

ESCROW AGREEMENT

THIS ESCROW AGREEMENT (“Agreement”) is made and entered into as of this ____ day of _____ 2019, by and among UTAH TRANSIT AUTHORITY (“UTA”), SALT LAKE COUNTY (“SLCO”) and Z.B., National Association, dba Zions Bank, as “Escrow Agent.”

UTA, SLCO and Escrow Agent agree as follows:

1. **Purpose.** The intent of this Agreement is to establish the terms and conditions pursuant to which the Escrow Agent will disburse \$400,000 in SLCO funding (the “Escrow Property”), as identified in Exhibit A, to UTA to fund a portion of the costs related to performing a Transit Alternatives Analysis in the Point of the Mountain area to determine a Local Preferred Alternative for extension of the TRAX Blue Line East/West of I-15 at the Point of the Mountain and connection to the former Utah State Prison redevelopment site (the “Project”).
2. **Express Duties.** This Agreement expressly and exclusively sets forth the duties of Escrow Agent with respect to any and all matters pertinent hereto, and no implied duties or obligations shall be read into this Agreement against Escrow Agent. There are no additional written or unwritten oral agreements between or among the parties that would modify the Escrow Agent’s obligations. This Agreement constitutes the entire agreement between the Escrow Agent and the other parties hereto in connection with the subject matter of this escrow. The Escrow Agent shall have no duty to know or determine the performance or nonperformance of any provision of any separate agreement between or among the other parties hereto, and no other agreement shall be considered as adopted or binding, in whole or in part, upon the Escrow Agent notwithstanding that any such other agreement may be referred to herein or deposited with Escrow Agent or the Escrow Agent may have knowledge thereof, and Escrow Agent's rights and responsibilities shall be governed solely by this Agreement.
3. **Depository.** The Escrow Agent acts hereunder as a depository only. Escrow Agent’s obligations are limited solely to processing requests for withdrawals of Escrow Property (“Withdrawal Requests”) in accordance with the specific instructions set forth in Exhibit B. With regard to such obligations, Escrow Agent is not responsible or liable for verifying the accuracy, sufficiency, genuineness or validity of any matters set forth in documentation provided to the Escrow Agent. This Agreement shall not be deemed to create a fiduciary relationship between the parties hereto under state or federal law.
4. **Notice.** Other than as specifically set forth herein, the Escrow Agent shall not be required to take or be bound by any notice or to take any action unless the Escrow Agent is indemnified in a manner satisfactory to it against any expense or liability. Except as otherwise provided in this Agreement, any notice, request for consent, report or other communication required or desired to be given by the Escrow Agent or the other parties to this Agreement shall be in writing and shall be deemed to have been given when delivered in person or by electronic transmission or mailing the same, postage prepaid, to such party at the address noted on the signature page and notice so mailed shall for all purposes hereof be as effective as though served upon such party in person at the time received. It shall be the responsibility of the Escrow Agent and each of the other parties to notify each other in writing of any name, address or facsimile number change.

5. **Reliance.** The Escrow Agent may rely upon any Withdrawal Request submitted on behalf of UTA by UTA's project controls manager, Gregg Larsen (glarsen@rideuta.com) or UTA's assistant comptroller, Bryan Steele (bsteele@rideuta.com). The Escrow Agent may rely upon any objection submitted to a Withdrawal Request which purports to be made by or on behalf of SLCO. The Escrow Agent shall be entitled to rely upon any other notice, request, waiver, consent, receipt or other instruction received by either party if such notice, request, waiver, consent, receipt or other instruction is provided or purported to be provided by the following: (i) with respect to UTA, UTA's project manager, Patricia Garver (pgarver@rideuta.com) or UTA's Director of Capital Projects, Mary Deloretto (mdeloretto@rideuta.com); and with respect to SLCO, the then-current Director of SLCO's Department of Regional Planning & Transportation, as of the date of this Agreement, is Wilf Sommerkorn (wsommerkorn@slco.org). Specimen signatures for the above-described representatives are included in the attached Exhibit E.

