

# EQUIPMENT LEASE-PURCHASE AGREEMENT

(2018 – 4 Year)

This Equipment Lease-Purchase Agreement dated as of \_\_\_\_\_, 2018, together with all amendments or supplements thereto (collectively, the “Lease”) by and between \_\_\_\_\_, a corporation organized under the laws of State of \_\_\_\_\_ (“Lessor”), and the Utah Transit Authority (the “Lessee”), a public transit district existing under the laws of the State of Utah:

NOW THEREFORE, for and in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto agree as follows:

## ARTICLE I

### DEMISING CLAUSE; TITLE; SECURITY

Section 1.1 Agreement to Lease. Lessor hereby demises, leases, and lets to Lessee and Lessee rents, leases and hires from Lessor, the Equipment (defined below), to have and to hold for the Term (defined below) of this Lease.

Section 1.2 Title. During the Term of this Lease, title to the Equipment will be transferred to, vested and held in the name of, Lessee, subject to retransfer to Lessor as provided in Section 3.4 and further subject to Lessee’s right to exercise the Option provided in Article V hereof. Upon termination of this Lease pursuant to Sections 3.3(a) or 3.3(c), title to the Equipment will transfer automatically to Lessor without the need for any further action on the part of Lessee, who by this Lease appoints Lessor its irrevocable attorney in fact solely for the purpose of taking such action as is necessary to so transfer title to the Equipment to Lessor. Lessor at all times will have reasonable access to the Equipment during regular business hours for the purpose of inspection, alteration, and repair.

Section 1.3 Security. To secure the payment of all of Lessee’s obligations to Lessor under this Lease, Lessee grants to Lessor a security interest in (i) the Equipment and in all additions, attachments, accessions, and substitutions to or for the Equipment, (ii) any moneys and investments held from time to time in the Escrow Account and (iii) any and all proceeds of the foregoing. Lessee agrees to execute such additional documents, including financing statements, affidavits, notices, and similar instruments, in form satisfactory to Lessor, which Lessor deems necessary or advisable to establish and maintain its security interest in the Equipment. Under the laws of the State of Utah, such pledge and assignment and security interest is automatically perfected as provided in Section 11-14-501, Utah Code Annotated 1953, as amended, and is and shall have priority as against all parties having claims of any kind in tort, contract, or otherwise hereafter imposed on the Equipment.

This Lease does not create any pledge of or lien on the revenues of the Lessee, including without limitation, the revenues pledged to any of its bonds, notes or other indebtedness and nothing in this Lease shall be construed to limit the ability of the Lessee

to issue bonds, notes or other indebtedness secured by its revenues or any of its assets other than a lien on the Equipment.

## ARTICLE II

### DEFINITIONS

In addition to the terms defined in Article I hereof, the terms defined in this Article II shall, for purposes of this Lease, have the meaning herein specified unless the context clearly otherwise requires:

“Acquisition Amount” means \$\_\_\_\_\_. The Acquisition Amount represented by the Lessee to be sufficient, together with other funds (if any) that are legally available, for the purpose to acquire and install the Equipment.

“Code” means the Internal Revenue Code of 1986 as amended. Each reference to a section of the Code herein shall be deemed to include the United States Treasury Regulations proposed or in effect thereunder.

“Commencement Date” shall mean the date when Lessee’s obligation to make payments commences hereunder and shall be the date on which the Acquisition Amount is deposited with the Escrow Agent.

“Equipment” shall mean the property which Lessor is leasing to Lessee described generally in Appendix A attached hereto and as may be more fully described in each draw under the Escrow Agreement.

“Escrow Account” means the fund established and held by the Escrow Agent pursuant to the Escrow Agreement.

“Escrow Agent” means the Escrow Agent identified in the Escrow Agreement, and its successor and assigns.

“Escrow Agreement” means an Escrow and Account Control Agreement (2018 – 4 Year) in form and substance acceptable to and executed by Lessee, Lessor and the Escrow Agent, pursuant to which the Escrow Account is established and administered.

“Event of Taxability” has the meaning assigned in Section 6.1(h).

“Option Purchase Price” shall mean the amount which Lessee must pay Lessor to purchase the Equipment, as determined by Article V and attached Appendix B.

“Original Term” shall mean the period from the Commencement Date until the end of the fiscal year of Lessee in effect at the Commencement Date, as set forth in Section 3.2.

“Renewal Terms” shall mean all of the additional periods of one year (coextensive with Lessee’s fiscal year) for which this Lease shall be effective in the absence of a termination of the Lease as provided in Article III.

“Rental Payments” means the rental payments payable by Lessee pursuant to the provisions of this Lease during the Term hereof.

“Taxable Rate” means the interest rate then in effect divided by \_\_\_\_\_%.

“Tax Certificate” means the Tax Certificate to be executed by the Lessee in connection with this Lease, and attached thereto as Appendix E.

“Tax-Exempt Rental Payments” means Rental Payments related to this Lease, the interest portion of which is excludable from gross income for federal income tax purposes.

“Term” or “Term of this Lease” shall mean the Original Term and all Renewal Terms provided for in this Lease under Section 3.2.

“Vendor” shall mean the manufacturer of the Equipment and the manufacturer’s agent or dealer from whom Lessee purchased the Equipment.

### ARTICLE III

#### LEASE TERM

Section 3.1 Commencement. The Term of this Lease shall commence as of the Commencement Date.

