is only worth \$10,000, that is an impact that should usually be accepted and accommodated by the Impacted Agency.

Notwithstanding the foregoing, the Agencies understand and agree that each Agency is subject to specific rules, regulations, and laws pertaining to the use of their property. By way of illustration only, UDOT is required to follow a particular process when adjusting a No Access line, and UTA is typically required to obtain an Incidental Use Permit before allowing third-party use of FTA-funded property. The Agencies agree that neither Agency should be expected to deviate from such rules in order to accommodate the other Agency's project. The Agencies further agree, however, that it is reasonable to expect each other to make good faith efforts – including making inquiries with FHWA, FTA, or other governing authorities about interpretations, exceptions, or variances from applicable rules – in order to better accommodate the other Agency's projects.

D. Paying for Project Impacts. Some Project Impacts have immediate effects, while others might not be an issue until the Impacted Agency expands its system in the future.

1) **Current Project Impacts.** In general, the Impacting Agency should include in its project, at its cost, whatever features or improvements are made necessary by its Project, as well as whatever features or improvements are reasonably necessary to minimize the impact to the other agency's property and existing system. By way of example only, if a UTA rail project crosses a UDOT roadway, UTA should pay the cost of applicable crossing safety devices such as lights, gates, medians, signage, etc. Conversely, where UDOT crosses an existing UTA rail line with a new roadway, UDOT should bear the costs of the applicable crossing safety devices.

Notwithstanding the foregoing, pursuant to 23 C.F.R. § 646.210, UTA shall share in the cost of grade separation projects that eliminate an existing at-grade crossing at which active warning devices are in place.

2) **Future Project Impacts.** In addition to (or instead of) Project Impacts that have immediate effects, other Impacts might not be an issue until the Impacted Agency expands its system in the future. For example, UTA may be able to construct a Bus Rapid Transit project in the open median of a UDOT highway with little current impact, but in so doing may impair UDOT's ability to add additional traffic lanes in the future. Conversely, UDOT may be able to construct a new highway at-grade across an inactive UTA rail corridor with little current impact, but in so doing may increase UTA's cost of constructing and operating a rail line in that corridor in the future when the rail corridor becomes active.

In the case of impacts to future projects, the Agencies will draw a distinction between future projects that are on a Metropolitan Planning Organization's financially constrained Long Range Plan (LRP), and those projects that are not on a financially constrained LRP. Such determination will be made as of the time that the current, impacting project is funded.

a. *Projects on a LRP.* The Impacting Agency should be responsible for impacts to future projects that are included on a LRP. For such future costs, the Impacting Agency may either:

- i. Expend funds as part of the current project to avoid future impacts (e.g., building a bridge structure long enough to accommodate a future road or rail widening underneath);
- ii. Agree to remove or alter its facility in the future to eliminate the impact (e.g., promising to lengthen the bridge structure in the future, when the future road or rail widening takes place);
- iii. Agree to pay the Impacted Agency the cost of resolving impacts in the future, when the future project is undertaken by the Impacted Agency (e.g., promising to pay the Impacted Agency to lengthen the bridge in the future, as part of the road or rail widening project); or
- iv. Any combination of the above.

Projects not on a LRP. Projects that fall into this category will be elevated to the Agency Decider of each agency.

E. Agency License Agreements and Project Impacts. If the Project Impact includes the need to construct facilities on, or otherwise use or occupy property that is owned by the other Agency, the Agencies shall address responsibility concerning Project Impacts in an Agency License Agreement in the form attached hereto as Exhibit B. Where the project only has current Project Impacts, no changes or additions need be made to the language of the standard form Agency License Agreement; the features and improvements necessary to address current Project Impacts should be included in the approved design drawings.

Similarly, where the project has future Project Impacts, but the Impacting Agency has elected to address those impacts by designing its current project to avoid those Project Impacts (pursuant to paragraph D.2.a.i, above), no changes or additions need be made to the language of the standard form Agency License Agreement.