6. **Limitations of Liability.** The Escrow Agent shall not be liable for any error of judgment or for any act done or step taken or omitted by it in good faith or for any mistake of fact or law or for anything which the Escrow Agent may do or refrain from doing in connection herewith, including upon advice of counsel, except for its own willful misconduct or gross negligence. Escrow Agent may consult with legal counsel at the joint and several cost and expense of the undersigned (other than Escrow Agent) in the event of any dispute or question as to the construction of any of the provisions hereof or its duties hereunder, and it shall incur no liability and shall be fully protected in acting in accordance with the advice of such counsel.

7. **Authority for Agreement.** Each party represents and warrants that it has full power and authority to enter into this Agreement and has taken all action necessary, corporate or otherwise, to carry out the transaction contemplated hereby so that when executed this Agreement constitutes a valid and binding obligation enforceable in accordance with its terms.

8. **Escrow Property.** No assignment, transfer, conveyance or hypothecation of any right, title or interest in and to the Escrow Property shall be binding upon the Escrow Agent unless written notice thereof shall be served upon the Escrow Agent and all fees, costs and expenses incident to such transfer of interest shall have been paid.

9. **Terms of Agreement.** The terms of this Agreement may be altered, amended, modified or revoked by writing only, signed by all of the parties hereto or their successors or assigns, and approved by the Escrow Agent, upon payment of all fees, costs and expenses incident hereto.

10. **Compensation.** In consideration for the Escrow Agent's agreement to perform the services set forth in this Agreement, UTA agrees to pay the fees and charges of the Escrow Agent as set forth in Exhibit C, each year in advance, upon the commencement of the escrow and thereafter on each anniversary date hereof without proration. All fees charged shall be paid by UTA. In addition to the escrow fee agreed upon, the other parties to this Agreement jointly and severally agree to pay the Escrow Agent's costs and expenses including reasonable attorneys' fees in the event of any dispute or litigation threatened or commenced which requires the Escrow Agent in its opinion to refer such matter to its attorneys. Escrow Agent will incur no liability for any delay

reasonably required to obtain such advice of counsel. The Escrow Agent shall have a first lien on the Escrow Property held by it hereunder for its compensation and any costs or expense incurred.

11. **Indemnification.** The parties to this Agreement (other than Escrow Agent) hereby agree to indemnify and hold Escrow Agent, its affiliates and their directors, officers, employees, successors, assigns, attorneys and agents (each an "Indemnified Party") harmless from all losses, costs, claims, demands, actions, proceedings, judgments, court costs, payments, expenses, damages, penalties, counsel's fees, and all liabilities whatsoever suffered or incurred by any Indemnified Party or Escrow Agent as a result of anything which it may do or refrain from doing in connection with this Agreement or any litigation or cause of action arising from or in conjunction with this Agreement or involving the subject matter hereof or Escrow Funds or monies deposited hereunder or for any interest upon any such monies, including, without limitation, arising out of the negligence of Escrow Agent; provided that the foregoing indemnification shall not extend to the gross negligence or willful misconduct of Escrow Agent. This indemnity shall include, but not be limited to, all costs incurred in conjunction with any interpleader which the Escrow Agent may initiate relating to this Agreement.

12. **Termination.** This Agreement shall terminate upon the first to occur of any of the following events: (a) when the Escrow Agent has released all Escrow Property from the Escrow Account in accordance with the provisions contained in Exhibit B attached hereto and incorporated herein by reference, or (b) December 31, 2024, in which case the Escrow Agent shall deliver the remaining Escrow Property as directed by SLCO.