Section 3.2 Duration of Lease; Nonappropriation; Nonsubstitution. The Term of this Lease will continue until midnight on the last day of the fiscal year of Lessee in effect at the Commencement Date (the “Original Term”). Thereafter, this Lease will be automatically extended for successive additional periods of one year coextensive with Lessee’s fiscal year as set forth in Appendix B (the “Renewal Terms”), unless this Lease is terminated as hereinafter provided.

The parties understand that as long as Lessee has sufficient appropriated funds to make the Rental Payments hereunder, Lessee will keep this Lease in effect through all Renewal Terms and make all payments required herein or Lessee will exercise its option under Article V to purchase the Equipment. Lessee hereby declares that, as of the date of the execution of this Lease, Lessee currently has an essential need for the Leased Equipment which is the subject of this Lease to carry out and give effect to the public purposes of Lessee. Lessee reasonably believes that it will have a need for the Equipment for the duration of the Original Term and all Renewal Terms. If Lessee does not appropriate funds to continue the leasing of the Equipment (an “Event of Nonappropriation”) for any ensuing Renewal Term, this Lease will terminate upon the expiration of the Original or Renewal Term then in effect and Lessee shall notify Lessor of such termination at least ten (10) days prior to the expiration of the Original or Renewal Term then in effect; provided, however, that a failure to give such written notice shall not constitute an event of default, result in any liability on the part of the Lessee or otherwise affect the termination of this Lease as set forth hereinabove.

If this Lease is terminated by Lessee due to an Event of Nonappropriation, the Lessee agrees not to purchase, lease or rent personal property to perform the same function or functions as those performed by the Equipment for a period of one hundred eighty (180) days succeeding such termination; provided, however, that these restrictions shall not be applicable if illegal or unenforceable under Utah law (as to which no opinion is expressed by Lessee or Lessee's counsel).

Section 3.3 Termination. This Lease will terminate upon the earliest to occur of any of the following events:

- (a) the expiration of the Original Term or any Renewal Term of this Lease wherein an Event of Nonappropriation has occurred resulting in a lack of funds to continue the leasing of the Equipment for the ensuing Renewal Term;
- (b) the exercise by Lessee of any option to purchase granted in this Lease by which Lessee purchases all of the Equipment;
- (c) a default by Lessee and Lessor's election to terminate this Lease under Article VII herein; or
- (d) upon the payment of all rental payments and all other amounts due hereunder.

Section 3.4 Return of Equipment Upon Termination. Upon termination of this Lease pursuant to Section 3.3(a) or (c), Lessee shall return the Equipment, freight and insurance prepaid, at Lessee's expense to a location designated by the Lessor in the condition, repair, appearance and working order required in Section 9.2 hereof. In the event that Lessee refuses to return the Equipment in the manner designated, Lessor may repossess the Equipment and charge to Lessee the costs of such repossession and the Rental Payments through the earlier of (i) actual repossession by Lessors or (ii) 30 days from the date of termination of this Lease. Lessee's obligations under the provisions of this Section are subject to and payable solely from funds appropriated for such purpose.

Section 3.5 Delivery and Installation. Delivery and Installation specifics for the Equipment shall be performed in a reasonable and customary manner.

Section 3.6 Draw Down of Funds into Escrow Account. Upon closing of this Lease, the Lessor shall deposit \$\_\_\_\_\_ into the Escrow Account.

Section 3.7 Acceptance Certificate. Upon delivery of all of the Equipment for use by the Lessee, the Lessee shall deliver the Acceptance Certificate in substantially the form of Appendix D hereto.

## ARTICLE IV

### RENTAL PAYMENTS

Section 4.1 Amount. Lessee will pay Lessor as rent for the use of the Equipment during the Original Term and any Renewal Terms the Rental Payments on the dates and in the amounts set forth in Appendix B. All Rental Payments shall be paid, exclusively from legally available funds, in lawful money of the United States of America to Lessor at Lessor's address set forth in Section 11.4 or to such other person or entity or at such other place as Lessor may from time to time designate by at least thirty (30) days advance written notice to Lessee.

Section 4.2 Portion of Rental Payments Attributable to Interest. The portion of each Rental Payment which is paid as and is representative of interest is set forth in Appendix B.

Section 4.3 No Right to Withhold. Notwithstanding any dispute between Lessee, Lessor, or any other party, Lessee will make all Rental Payments when due, without withholding any portion of such rent, pending final resolution of such dispute by mutual agreement between the parties thereto or by a court of competent jurisdiction. The obligation of Lessee to pay Rental Payments hereunder during the Original Term and any Renewal Term is absolute and unconditional and shall not be abated for any reason, subject to the right of the Lessee to terminate this lease at the conclusion of the Original Term or any Renewal Term due to an Event of Nonappropriation.

Section 4.4 Rental Payments to Constitute a Current Obligation of the Lessee. The Lessee and the Lessor acknowledge and agree that the obligation of the Lessee to pay Rental Payments hereunder constitutes a current obligation of the Lessee payable exclusively from current and legally available funds and shall not in any way be construed to be an indebtedness of the Lessee within the meaning of any provision of the laws of the State of Utah or any section of the Utah Constitution, or any other constitutional or statutory limitation or requirement applicable to the Lessee concerning the creation of indebtedness. The Lessee has not hereby pledged the general credit of the Lessee or any revenues or assets of Lessee to the payment of the Rental Payments, or the interest thereon, and this Lease shall not obligate the Lessee to apply any other money to the Rental Payments or any interest thereon.