Where, however, the Impacting Agency must take action or expend funds in the future in order to address future Project Impacts (whether pursuant to paragraph D.2.a.ii, D.2.a.iii, D.2.a.iv, or D.2.b), the Agencies shall set forth those responsibilities in the Special Conditions section of the Agency License Agreement, along with any other terms particular to the project.

At the option of the Licensee (the Impacting Agency), the Agencies shall execute a recordable Memorandum of Agency License Agreement in the form attached hereto as Exhibit C. The Licensee shall be responsible for preparing legal descriptions and for recording the Memorandum of Agency License Agreement.

If the Project Impact does not involve the need to construct facilities on, or otherwise use or occupy property that is owned by the other Agency, the Agencies shall address responsibility concerning Project Impacts in an agreement prepared with the assistance of Agency counsel.

ARTICLE IV — PROPERTY EXCHANGES

The Agencies frequently need to acquire property — typically small parcels — from each other. In an effort to reduce the accounting paperwork associated with these small transactions, the Agencies hereby establish a ledger of costs attributable to property conveyances (the “Ledger”), to be maintained as described herein.

A. Applicability of Ledger. The Ledger applies only to properties transferred in fee simple from one Agency to the other. The Agencies will not charge each other for permits, licenses, or less-than-fee property transfers (*see* Article VI, *infra*). Only transportation-related assets and improvements are permitted on the Ledger. No single line-item on the Ledger may be for an amount greater than Five Hundred Thousand Dollars (\$500,000).

In extraordinary circumstances, the Ledger may be used to account for costs other than property transactions, such as when one agency performs work for the benefit of the other agency. The Ledger shall not be used for such purpose when the benefitting agency has a funded project to pay for such work.

B. Ledger Entries. For each separate property interest to be conveyed from one agency to the other, the Agency conveying the property interest will prepare a Property Interest Exchange Form, in the form attached as Exhibit D hereto. Upon review and execution by the Agency Liaisons, the property interest will be entered on the Ledger. Each entry on the Ledger shall consist of a description of the property interest conveyed, and the cost attributable to that property interest (including, where applicable, the value of improvements located on such property). Only the Agency Liaisons are authorized to make entries on the Ledger. The Agency Liaisons will meet to discuss each transaction, review supporting documentation, and to approve each entry, and in any event will meet at least annually to review the Ledger.

Each Agency will execute necessary documentation to effect the transfer of the property, including deeds or instruments of conveyance in recordable form.

C. Determining Value. The value of properties greater than \$250,000 will be determined by an independent appraiser mutually acceptable to both Agencies. For properties worth less than \$250,000, the Agencies may agree on a value acceptable to both Agencies; and if no such value can be agreed upon, the property interest will be submitted for independent appraisal as described above. This value will be used on the Ledger.

D. Balancing the Ledger. A running balance will be maintained on the Ledger. It is anticipated that the Ledger will, within the ongoing scope of UDOT and UTA projects, fluctuate in and out of balance. In the event either Agency believes the differential on the Ledger is too great, the Agency Liaisons shall meet and discuss adequate means of bringing the Ledger closer to a balance; this discussion will include a reasonable time frame to bring the balance down. Additionally, either Agency may, by written notice to the other, place a temporary moratorium on any additional items being placed on the side of the Ledger that is currently greater than the other side, until such time as the Ledger has returned closer to balance, at which time the Agency imposing the moratorium will give written notice of the lifting of the moratorium.

E. Adoption of Existing Ledger. The Agencies acknowledge and agree that they have been maintaining a Ledger, as described herein, pursuant to that certain Amendment No. 7 to Cooperative Agreement dated January 25, 2011 (the “Ledger Agreement”). The Agencies hereby adopt the existing Ledger, attached hereto as Exhibit E, and agree to use it as the starting point for the Ledger to be maintained as described herein. This Agreement supersedes and replaces the Ledger Agreement, which is of no further force or effect.