13. **Resignation of Escrow Agent.** The Escrow Agent may resign at any time by giving written notice by Certified Mail, Return Receipt Requested to all of the parties hereto to be effective thirty days after such notice has been deposited into the U.S. Mail. If a successor agent has not been appointed within thirty days after such notice of resignation, the Escrow Agent may petition any court of competent jurisdiction for the appointment of a successor Escrow Agent. Costs of such petition, including reasonable attorneys' fees, shall be borne by jointly and severally by the other parties to the Agreement or may be assessed by the resigning Escrow Agent against the Escrow Property. The Escrow Agent shall have no responsibility for the appointment of a successor escrow agent. The successor Escrow Agent shall execute and deliver to the Escrow Agent an instrument accepting such appointment, and the successor Escrow Agent shall, without further acts, be vested with all the estates, property rights, powers and duties of the predecessor Escrow Agent as if originally named as Escrow Agent herein. The Escrow Agent shall act in accordance with written instructions from the other parties to this Agreement as to the transfer of the Escrow Fund to a successor escrow agent.

14. **Applicable Law.** Applicable laws shall inure to and be binding upon the parties and their respective successors, heirs and assigns. All representations, covenants and indemnification contained in herein shall survive the termination of this Agreement.

(a) This agreement shall be constructed and construed in accordance with the laws of the State of Utah.

(b) Escrow Agent hereby notifies the other parties hereto that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 the "Act"), it is required to obtain, verify and

record information that identifies the other parties hereto, which information includes the name and address of the other parties hereto and other information that will allow Escrow Agent to identify the other parties hereto in accordance with the Act.

(c) The other parties agree to provide the Escrow Agent with certified tax identification numbers for each of them by furnishing appropriate forms W-9 (or Forms W-8, in the case of non-U.S. persons) and any other forms and documents that the Escrow Agent may reasonably request. The parties hereto understand that, if such tax reporting documentation is not so furnished to the Escrow Agent, the Escrow Agent shall be required by the Internal Revenue Code to withhold a portion of any interest or other income earned on the investment of monies or other property held by the Escrow Agent pursuant to this Agreement, and to immediately remit such withholding to the Internal Revenue Service. Any interest or income earned on the Fund shall be reportable on Form 1099 by the Escrow Agent to tax identification number 87-0284459 in the name of UTA and such party agrees to provide Escrow Agent with a Form W-9 or W-8 as appropriate.

15. **Investments.** The Escrow Agent shall invest the Escrow Property as indicated in Exhibit B. The Escrow Agent shall not be responsible or liable for any diminution of principal, interest, or penalty on any investments of the Escrow Property made pursuant to the terms of this Agreement.

16. **Conflicts.** If a conflict arises between the instructions set forth in Exhibit B ("Specific Instructions") and the terms set forth herein, then the terms set forth in the Specific Instructions shall rule.

17. **Miscellaneous.**

(a) If any provision of this Agreement is illegal, inoperative or unenforceable, that shall not affect any other provision herein.

(b) Escrow Agent shall make no disbursement, investment or other use of funds until and unless it has collected funds. Escrow Agent shall not be liable for collection items until the proceeds of the same in actual cash have been received.

(c) Escrow Agent shall send monthly statements to the undersigned of all activity and transactions processed for the escrow account and the undersigned (except Escrow Agent) hereby agree to waive their right to receive trade confirmations as they occur.

18. **Construction.** Words used in the singular number may include the plural and the plural may include the singular. The section headings appearing in this instrument have been inserted for convenience only and shall be given no substantive meaning or significance whatsoever in construing the terms and conditions of this the Agreement. Titles and headings in this Agreement are intended for convenience or reference and shall not affect the interpretation of any of the provisions hereof. All facsimile signature(s) to this agreement is as valid and effective for all purposes as an original signature.

19. **Force Majeure.** Escrow Agent shall not be liable to the undersigned for any loss or damage arising out of any acts of God, strikes, equipment or transmission failure, war, terrorism, or any other act or circumstance beyond the reasonable control of Escrow Agent.

20. **Counterparts.** This Agreement may be executed in one or more counterparts in which event all of said counterparts shall be deemed to constitute one original of this Agreement. This Agreement is effective upon delivery of one executed counterpart from each party to the other parties.

IN WITNESS WHEREOF the undersigned have hereto affixed their signatures and hereby adopt as a part of this Agreement Exhibits A, B, C and D hereto attached.