## ARTICLE V

### PURCHASE OF EQUIPMENT

Section 5.1 Option Purchase Price. Lessee shall have the option (the "Option") to purchase the Equipment from Lessor at a price equal to the Option Purchase Price (as set forth on Appendix B), plus accrued and unpaid interest (if any) and any rental payments due on the date of purchase.

Section 5.2 Manner of Exercise of Option. To exercise the Option, Lessee must deliver to Lessor written notice specifying the date on which the related Equipment is to be purchased, which notice must be delivered to Lessor at least thirty (30) days prior to the date of purchase specified therein. At the closing of the Option and upon payment of the Option Purchase Price, Lessor will deliver to Lessee all documents necessary to clear and release any related lien, encumbrance or security interest created by or arising through Lessor or this Lease

Section 5.3 Conditions of Exercise of Option. Lessee may purchase the Equipment pursuant to the Option only if Lessee is not in default in the payment of Rental Payments, in accordance with the provisions of this Lease (or has remedied any defaults).

Section 5.4 Termination Purchase. Upon the expiration of the Term of the Lease as stated in Section 3.3(d) and provided that the conditions of Section 5.3 have been satisfied, Lessee shall be deemed to have purchased all of the Equipment (without the payment of additional sums and without any notice required by Section 5.2) and shall be vested with all rights and title to all of the Equipment. Lessor agrees that upon the occurrence of the events as provided in this Section 5.4, it shall deliver to Lessee the documents specified in Section 5.2.

## ARTICLE VI

### REPRESENTATIONS, COVENANTS, AND WARRANTIES OF LESSEE AND LESSOR

Section 6.1 Representations, Covenants and Warranties of Lessee. Lessee represents, covenants, and warrants as follows:

(a) Lessee is a public transit district, duly organized and existing under the Constitution and laws of the State of Utah.

(b) Lessee is authorized by the Constitution and laws of the State of Utah to enter into this Lease and to effect all of Lessee's obligations hereunder. To the knowledge of the undersigned, there is no litigation or other proceeding challenging in any way Lessee's authority to execute this Lease and perform its obligations hereunder. To the knowledge of the undersigned, the execution and delivery of this Lease by Lessee and the performance of Lessee's obligations hereunder does not conflict with or constitute a breach of or default under, (with or without notice or lapse of time), any other instrument to which Lessee is a part.

(c) All procedures and requirements, including any public bidding requirements, required to be met by Lessee prior to the execution of this Lease in order to insure the enforceability of this Lease have been met and all Rental Payments and other payment obligations will be paid out of funds legally available for such purpose.

(d) The letter attached to this Lease as Appendix C is a true opinion of Lessee's counsel.

(e) Lessee will use and service the Equipment in accordance with Vendor's written instructions, if any, provided to Lessee.

(f) During the Term of this Lease, the Lessee shall comply with the Tax Certificate, if any, and the Equipment will be used by Lessee only for the purpose of performing one or more governmental or proprietary functions of Lessee consistent with the permissible scope of Lessee's authority.

(g) Equipment related to Tax-Exempt Rental Payments shall be used solely by Lessee (except as otherwise permitted by the Code) and shall not be subject to any direct or indirect private business use or to make any loans.

(h) Lessee agrees that it will not take any action that would cause the interest component of Tax-Exempt Rental Payments to be or to become ineligible for the exclusion from gross income of Lessor for federal income tax purposes, nor will it omit to take or cause to be taken, in a timely manner, any action, which omission would cause the interest component of Tax-Exempt Rental Payments to be or to become ineligible for the exclusion from gross income of Lessor for federal income tax purposes. Upon the occurrence of an Event of Taxability with respect to this Lease, the interest component of Rental Payments under such Lease and any charge on Rental Payments or other amounts payable based on the interest rate described herein shall have accrued and be payable at the Taxable Rate retroactive to the date as of which the interest component is determined by the Internal Revenue Service to be includible in the gross income of the owner or owners thereof for federal income tax purposes, and Lessee will pay such additional amount as will result in Lessor receiving the interest component at the Taxable Rate. For purposes of this Section, "Event of Taxability" means the circumstance of the interest component of any Rental Payment paid or payable pursuant to this Lease becoming includible for federal income tax purposes in Lessor's gross income as a consequence of any act, omission or event whatsoever, including but not limited to the matters described in the immediately succeeding sentence, and regardless of whether the same was within or beyond the control of Lessee. An Event of Taxability shall be presumed to have occurred upon (a) the receipt by Lessor or Lessee of an original or a copy of an Internal Revenue Service Technical Advice Memorandum or Statutory Notice of Deficiency or other written correspondence which legally holds that the interest component of any Rental Payment under this Lease is includable in the gross income of Lessor; (b) the issuance of any public or private ruling of the Internal Revenue Service that the interest component of any Rental Payment under this Lease is includable in the gross income of Lessor; or (c) receipt by Lessor or Lessee of a written opinion of a nationally recognized firm of attorneys experienced in matters pertaining to the tax exempt status of interest on obligations issued by states and their political subdivisions, selected by Lessor and acceptable to Lessee, to the effect that the interest component of any Rental Payment under this Lease has become includable in the gross income of Lessor for

federal income tax purposes. For all purposes of this definition, an Event of Taxability shall be deemed to occur on the date as of which the interest component of any Rental Payment is deemed includable in the gross income of the owner thereof for federal income tax purposes.