ARTICLE V — EXISTING UNLICENSED FACILITIES

From time to time the Agencies may discover that an existing Agency facility was placed on the property of the other Agency without a formal agreement (or the formal agreement cannot be located), but without objection from the Agency that owns the property. In such cases, at the request of either Agency, the Agency Liaisons shall coordinate with appropriate Agency personnel to facilitate the execution of an Agency License Agreement in order to document permission for the facility to remain in place.

Pending execution of an Agency License Agreement to license the facility, the Agencies shall treat the facility as if it is licensed by, and subject to, an Agency License Agreement in the form attached hereto as Exhibit B. Specifically, the Licensee shall abide by the provisions of the Agency License Agreement regarding limitations on access to the facility for maintenance purposes, and the Licensor shall process requests for Rights of Entry and/or Permits as if an Agency License Agreement were already in place.

ARTICLE VI — FEES

The Agencies agree that they will not charge each other application fees, administrative fees, review fees, permit fees, right-of-entry fees, license fees, or other fees typically assessed against third parties in association with entry or license requests. Notwithstanding the foregoing, the Agencies may (but are not required to) charge each other for actual costs incurred due to the other Agency’s project, such as charging for flagging and contracted inspectors.

ARTICLE VII — REIMBURSEMENT FOR PROJECT WORK

From time to time, one Agency may agree to perform work, through its own forces or through contractors, that is part of the other Agency’s project scope. This may occur, for instance, where the Impacted Agency has particular expertise (or a firm under contract with a particular expertise) with an element of the Impacting Agency’s project, or where the Impacted Agency prefers more direct control over the work on its property or system, or where the work can be performed more efficiently by the Impacted Agency due to project timing or other reasons.

In such cases, the Agencies shall document the Impacted Agency's agreement to perform the work, and the terms on which reimbursement will be made by the Impacting Agency. An example of a simple reimbursement agreement is attached hereto as Exhibit F, but because such agreements may arise in a variety of contexts, the Agencies shall consult with their respective legal counsel to ensure that all applicable requirements are met. Such agreements shall be in compliance with all applicable state and federal law, including regulations governing allowable costs.

One common situation arises when UDOT performs work on, over, or around a UTA-owned rail corridor, and UTA provides flagging services. In such cases, the Agencies may document UDOT's reimbursement obligation as a special condition to the Agency License Agreement (or, if no additional property is being licensed, as a special condition to the Right of Entry) containing an itemized estimate of the costs of flagging services in conformance with 23 CFR Part 140, Subpart I.

ARTICLE VIII — GRADE CROSSINGS

The Agencies recognize and agree that pursuant to Utah Code Ann. § 54-4-14 through 54-4-16, UDOT has certain authority over such matters as the establishment, regulation, installation, maintenance, and operation of public highway-railroad crossings, and apportionment of the costs therefor. UDOT exercises such authority through its Office of the Chief Railroad Engineer. The Agencies agree that the Chief Railroad Engineer shall make decisions on crossing design — such as whether a new crossing should be grade-separated or not — based on considerations of public safety, and without preference for or against UDOT, UTA, or any interested third parties.

ARTICLE IX - MISCELLANEOUS

A. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their officers, employees, representatives, successors and assigns.

B. This Agreement is executed by the parties under current interpretation of any and all applicable federal, state, county, municipal, or other local statutes, ordinances, or laws. Furthermore, each and every separate division hereof shall have independent and severable status from each other division, or combination thereof, for the determination of legality, so that if any separate division herein is determined to be unconstitutional, illegal, violative of trade or commerce, in contravention of public policy, void, invalid or unenforceable for any reason, that separate division shall be treated as a nullity but such holding or determination shall have no effect upon the validity or enforceability of each and every other division, or other combination thereof.

C. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt

requested, or sent by overnight carrier to the addresses set forth herein. Addresses for notice may be changed by giving ten (10) days written notice of the change in the manner set forth herein.

D. This contract may be terminated without cause by either party, upon sixty (60) days prior written notice being given the other party.