UTAH TRANSIT AUTHORITY

Signature

Name: Patricia Garver
(pgarver@rideuta.com)

Title: Project Manager

Signature

Name: Mary Deloretto
(mdeloretto@rideuta.com)

Title: Director of Capital Projects

Address:
669 West 200 South
Salt Lake City, UT 84101

Approved as to form:

UTA Legal Counsel

ESCROW AGENT

Signature

Name: Verena Critser
(Verena.Critser@zionsbancorp.com)

Title: Trust Officer

Address:
One South Main Street, 12th Floor
Salt Lake City, UT 84133-1109

SALT LAKE COUNTY

Signature

Name: Mayor Jennifer Wilson or Designee
Email Address

Title: County Mayor or Designee
Address:
2001 South State, Suite S2-100
Salt Lake City, Utah 84190

Approved as to Form and Legality:

By Craig Wangsgard
Deputy District Attorney
April 4, 2019

EXHIBIT A

(“Escrow Property”)

Cash deposit provided by SLCO in the initial, aggregate amount of \$400,000, and any interest earnings thereon

EXHIBIT B

("Specific Instructions")

Purpose: SLCO has agreed to fund up to \$400,000 to fund a portion of the costs related to performing a Transit Alternatives Analysis in the Point of the Mountain area to determine a Local Preferred Alternative for extension of the TRAX Blue Line East/West of I-15 at the Point of the Mountain and connection to the former Utah State Prison redevelopment site (the "Project"). The purpose of this account is to allow UTA to make monthly progress payments to its consultant for the Project.

Disbursements: Upon award of the consulting contract, UTA will make periodic drawdowns of the Escrow Property to pay (or reimburse itself) costs incurred under the consulting contract. In conjunction with proposed drawdown, UTA will submit to the Escrow Agent a Request for Withdrawal of Escrow Property ("Withdrawal Request"), using the form attached as Exhibit D. At the same time UTA sends the Withdrawal Request to the Escrow Agent, a copy of the Withdrawal Request will be emailed to the SLCO representative identified in Section 5 of the Escrow Agreement.

The Escrow Agent shall not make a payment with regard to the Withdrawal Request for a period of ten (10) business days. This period shall commence on the first business day after the Withdrawal Request is received by Escrow Agent and SLCO. The purpose of this ten(business)-day period shall be to allow for SLCO to review the Withdrawal Request and supporting documentation to confirm compliance with the Escrow Agreement and corresponding Interlocal Agreement between UTA and SLCO.

SLCO shall notify the Escrow Agent of any such objection by submitting a countersigned Withdrawal Request (see the payment denial line located on the bottom of the form included as Exhibit D). An objection must be sent to the Escrow Agent by both email and physical delivery (via hand delivery or express service with receipt confirmation). The objection must be received by the Escrow Agent by 5:00 PM (Mountain prevailing time) on the tenth business day after receipt. If the Escrow Agent does not receive an objection to payment from SLCO, then Escrow Agent shall make full payment in accordance with the Withdrawal Request. Payments shall be made on the eleventh business day following Escrow Agent's receipt of the Withdrawal Request.

If the Escrow Agent receives an objection to payment, then the Escrow Agent shall withhold payment with regard to the Withdrawal Request, pending receipt of joint instructions from SLCO and UTA. The Escrow Agent shall have no duty to verify or confirm the merits of any objection received from SLCO. The Escrow Agent's only duty shall be to ensure that such objection was received from SLCO within the above-described ten day period. Escrow Agent shall have no liability to UTA for payments withheld based on a SLCO objection.

For purposes of the Agreement, "business day" shall mean a day other than a Saturday, Sunday or federal or state holiday recognized by the Escrow Agent. If the final day of any period referenced in this Agreement falls on a day other than a business day (as defined immediately above), then the period shall be construed so as to end on the next succeeding business day.

Investment of Funds: Moneys will be invested in the Public Treasurers Investment Fund (PTIF) and all earnings will be retained in the account. Subject to Section 12 of the Agreement, and SLCO's ability to object to any Withdrawal Request, all interest shall be payable to UTA as part of the final request for payment of operating costs.