(i) With relation to Tax-Exempt Rental Payments, this Lease constitutes neither (i) a private activity bond, as defined in Section 141 of the Internal Revenue Code of 1986, as amended (the “Code”) nor (ii) an arbitrage bond, as defined in Section 148 of the Code.

(j) For Tax-Exempt Rental Payments, the obligations of Lessee under this Lease are not federally guaranteed within the meaning of Section 149(b) of the Code.

(k) With relation to Tax-Exempt Rental Payments, in compliance with Section 149(e) of the Code relating to information reporting, Lessee has caused or will cause to be filed with the Internal Revenue Service, IRS form 8038-G or 8038-GC, as appropriate (form attached as Appendix F).

(l) The Lessee covenants and certifies to and for the benefit of the Lessor that no use will be made of any of the proceeds of the issuance and sale of the Lease or any funds or accounts of the Lessee which may be deemed to be available proceeds of the Lease, pursuant to Section 148 of the Code, and applicable Treasury Regulations (promulgated or proposed) thereunder, which use, if it had been reasonably expected on the date of issuance of the Lease, would have caused the Lease to be classified as an “arbitrage bond” within the meaning of Section 148 of the Code. Pursuant to this covenant, the Lessee obligates itself to comply throughout the term of the Lease with the requirements of Section 148 of the Code and the Treasury Regulations proposed or promulgated thereunder as the same presently exist, or may from time to time hereafter be amended, supplemented or revised. [The Lessee further represents and covenants that, with the exception of [two] leases similar to this Lease entered into by Lessee and Lessor simultaneous with the execution of this Lease, no federal tax exempt bonds or other federal tax exempt evidences of indebtedness of the Lessee have been or will be issued, sold or delivered pursuant to a common plan of finance with this Lease within a period beginning 15 days prior to the pricing of the Lease and ending 15 days following the delivery of the Lease. Additional representations and covenants of the Lessee with respect to matters governed by the Code and Treasury Regulations relating to the Tax-Exempt Rental Payments, including without limitation Treasury Regulations Sections 1.148-1 through 1.148-11, Section 1.149 and Sections 1.150-1 and 1.150-2, will be set forth in the Tax Certificate attached hereto.]

(m) With relation to Tax-Exempt Rental Payments, no portion of the proceeds of this Lease will be used to refund any other obligation.

(n) With relation to Tax-Exempt Rental Payments, except for capital expenditures (i) contemplated by the Declaration of Official Intent attached hereto



as Appendix G and (ii) paid after the date of the Declaration of Official Intent (or within 60 days prior to the date thereof), no proceeds of this Lease will be used to reimburse amounts expended prior to the closing date described herein.

(o) During the term of this Lease, Lessee covenants and agrees (1) to include in its annual tentative budget prepared by the appropriate officials acting on behalf of Lessee in accordance with applicable law an item for expenditure of an amount necessary to pay the Rental Payments for the Equipment during the next succeeding Renewal Term, and (2) to take such further action (or cause the same to be taken) as may be necessary or desirable to assure that the final budget submitted to the governing body of Lessee for its consideration seeks an appropriation of moneys sufficient to pay such Rental Payments.

(p) Lessee has never non-appropriated or defaulted under any of its payment or performance covenants, either under any municipal lease of the same general nature as this Lease or under any of its bonds, notes or other debt obligations.

(q) The Lessee shall have available for the Lessor's inspection a copy of its audited financial statements within two hundred (200) days of its fiscal year end, unless due to circumstances reasonably outside of its control said statements cannot be completed within two hundred (200) days. In such event, unless reasonably agreed to otherwise by Lessor, audited financial statements shall be made available within two-hundred-twenty (220) days of its fiscal year end.

(r) Lessee has not directly or indirectly caused to be created any lien or encumbrance on the Equipment except the security interest granted in Section 1.3 of this Lease.

Section 6.2 Representations, Covenants and Warranties of Lessor. Lessor represents, covenants, and warrants as follows:

(i) During the Term of this Lease, Lessor will provide Lessee with quiet use and enjoyment of the Equipment, without suit, trouble, or hindrance from Lessor or through Lessor, except upon the occurrence of the events described in Section 3.3 (a) and (c) of this Lease.

(ii) Lessee has ordered the Equipment and Lessor shall lease the same to Lessee as herein provided, Lessor's role being the facilitation of the financing of the Equipment for the Lessee. FOR PURPOSE OF THIS LEASE AND OF ANY PURCHASE OF THE EQUIPMENT EFFECTED UNDER THIS LEASE, LESSOR EXPRESSLY DISCLAIMS ANY WARRANTY WITH RESPECT TO THE CONDITION, QUALITY, DURABILITY, SUITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE EQUIPMENT IN ANY RESPECT, AND ANY OTHER REPRESENTATION, WARRANTY, OR COVENANT, EXPRESS OR IMPLIED. LESSOR WILL NOT BE

LIABLE TO LESSEE FOR ANY LIABILITY, LOSS, OR DAMAGE CAUSED OR ALLEGED TO BE CAUSED, DIRECTLY OR INDIRECTLY, BY ANY INADEQUACY, DEFICIENCY, OR DEFECT IN THE EQUIPMENT, OR BY ANY USE OF THE EQUIPMENT, WHATSOEVER. Lessor assigns to Lessee, without recourse, for the Term of this Lease all manufacturer warranties and guarantees, express or implied, pertinent to the Equipment, and authorizes Lessee to obtain the customary services furnished in connection with such guarantees and warranties at Lessee's expense.