If to UTA:

Utah Transit Authority
Attn: Senior Program Manager/Project Development
669 West 200 South
Salt Lake City, UT 84101

With a Copy to:

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

If to UDOT:

Utah Department of Transportation
Attention: Statewide Utilities & Railroads Engineer
4501 South 2700 West
Box 148380
Salt Lake City, UT 84114-8380

With a Copy to:


Utah Department of Transportation
Attention: Assistant Attorney General
4501 South 2700 West
Box 141200
Salt Lake City, UT 84114-1200

E. This Agreement shall constitute the entire agreement and understanding of the Agencies with respect to the subject matter hereof, and shall supersede all offers, negotiations and other agreements with respect thereto. Any amendment to this Agreement must be in writing and executed by an authorized representatives of each Agency. This Agreement may be executed in any number of counterparts and by each of the Agencies hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument. Any signature page of this Agreement may be detached from any counterpart and reattached to any other counterpart hereof. The facsimile transmission of a signed original of this Agreement or any counterpart hereof and the retransmission of any signed facsimile transmission hereof shall be the same as delivery of an original.

F. This Agreement shall apply to all future projects. Previous agreements shall remain in effect. The Agencies agree to review and supplement or amend this Agreement as necessary, and further agree to comprehensively review the effectiveness of this Agreement no later than three (3) years from the Effective Date. Such review shall be coordinated by the Agency Liaisons.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in duplicate as of the Effective Date.

Reviewed and Approved as to Form for
UTA:



UTA Legal
UTA Contract No.: 15-1249

Recommended for Approval:

By: 

Statewide Utilities & Railroads Engineer

Date: 19 May 2015

Approved as to Form:

By: 

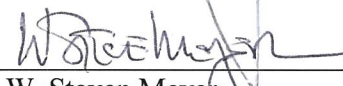
Assistant Attorney General

Date: 5/19/2015

UTAH TRANSIT AUTHORITY

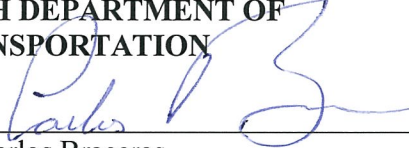
By: 

Michael Allegra
President/CEO

By: 

W. Steven Meyer
Chief Development Officer

**UTAH DEPARTMENT OF
TRANSPORTATION**

By: 

Carlos Braceras
Executive Director

Date: 5/19/15

EXHIBIT A

UDOT/UTA Personnel Chart

As of the execution of this Exhibit A – UDOT/UTA Personnel Chart, the applicable roles are filled by the following people:

UDOT Decider	Shane Marshall	
UTA Decider	Steve Meyer/Jerry Benson	Typically, Steve Meyer will serve as the UTA Decider. If, however, Steve Meyer was involved in the Second Level of the Issue Resolution process (acting as Chief Development Officer), then Jerry Benson will serve as the UTA Decider.
UDOT's Agency Liaison	Richard Manser	
UTA's Agency Liaison	Grey Turner	

The Deciders are authorized to amend or update the personnel listed herein by executing a new Exhibit A.

Notice of an amended or updated UDOT/UTA Personnel Chart shall be mailed to the following:

UDOT:

Utah Department of Transportation
Attn: Statewide Utilities & Railroads Engineer
4501 South 2700 West
Box 148380
Salt Lake City, UT 84114-8380

With a copy to:

Utah Department of Transportation
Attn: Assistant Attorney General
4501 South 2700 West
Box 141200
Salt Lake City UT 84114-1200

UTA:

Utah Transit Authority
Attn: Grey Turner
669 West 200 South
Salt Lake City, Utah 84101-1014

With a copy to:

Utah Transit Authority
Attn: General Counsel
669 West 200 South
Salt Lake City, Utah 84101-1014

UDOT Decider

UTA Decider

EXHIBIT B

**FORM OF AGENCY LICENSE AGREEMENT
AGENCY LICENSE AGREEMENT**

This AGENCY LICENSE AGREEMENT (“Agreement”) is entered into between the Utah Department of Transportation, an agency of the State of Utah (“UDOT”) and Utah Transit Authority, a public transit district organized pursuant to the Utah Public Transit District Act (“UTA”). UDOT and UTA may be referred to hereafter as an Agency or Agencies, as the context requires.