EXHIBIT C

(“Escrow Agent Fee Schedule”)

\$750.00 Annual Fee

EXHIBIT D

("Request for Withdrawal of Escrow Property")

REQUEST FOR WITHDRAWAL

To: Escrow Agent, with copy to Salt Lake County

Re: Utah Transit Authority – Interlocal Agreement for Transportation Funds (DA Log No. 17-09303)

Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Interlocal Cooperation Agreement (the "Agreement") between Salt Lake County (the "County") and UTA ("UTA") (DA Log No. 17-09303). In connection with said Agreement, the undersigned hereby states and certifies that:

1. Each item listed on **Schedule 1** attached hereto is a Reimbursable Project Cost and was incurred in connection with the Project.
2. These Reimbursable Project Costs have been incurred by UTA and are reimbursable or payable under the Agreement.
3. Each item listed on **Schedule 1** has not previously been paid or reimbursed from money deposited by the County into the Escrow Account.
4. Invoices for each item listed on **Schedule 1** are attached hereto.
5. There has not been filed with or served upon UTA any notice of any lien, right of lien or attachment upon or claim affecting the right of any person, firm, or corporation to receive payment of the amounts stated in this request, except to the extent any such lien is being contested in good faith.
6. All work for which reimbursement or payment is requested under this Request for Withdrawal has been performed in a good and workmanlike manner and in accordance with the Agreement.
7. All Reimbursable Project Costs for which reimbursement or payment is requested under this Request for Withdrawal is consistent with the allowable uses for County Transportation Funds described in.
8. UTA is not in default or breach of any term or condition of the Agreement, and no event has occurred and no condition exists which constitutes an Event of Default under the Agreement.

9. All of UTA's representations set forth in the Agreement remain true and correct as of the date hereof.

10. UTA acknowledges and agrees that the County's review and approval of this Request for Withdrawal will not be deemed to be a review by the County as to whether any particular Reimbursable Project Cost for which a withdrawal of Transportation Funds is sought hereunder is consistent with the allowable uses for County Transportation Funds described in Utah Code Ann. §59-12-2219(11)(a)(ii). As such, UTA agrees to be liable for and to indemnify the County from any improper use of the Transportation Funds, as indicated in Section 5.1 of the Agreement.

Dated this ____ day of _____, 20__.

UTAH TRANSIT AUTHORITY

By: _____

Name: _____

Title: _____

**BY SIGNING BELOW, SALT LAKE COUNTY HEREBY OBJECTS TO THE ABOVE DESCRIBED
PAYMENT REQUEST AND DIRECTS ESCROW AGENT NOT TO MAKE PAYMENT. THIS OBJECTION IS
MADE BY SALT LAKE COUNTY AS OF THIS ____ DAY OF _____, 20__.**

SALT LAKE COUNTY

By: _____

Name: _____

Title: _____

SCHEDULE 1 to EXHIBIT D

Reimbursable Project Costs (RPC) Request for Withdrawal

Reimbursable Project Costs Request Detail:

<u>Vendor Name</u>	<u>Date of Service</u>	<u>Date Paid by UTA</u>	<u>Reimbursable Project Cost Description</u>	<u>Requested Amount</u>

Total RPC Request \$ _____

RPC – This Request	_____
(plus) RPC Paid to Date	_____
Total Paid to Date	_____
Maximum Reimbursable Amount	_____
(less) Total Paid to Date	_____
Remaining Transportation Funds	_____

EXHIBIT E
REPRESENTATIVE SPECIMEN SIGNATURES

CERTIFICATE OF AUTHORIZED REPRESENTATIVES

Re: UTA/ SALT LAKE COUNTY ESCROW

Shown below are the specimen signatures of the individuals who have been designated as authorized representatives of each party and are hereby authorized to initiate and approve transactions for the above referenced Escrow Agreement.

NAME	TITLE	SIGNATURE
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Date: _____