## ARTICLE VII

### EVENTS OF DEFAULT AND REMEDIES

Section 7.1 Events of Default Defined. The following shall be "events of default" under this Lease and the terms "Event of Default" and "default" shall mean, whenever they are used in this Lease, any one or more of the following events:

(a) Failure by Lessee to pay any Rental Payment or other payment required to be paid hereunder within fifteen (15) days of the time specified herein; and

(b) Failure by Lessee to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in Section 7.1 (a), for a period of 20 days (10 days in the case of a failure to comply with Section 10.2 hereof) after written notice, specifying such failure and requesting that it be remedied, is given to Lessee by Lessor, unless Lessor shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, Lessor will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by Lessee within the applicable period and diligently pursued until the default is corrected.

(c) Lessee shall (i) apply for or consent to the appointment of a receiver, trustee, custodian or liquidator of Lessee, or of all or a substantial part of the assets of Lessee, (ii) be unable, fail or admit in writing its inability generally to pay its debts as they become due, (iii) make a general assignment for the benefit of creditors, or (iv) file a voluntary petition in bankruptcy or a petition or an answer seeking reorganization or an arrangement with creditors or taking advantage of any insolvency law or any answer admitting the material allegations of a petition filed against Lessee in any bankruptcy, reorganization or insolvency proceeding.

(d) An order, judgment or decree shall be entered by any court of competent jurisdiction, approving a petition or appointing a receiver, trustee, custodian or liquidator for Lessee or of all or a substantial part of the assets of Lessee, in each case without its application, approval or consent, and such order,

judgment or decree shall continue unstayed and in effect for any period of thirty (30) consecutive days.

The foregoing provisions of this Section 7.1 are subject to (i) the provisions of Section 3.2 hereof with respect to an Event of Nonappropriation; and (ii) if by reason of force majeure Lessee is unable in whole or in part to carry out its agreement on its part herein contained, other than the obligations on the part of Lessee contained in Article IV hereof and Section 10.2 hereof, Lessee shall not be deemed in default during the continuance of such inability. The term “force majeure” as used herein shall mean, without limitation, the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States of America or of the State of Utah or any of their departments, agencies or officials, or any civil or military authority; insurrections; riots; landslides; earthquakes; fires; storms, droughts; floods; explosions; breakage or accident to machinery, transmission pipes or canals; or any other cause or event not reasonably within the control of Lessee.

Section 7.2 Remedies on Default. Whenever any event of default referred to in Section 7.1 hereof shall have happened and be continuing, Lessor shall have the right, at its sole option without any further demand or notice to take one or any combination of the following remedial steps:

(a) With or without terminating this Lease, retake possession of the Equipment or by written notice to Lessee, request Lessee to (and Lessee agrees that it will), at Lessee’s expense, promptly return the Equipment to Lessor in the manner set forth in Section 3.4 hereof and Lessor may sell, lease or otherwise dispose of the Equipment;

(b) Take whatever action at law or in equity may appear necessary or desirable to enforce its rights under this Lease or the Escrow Agreement or as a secured party in any or all of the Equipment or the Escrow Account;

(c) Terminate the Escrow Agreement and apply any proceeds in the Escrow Account to the Rental Payments due hereunder; and

(d) With or without terminating this Lease, declare all Rental Payments due during the Original Term or Renewal Term in effect on the date of the default to be immediately due and payable whereupon such Rental Payments shall be due and payable, but solely from legally available funds appropriated for such purpose.

Any amount realized upon a sale, lease or other disposition of the Equipment or from the exercise of any other remedies hereunder shall be applied as follows:

First: To pay all reasonable expenses of the repossession and/or disposition of the Equipment;

Second: To the payment of all principal (using for this purpose the Option Purchase Price) and interest (accrued to the date of payment) owing Lessor hereunder, and

Third: Any excess shall be returned to Lessee as an overpayment of rent hereunder.

Section 7.3 No Remedy Exclusive. No remedy herein conferred upon or reserved to Lessor is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle Lessor to exercise any remedy reserved to it in this Article VII, it shall not be necessary to give any notice, other than such notice as may be required in this Article VII.

Section 7.4 No Deficiency Judgment. Anything in this Lease to the contrary notwithstanding, the remedies of Lessor hereunder shall be limited to repossession and disposal of the Equipment and no judgment for any deficiency or any other amounts owing hereunder shall be entered against Lessee except with respect to the Rental Payments due during the Original Term or Renewal Term in effect on the date of the default, but then solely from legally available funds appropriated for such purpose.

Section 7.5 Waiver of Certain Damages. With respect to all of the remedies of Section 7.2 above, Lessee expressly waives any damages occasioned by Lessor's repossession of the Equipment.

## ARTICLE VIII

### PAYMENT OF TAXES, FEES, PERMITS, AND UTILITY SERVICES

Section 8.1 Interpretation. This Lease for all purposes will be treated as a net lease.