General:	[Brief description of Project, Facility, and Property]
Contract:	[Licensee’s Contract No.]
Project:	[Licensee’s Project No.]
Licensor:	[Identify Licensor – UTA or UDOT]
Licensee:	[Identify Licensee – UTA or UDOT]
Property:	[Specifically identify Property subject to License]
Facility:	[Specifically describe Licensed Facility]
Emergency Access Manager:	UTA TRAX Control 801-287-5455 (TRAX light rail corridors) UTA Rail Traffic Control 801-502-2899 (FrontRunner right-of-way) UDOT Operations Center 801-887-3700
Effective Date:	[Write this in after Agreement is fully executed]

1. **Rights Granted.** Licensor hereby grants to Licensee a non-exclusive License to place and keep the Facility on the Property, in the location shown in the Design Plans, attached hereto as Exhibit A.
 - a. **Construction Access.** Licensee or its Contractor shall be required to apply to Licensor for a Right of Entry and/or Track Access Permit, or Encroachment Permit to enter the Property for the purpose of constructing or installing the Facility. Licensor will grant such Right of Entry and/or Permit on reasonable terms and conditions. Licensee shall not enter Licensor’s property without a permit and agrees to comply with the conditions of the permit.
 - b. **Maintenance Access.** Whenever Licensee or its Contractor needs to enter the Property for the purpose of inspecting, maintaining, or repairing the Facility, Licensee shall apply to Licensor for a Right of Entry and/or Permit for such purpose, and Licensor shall grant such Right of Entry and/or Permit on reasonable terms and conditions.

Licensee does not need to apply for a Right of Entry and/or Permit for inspection, maintenance, and repair activities that pose no safety risk and can be safely performed within areas of the Property such as areas designated for

upon notification to Licensee if Licensor reasonably believes that such activities (i) are not in compliance with the Design Plans or Work Plans, (ii) pose a safety risk, or (iii) pose a risk to the Property or to Licensor's facilities, or to the operations conducted thereon.

- b. *Utilities.* Licensee shall properly locate all utilities in the area of the Construction or Maintenance activities, and shall not damage or interfere with any such utilities.
 - i. *Fiber in Union Pacific Railroad Corridors.* Where the Property consists of UTA rail corridor owned or formerly owned by UPRR, Licensee shall be solely responsible for contacting UNION PACIFIC RAILROAD COMPANY during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) and for determining if fiber optic cable is buried near the location of the Facility.
- c. *Compliance with Law.* Licensee shall construct and maintain the Facility in compliance with all regulations promulgated by any governmental authority including, without limitation, the regulations of the Federal Railroad Administration, the Occupational Safety and Health Administration and the Utah Department of Transportation. Licensee shall also Construct, Maintain and operate the Facility in compliance with all applicable environmental laws.
- d. *Contaminated Soils.* The Property may have contaminated soils. Licensee shall characterize any soil excavated on the Property that appears to be contaminated based on odor or visual appearance, and if such characterization confirms the presence of contamination, Licensee shall properly dispose of such soils in conformance with all applicable laws.
- e. *Release of Contamination.* If any hazardous substances (specifically including but not limited to fuel) are released or spilled on the Property during Licensee's construction or maintenance activities, Licensee shall remediate the affected area in accordance with all applicable laws.

7. No Warranties. Licensor licenses the Property as-is, with no warranties as to condition or title, and subject to any outstanding superior rights previously conveyed or granted to third parties by Licensor or Licensor's predecessors in interest, and the right of Licensor to renew and extend the same.