Section 8.2 Taxes and Fees. Lessee agrees to pay and to indemnify and hold Lessor harmless from, all license, sales, use, personal property, and other taxes and fees, together with any penalties, fines, and interest on such taxes and fees imposed or levied with respect to the Equipment and the ownership, delivery, lease, possession, use, operation, sale, and other disposition of the Equipment, and upon the rental or earnings arising from any such disposition, except any federal or state income taxes payable by Lessor on such rental or earnings. Lessee may in good faith and by appropriate proceedings contest any such taxes and fees so long as such proceedings do not involve any danger of sale, forfeiture, or loss of the Equipment or of any interest in the Equipment.

Section 8.3 Permits. Lessee will obtain all permits and licenses necessary for the installation, operation, and use of the Equipment. Lessee will comply with all laws, rules, regulations, and ordinances applicable to the installation, use, possession, and operation of the Equipment. If compliance with any law, rule, regulation, ordinance, permit, or license requires changes or additions to be made to the Equipment, such changes or additions will be made by Lessee at its own expense.

Section 8.4 Utilities. Lessee will pay all charges for fuel, water, steam, electricity, light, heat, power, telephone, or other utilities furnished to or used in connection with the Equipment (including charges for installation of such services) during the Term of this Lease. There will be no abatement of rent on account of the interruption of any such services.

## ARTICLE IX

### USE, REPAIRS, ALTERATIONS, AND LIENS

Section 9.1 Use; Personal Property. Lessee has not (or, as applicable, will not) install, use, operate, or maintain the Equipment improperly, carelessly, in violation of any applicable law, or in a manner contrary to that contemplated by this Lease. Lessee agrees that the Equipment is and at all times will remain personal property notwithstanding that the Equipment or any part of the Equipment may now or hereafter become affixed in any manner to real property or to any building or permanent structure. Lessee shall comply with all license and copyright requirements of any software used in connection with the Equipment.

Section 9.2 Repairs. Lessee at its own cost will service, repair, and maintain the Equipment so as to keep the Equipment in as good condition, repair, appearance, and working order as when delivered to and accepted by Lessee under this Lease, ordinary wear and tear excepted. At its own cost, Lessee will replace any and all parts and devices which may from time to time become worn out, lost, stolen, destroyed, damaged beyond repair, or rendered unfit for use for any reason whatsoever. All such replacement parts, mechanisms, and devices will be free and clear of all liens, encumbrances, and rights of others, and immediately will become a part of the Equipment and will be covered by this Lease (for all purposes including the obligation of Lessee to retransfer title to Lessor under Section 1.2 herein) to the same extent as the Equipment originally covered by this Lease.

Section 9.3 Alterations. Lessee may install such miscellaneous equipment as may be necessary for use of the Equipment for its intended purposes so long as either (a) the installation of such miscellaneous equipment does not alter the function or manner of operation of the Equipment, or (b) Lessee, upon termination of this Lease, restores the Equipment to its function and manner of operation in existence prior to the installation of such miscellaneous equipment. Subject to the obligations described above, Lessee may remove such equipment upon termination of this Lease, if the removal of such equipment will not substantially damage the Equipment. Without the prior written consent of Lessor, Lessee will not make any other alterations, changes, modifications, additions, or improvements to the Equipment except those needed to comply with Lessee's obligations to change, add to, or repair the Equipment as set forth in Sections 9.2 and 10.3 herein. Any alterations, changes, modifications, additions, and improvements made to the Equipment, other than miscellaneous equipment which may be removed as set forth above, immediately will become a part of the Equipment and will be covered by this Lease (for all purposes, including the obligation of Lessee to retransfer title to Lessor under Section 1.2 herein) to the same extent as the Equipment originally covered by this Lease.

Section 9.4 Liens. Except with respect to the security interest provided in Section 1.3 hereof, Lessee will not directly or indirectly create, incur, assume, or suffer to exist any mortgage, pledge, lien, charge, encumbrance, or claim on or with respect to the Equipment or any interest in the Equipment. Lessee promptly and at its own expense will take such action as may be necessary to duly discharge any mortgage, pledge, lien, charge, encumbrance, or claim, not excepted above, if the same arises at any time.

## ARTICLE X

### INDEMNIFICATION, INSURANCE, AND DAMAGE TO OR DESTRUCTION OF THE EQUIPMENT

Section 10.1 Indemnification. Lessee shall, to the extent permitted by law, indemnify and hold Lessor harmless from and against any and all claims, liabilities, damages and expenses, including reasonable attorneys' fees, to the extent caused by Lessee's negligence in the use, operation, ownership or possession of the Equipment, including claims for property damage, personal injury or wrongful death, and excluding any claims, liabilities, damages and expenses arising out of the negligent acts or omissions of Lessor. Lessee is a governmental entity under the Governmental Immunity Act of Utah (the "Act"). Nothing in this Agreement may be construed as a waiver of any rights or defenses otherwise applicable to Lessee pursuant to the Act. Indemnification is limited to the amounts established in Section 63G-7-604 of the Act.

Section 10.2 Insurance. Lessee shall, at its sole discretion, either self-insure or maintain at all times during the Lease Term comprehensive general liability and property damage insurance with respect to the Lessee's operation or possession of the Equipment. The comprehensive general liability insurance limits shall be not less than the maximum limits for judgments provided for under the Governmental Immunity Act of Utah as set forth in Utah Code Ann. 63G-7-101 et seq, or any successor act, (such limits to be automatically increased as the related limits provided by State law are increased). In no event will the property insurance limits be less than the replacement cost with equipment of like kind and quality. Lessee shall furnish to Lessor a certificate of insurance or, if Lessee has self-insured, a letter or certificate regarding such self-insurance to be sent to \_\_\_\_\_.

Section 10.3 Damage to or Destruction of the Equipment. If all or any part of the Equipment is lost, stolen, destroyed, or damaged, Lessee will give Lessor prompt notice of such event and will, to the extent of insurance proceeds (including self-insurance) and legally available funds repair or replace (at the Lessee's sole discretion), the same at Lessee's cost within a reasonable time after such event, and any replaced Equipment will be substituted in this Lease by appropriate endorsement. All insurance proceeds received under the policies required under Section 10.2 with respect to the Equipment lost, stolen, destroyed, or damaged, will be paid to Lessee if the Equipment is repaired or replaced by Lessee as required by this Section. If Lessee fails or refuses to make the required repairs or replacement or if sufficient amounts are not available, such proceeds will be paid to Lessor to the extent of the then remaining principal balance of the related Rental Payments

of this Lease plus accrued interest to the date of payment. No loss, theft, destruction, or damage to the Equipment will impose any obligation on Lessor under this Lease, and this Lease will continue in full force and effect regardless of such loss, theft, destruction, or damage.

## ARTICLE XI

### MISCELLANEOUS

Section 11.1 Assignment and Sublease by Lessee. Lessee may not assign, transfer, pledge, or encumber this Lease or any portion of the Equipment (or any interest in this Lease or the Equipment), or sublet the Equipment, without the prior written consent of Lessor. Consent to any of the foregoing acts shall not constitute a consent to any subsequent like act by Lessee or any other person. Lessee agrees that Lessor may impose on the Equipment or the title thereto such plates or other means of identification as necessary to indicate that the Equipment is subject to this Lease and the restrictions set forth in this Section.

Section 11.2 Assignment by Lessor. The parties hereto agree that all rights of Lessor hereunder may be assigned, transferred or otherwise disposed of, either in whole or in part; provided that (1) written notice of any such assignment, transfer or other disposition is given to Lessee at least ten (10) days prior thereto (except that any assignment of this Lease at the time of execution thereof may be made by written notice at the time of execution); and (2) prior to any such assignment, transfer or other disposition, the name, address and the Federal Tax I.D. number of the assignee or transferee must be registered on registration books maintained by Lessee for this Lease. Lessor shall pay all costs of such transfer and shall be responsible for notice to Lessee and provision to Lessee of the name, address and Federal Tax I.D. number of the assignee. Lessee shall maintain registration books for this Lease and shall be obligated to make the payments required hereby, including principal and interest payments, solely to the registered owner or owners hereof.

Section 11.3 Lessor's Right to Perform for Lessee. If Lessee fails to make any payment or fails to satisfy any representations, covenant, warranty, or obligation under this Lease, Lessor may (but need not) make such payment or satisfy such representation, covenant, warranty, or obligation on Lessee's behalf, and the amount of such payment and any expenses incurred by Lessor, as the case may be, together with interest thereon at a rate of the interest rate then in effect on this Lease plus 5% or the maximum amount permitted by law, whichever is less, will be deemed to be additional rent payable by Lessee on Lessor's demand.

Section 11.4 Addresses. All notices to be given under this Lease will be made in writing and mailed by registered or certified mail, return receipt requested, (a) if to Lessee, at the Utah Transit Authority, 669 West 200 South, Salt Lake City, Utah 84101, Attention: Treasurer, and if to Lessor, at \_\_\_\_\_, until either Lessee or Lessor gives written notice to the other specifying a different address.

Section 11.5 Manner of Payment. All payments by Lessee to Lessor hereunder will be made by check or fed wire transfer, or by other manner mutually acceptable to Lessor and Lessee.

Section 11.6 Nonwaiver. No breach by Lessee in the satisfaction of any representation, covenant, warranty, or obligation may be waived except by the written consent of Lessor, and any such waiver will not operate as a waiver of any subsequent breach. Forbearance or indulgence by Lessor in any regard whatsoever shall not constitute a waiver of the covenant or obligation and until complete performance by Lessee of said covenant or obligation Lessor shall be entitled to invoke any remedy available to it under this Lease despite said forbearance or indulgence. No collection of rent shall operate as a waiver of any default.

Section 11.7 Severance Clause. Any provision in this Lease which is prohibited by law will be treated as if it never were a part of this Lease, and the validity of the remaining terms of this Lease will be unaffected.

Section 11.8 Entire Agreement. This Lease and the attached Exhibits constitute the entire agreement between Lessor and Lessee and supersedes any prior agreement between Lessor and Lessee with respect to the Equipment, except as is set forth in an addendum, if any, which is made a part of this Lease and which is signed by Lessor and Lessee.

Section 11.9 Amendments. This Lease may be amended only by a written document signed by Lessor and Lessee.

Section 11.10 Inurement. Subject to the restrictions in Sections 11.1 and 11.2 above, this Lease is binding upon and inures to the benefit of Lessor and Lessee and their respective successors and assigns.

Section 11.11 Governing Law. This Lease is governed by the laws of the State of Utah, without giving effect to any choice of laws rules.

Section 11.12 Prevailing Party. In the event an action or other proceeding is filed with respect to the rights and obligations of the parties to this Lease, any judgment rendered in such action or proceeding shall, to the extent permitted by law, include a sum for attorney's fees in favor of the prevailing party.