8. Relocation. Licensor shall remain the owner of the Property on which the Facility is constructed and this Agreement does not give Licensee any property rights in the Property, except as specified in this Agreement. If, after the effective date of this Agreement, Licensor needs to use the Property for its purposes, or if Licensor reasonably determines that the Facility is a hazard or interferes with Licensor's purposes, then Licensor may order the removal, reconfiguration, or relocation of the Facility at Licensor's sole cost and expense.

See Exhibit C, Special Conditions, for any specific provisions relating to relocation or allocation of responsibility for impacts to Licensor's future projects. Such terms override any conflicting terms in this paragraph 8.

9. Access to Property by Licensor. The Licensor remains the owner of the Property, and generally the Licensor retains all rights with respect to the Property. When, however, the Facility poses safety risks to persons on or near the Facility (such as roadways, rail lines, or bus rapid transit lanes), the Licensor (or its Contractor) shall seek a Right-of-Entry and/or Permit from the Licensee before entering the Property for construction, inspection, maintenance, or replacement purposes. Licensor shall abide by the terms of such permits, specifically including applicable safety procedures.

Such permits shall be granted as expeditiously as possible by the Licensee, in recognition that Licensor remains the owner of the Property. In no event may Licensee require Licensor to pay any fees or costs associated with such entry, including costs of flagging and inspectors contracted by Licensee. Licensee may require Licensor's Contractor to obtain insurance in accordance with Licensee's then-current insurance requirements.

Licensor does not need to apply for a Right of Entry and/or Permit for inspection, maintenance, and repair activities that pose no safety risk and can be safely performed within areas of the Property such as areas designated for public pedestrian use, areas separated from highway or rail traffic by a fence, or areas separated from the Licensee's use by a grade separated structure, so long as the Licensor's activities pose no risk (e.g., falling debris or damage to structure). Additionally, Licensor does not need to apply for a Right of Entry and/or Permit for maintenance activities undertaken in a manner similar to allowed use of the Licensed Property by the public such as, for example, driving a snowplow or a paint truck over a grade crossing in compliance with traffic control devices.

10. Third Party Rights. This License applies only to the Property. Licensee shall be solely responsible for obtaining any property rights, easements, licenses, franchises, or other rights from third parties that are necessary to construct or maintain the Facility.
11. Future Third Party Facilities. Licensor shall not grant easements, licenses, franchises, or other interests in the Property that would interfere with Licensee's Facility or Licensee's use of the Property. Licensor further agrees to notify Licensee of any requests for easements, licenses, franchises or other interests in the Property, and to provide Licensee with an opportunity to review and approve such requests, which review and approval shall not be unreasonably delayed, conditioned or withheld.
12. Insurance. Licensor and Licensee are both self-insured, and agree to maintain such self-insurance programs adequately funded to cover the risks and obligations arising from this Agreement. If a contractor is to perform work on the Property, Licensor may require such contractor to obtain insurance in accordance with Licensor's then-current insurance requirements.

13. Indemnity. Licensee agrees to protect, defend, release, indemnify and hold harmless Licensor and any successors, officials, agents and employees of Licensor from and against any and all claims, demands, judgments, costs, and expenses (“Losses”) resulting from: (a) negligence on the part of Licensee or any employees, officials, agents or contractors of Licensee related to the design, construction, maintenance or other work performed by or on behalf of Licensee on the Facilities within the Property; and (b) negligence on the part of Licensee or any employees, officials, agents or contractors of Licensee in the use of the Facilities within the Property, or (c) Licensee’s breach of any provision of this Agreement. Licensee’s indemnity obligation shall not extend to Losses to the extent that such Losses are due to Licensor’s negligence or willful misconduct.
14. Governmental Immunity. Both Agencies are governmental entities as defined by the Governmental Immunity Act of Utah, U.C.A. §63G-7-101 *et seq.*, and nothing in this Agreement shall be deemed of waiver of any of the defenses or protections afforded by such Act.
15. General Provisions.
- (a) *Waiver*. Failure of either Agency at any time to require performance of any provision of this Agreement shall not limit the Agency’s right to enforce the provision. Waiver of any breach of any provision shall not be a waiver of any succeeding breach of the provision or a waiver of the provision itself or any other provision.
 - (b) *Entire Agreement*. This Agreement supersedes and replaces all written and oral agreements previously made or existing between the Agencies regarding the subject matter hereof. Any amendment to this Agreement must be in writing and executed by an authorized representative of each Agency.
 - (c) *Counterparts*. This Agreement may be executed in any number of counterparts and by each of the Agencies hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument
 - (d) *Applicable Law*. This Agreement shall be construed, applied and enforced in accordance with the laws of the State of Utah.
16. Special Conditions. Special conditions to this Agreement, if any are attached hereto as Exhibit “C” (Exhibit “C” is attached hereto and hereby incorporated into and made a part of this Agreement by reference).