Section 11.13 Offset. Rental Payments or other sums payable by Lessee pursuant to this Lease shall not be subject to set-off, deduction, counterclaim or abatement and Lessee shall not be entitled to any credit against such Rental Payments or other sums for any reason whatsoever, including, but not limited to any damage or destruction of the Equipment.

Section 11.14 Interest. If any Rental Payment or other amount payable hereunder is not paid within 15 days of its due date, Lessee shall pay to Lessor, solely from and to the extent of legally available funds appropriated for such purpose, an administrative late



charge of 5% of the amount not timely paid or the maximum amount permitted by law, whichever is less.

Section 11.15 Nature of this Agreement. Lessor and Lessee agree that it is their intention that, (a) for federal income tax purposes, the interest of Lessor in the Equipment is as a secured party and the interest of Lessee is as a debtor with the aggregate principal amount of the Rental Payments constituting the purchase price of the Equipment, and (b) Lessor neither has nor will have any equity in the Equipment.

EXECUTED as of this \_\_\_\_\_, 2018.

LESSEE:  
UTAH TRANSIT AUTHORITY

By: \_\_\_\_\_  
Name: Robert K. Biles  
Title: Treasurer and VP Finance

By: \_\_\_\_\_  
Name: Richard C. Swenson  
Title: Deputy Treasurer

LESSOR:  
\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

APPENDIX A

<b>Description of Equipment:</b>
<b>Closing Date:</b> _____, 2018
<b>Commencement Date:</b> _____, 2018
<b>Principal Amount:</b> \$ _____
<b>Interest Rate or Rates:</b> _____%
<b>Prepayment Options:</b>
The lease is subject to prepayment in whole or in part at the option of the Lessee on _____, or on any date thereafter, at the price of 100% of the remaining principal balance of the lease, as shown on <u>Appendix B</u> hereto.
<b>Acquisition Period:</b> _____ (___) months from Commencement Date.

APPENDIX B

Rental Payments  
(4 Year Lease Term)

APPENDIX C

OPINION OF LESSEE'S COUNSEL

Date:

To:

Gentlemen:

As counsel for the Utah Transit Authority (the "Lessee"), I have examined duly executed originals of the three Equipment Lease-Purchase Agreements (collectively, the "Lease"), each dated \_\_\_\_\_, 2018, between the Lessee and \_\_\_\_\_ (the "Lessor"), and the proceedings taken by Lessee to authorize and execute the Lease. Based upon such examination as I have deemed necessary or appropriate, I am of the opinion that:

1. Lessee is a public transit district legally existing under the laws of the State of Utah.
2. The Lease has been duly authorized, executed, and delivered by Lessee.
3. The governing body of Lessee has complied with all applicable open public meeting and notice laws and requirements with respect to the meeting at which Lessee's execution of the Lease was authorized.
4. The Lease is a legal, valid and binding obligation of Lessee, enforceable in accordance with its terms except as limited by the state and federal laws affecting remedies and by bankruptcy, reorganization, or other laws of general application affecting the enforcement of creditors' rights generally.
5. The Lease is in accordance with and does not violate the usury statutes of the State of Utah, if any.
6. There are no legal or governmental proceedings or litigation pending or, to the best of my knowledge, threatened or contemplated (or any basis therefor) wherein an unfavorable decision, ruling or finding might adversely affect the transactions contemplated in or the validity of the Lease.
7. The Equipment (as defined in the Lease) constitutes personal property and when subjected to use by Lessee will not become fixtures under applicable law.

\_\_\_\_\_  
Attorney for Lessee

APPENDIX D

ACCEPTANCE CERTIFICATE

To: \_\_\_\_\_

Reference is made to the Equipment Lease-Purchase Agreement (2018 - 4 Year) between the undersigned Utah Transit Authority (the "Lessee") and \_\_\_\_\_ (the "Lessor"), dated \_\_\_\_\_, 2018 (the "Lease") and to the Equipment as such term is defined therein. In connection therewith we are pleased to confirm to you the following:

1. All of the Equipment has been delivered to and received by the undersigned; all installation or other work necessary prior to the use thereof has been completed; said Equipment has been examined and/or tested and is in good operating order and condition and is in all respects satisfactory to the undersigned and as represented, and that said Equipment has been accepted by the undersigned and complies with all terms of the Lease. Consequently, you are hereby authorized to pay for the Equipment in accordance with the terms of any purchase orders for the same.
2. In the future, in the event the Equipment fails to perform as expected or represented we will continue to honor the Lease in all respects and continue to make our rental and other payments thereunder in the normal course of business and we will look solely to the vendor, distributor or manufacturer for recourse.
3. We acknowledge that Lessor is neither the vendor nor manufacturer or distributor of the Equipment and has no control, knowledge or familiarity with the condition, capacity, functioning or other characteristics of the Equipment.
4. [The serial or vehicle identification number for each item of Equipment which is set forth on Appendix A to the Lease is correct.]

This certificate shall not be considered to alter, construe, or amend the terms of the Lease.

DATE:

LESSEE:  
UTAH TRANSIT AUTHORITY

By: \_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
Witness

APPENDIX E  
TAX CERTIFICATE

APPENDIX F  
FORM 8038-G



APPENDIX G

DECLARATION OF OFFICIAL INTENT

(See Authorizing Resolution)

APPENDIX H

ESCROW AGREEMENT