[signatures on following page]

IN WITNESS WHEREOF, the Agencies hereto have caused this Agreement to be executed in duplicate as of the date first herein written.

UTAH TRANSIT AUTHORITY

APPROVED AS TO FORM:

UTA Legal

By: _____

By: _____

**UTAH DEPARTMENT OF
TRANSPORTATION**

Recommended for Approval:

By: _____
Region Utility and Railroad Coordinator

By: _____
Region Director

Date: _____

Date: _____

Reviewed by:

UDOT Comptroller's Office

By _____
Statewide Utilities & Railroads Engineer

By: _____
Contracts Administrator

Date: _____

Date: _____

Approved as to Form:

By _____
Assistant Attorney General

Date: _____

Exhibit A

Design Plans

[attach approved design drawings]

Exhibit B

Work Plans

[if there are special rules or conditions about the method or manner of work, attach them here]

Exhibit C

Special Conditions

[if there are other special conditions, attach them here]

Examples of Special Conditions:

- Specific design or work requirements that are not reflected in the Design Drawings or Work Plans, or which the Licensor wants to emphasize.
- Specific notices or procedures, such as with regard to known or suspected contaminated soils.
- Allocation of responsibility for addressing or paying for future Project Impacts (see generally Article III of the MOA). Such provisions generally act as an exception to the Relocation provisions in paragraph 8 of this Agreement.

EXHIBIT C

FORM OF RECORDABLE MEMORANDUM OF AGENCY LICENSE AGREEMENT

When Recorded, Return to:

[Licensee's Address]

MEMORANDUM OF
AGENCY LICENSE AGREEMENT
(Description of impact: e.g., "highway widening" or "grade crossing")

*[List the following items:
Parcel No. XXXXX
Project No, etc.
Location
Contract No.]*

This Memorandum of Agency License Agreement is entered into by UTAH TRANSIT AUTHORITY, a public transit district organized pursuant to the laws of the State of Utah ("UTA") and UTAH DEPARTMENT OF TRANSPORTATION, an agency of the State of Utah ("UDOT").

1. By that certain Agency License Agreement (the "Agreement"), dated as of _____, between UDOT and UTA, *[identify Licensor]* ("Licensor") granted a license to *[identify Licensee]* ("Licensee") for *[briefly describe project and the licensed facilities]* (the "Facilities"). The License was granted to construct, maintain and operate the Facilities. All provisions of the Agreement are incorporated herein by reference.
2. The dimensions and specifications of the Facilities are set forth in the Agreement. The legal description, including the plans of the Facilities, of the property impacted are set forth on Exhibit "A", (the "License Area") attached hereto and incorporated by reference.
3. Construction means the initial installation of the Facilities in the License Area, as well as any subsequent reconstruction, relocation, restoration or rehabilitation of the Facilities.
3. Maintenance means the performance of any repair, restoration, rehabilitation, refurbishment, retrofitting, inspection, monitoring, observation, testing or similar work with respect to the Facilities.

4. Licensee has the right to enter the License Area in the event of any emergency to make repairs necessary to protect against imminent and serious injury or damages to persons or property. Licensee is required to notify the Licensor's Emergency Access Manager of the emergency access and the work being performed prior to entering the License Area. Otherwise, Licensee shall request permission from Licensor at least ten days or shorter period as approved by Licensor prior to performing any Construction or Maintenance.
5. Subject to the provisions in the Agreement and in the Partnering Agreement dated _____, the rights granted pursuant to the Agreement shall be subject and subordinate to the prior and continuing right and obligation of Licensor, to fully use the License Area, including the right and power of Licensor to construct, maintain, repair, renew, use, operate, modify, or relocate new or existing facilities upon, along, above, or across any or all parts of Licensor's property.
6. The foregoing grant is also subject to the outstanding superior rights previously conveyed or granted to third parties by Licensor, or its predecessors in interest, and the right of Licensor to renew and extend the same.

DATED this ____ day of _____, 20__.

[Insert appropriate signature and notary blocks]

EXHIBIT D

FORM OF PROPERTY INTEREST EXCHANGE FORM

PROPERTY INTEREST EXCHANGE FORM

The following property interest will be conveyed from [*UDOT to UTA*] [*UTA to UDOT*]

[*INSERT DESCRIPTION*]

The agreed-upon value of this property interest, to be entered on the UDOT/UTA Ledger, is \$_____ [not to exceed \$500,000]. Any supporting documentation (including any appraisal or other estimate of value) for this value has been made available to both parties, attached below, the parties acknowledge acceptance of the same.

Dated this ____ day of _____, 20__

UTAH TRANSIT AUTHORITY

UTAH DEPARTMENT OF TRANSPORTATION

By: _____

By: _____

Attached documents: [insert list of documents]

EXHIBIT F

FORM OF PROJECT REIMBURSEMENT AGREEMENT

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

RECITALS

WHEREAS, [*identify Agency*] (the “Project Agency”) is engaged in a project to [*describe project*] (hereafter, the “Project”);

WHEREAS, [*identify Agency*] (the “Work Agency”) has agreed to perform, or to cause its contractor to perform, certain work for the Project consisting of [*briefly describe scope of work*] (hereafter, the “Work”), at the Project Agency’s sole cost and expense; and

WHEREAS, the Agencies desire to enter into this Agreement to define their respective roles and responsibilities with respect to the Project.

AGREEMENT

NOW, THEREFORE, on the stated recitals, and for good and valuable consideration, the Agencies agree as follows:

1. **WORK.** The Work Agency [*“agrees to perform” or “agrees to cause its contractor to perform”*] [*describe services to be performed*], as more particularly set forth on the Scope of Work attached hereto as Exhibit A.
2. **ESTIMATED COST.** An itemized estimate of the cost of the Work is attached hereto as Exhibit B.
3. **SPECIAL PROVISIONS.** The Project Agency has fully disclosed to the Work Agency special requirements imposed on the Work, or for reimbursement of the Work, by Project conditions, state or federal regulations, to ensure that the Work is performed and documented in a manner that can be reimbursed. Special requirements and any applicable state and federal requirements are attached to this Agreement as Exhibit C.
4. **INVOICING.** The Work Agency shall submit invoices to the Project Agency as the Work progresses, reflecting Work that has been completed. The Work Agency shall provide the Project Agency with documentation supporting the invoice, reasonably acceptable to the Project Agency. The Project Agency will pay the Work Agency promptly upon receipt and approval of a complete, properly supported invoice for the Work.

IN WITNESS WHEREOF, the Agencies hereto have caused this Agreement to be executed in duplicate as of the date first herein written.

UTAH TRANSIT AUTHORITY

APPROVED AS TO FORM:

UTA Legal

By: _____

By: _____

**UTAH DEPARTMENT OF
TRANSPORTATION**

Recommended for Approval:

By: _____
Region Utility and Railroad Coordinator

By: _____
Region Director

Date: _____

Date: _____

Reviewed:

UDOT Comptroller's Office

By _____
Statewide Utilities & Railroads Engineer

By: _____
Contracts Administrator

Date: _____

Date: _____

Approved as to Form:

By _____
Assistant Attorney General

Date: _____