

SKI BUS SERVICE AGREEMENT
SMHG Management LLC,
a Delaware limited liability company
“Powder Mountain”
2020-2021

This Ski Bus Service Agreement (this “Agreement”) is made effective the 1st day of December, 2020 (the “Effective Date”) by and between SMHG Management LLC, a Delaware limited liability company, whose notice address for purposes of this Agreement is P.O. Box 1119, Eden, Utah 84310 (hereinafter referred to as the “**Sponsor**”) and **UTAH TRANSIT AUTHORITY**, a public transit district, whose notice address for purposes of this Agreement is 669 West 200 South, Salt Lake City, Utah 84101, (“**UTA**”).

RECITALS:

WHEREAS, UTA is a public transit district providing public transit services within the State of Utah;

WHEREAS, Both the Sponsor and UTA recognize the benefits of public transit for individuals, employers and the community for reducing congestion, improving the quality of air and the environment and limiting the amount of real property set aside or dedicated to motor vehicle uses and parking in urban locations;

WHEREAS, Sponsor desires to participate in Ski Bus Service Agreement pursuant to the terms and conditions set forth in this Agreement including Exhibits “A,” “B,” and “C”.

NOW, THEREFORE, in consideration of the mutual covenants, condition and promises as hereinafter set forth, it is mutually agreed as follows:

AGREEMENT:

1. Term. So long as this Agreement has not been earlier terminated in accordance with Section 8 or otherwise in accordance with the terms of this Agreement, this Agreement shall be effective from the Effective Date through and including April 30, 2021.
2. Ski Bus Service. UTA agrees to operate ski bus service on schedules and routes determined by the UTA and Snowbasin based on needs of Snowbasin and on an assessment of ridership demand as compared to resources available. Details can be found in Exhibit A.
3. Pass Recognized as Transit Fare. For the term of this Agreement, a pass issued to an authorized user under this Agreement, when displayed together with valid photo identification upon request, shall be recognized as valid fare on UTA TRAX trains and

regular UTA buses connecting to Ski Bus Service provided the authorized user taps on and taps off. In the event the Sponsor desires to include additional authorized UTA services within this Agreement, the Sponsor may request in writing by emailing kkunkel@rideuta.com. The Sponsor acknowledges that adding additional authorized services to this Agreement may result in an increase in price to the base purchase price referenced in Exhibit B (the “Base Purchase Price”) and, in such case, the parties agree to renegotiate the financial terms of this Agreement in good faith based on actual costs incurred as a result of the additional services.

4. Cost and Payment. In consideration of the obligations each party has assumed under the terms of this Agreement, Sponsor shall pay to UTA the applicable Base Purchase Price amount for each year during the Term as described in Exhibit B Payment shall be made in 3 equal installments, and UTA will invoice the Sponsor on January 1, February 1, and March 1 of each contract year. Payment shall be due within thirty (30) days after the invoice date.

- a. UTA shall charge a one percent (1%) per month late fee on balances due under this Agreement that remain unpaid for more than thirty days (30) days.
- b. UTA is entitled to one hundred percent (100%) of the advertising revenues generated from any advertising placed on any transit vehicle and all fare box revenue generated by the service.

5. Covid-19.

- a. Service: Notwithstanding anything to the contrary set forth in Section 4, for Year 1 of the contract only based upon the unforeseen circumstances of the Covid-19 pandemic: (i) the parties may jointly determine that limited service is warranted; or (ii) Sponsor may request service to be temporarily suspended. If the parties agree to reduce service or if Sponsor requests service to be temporarily suspended, then the Base Purchase Price will be adjusted on a weekly basis in accordance with the reduced rate of service.
- b. Billing: For Year 1, UTA will invoice Sponsor for service provided in the preceding month at the weekly Base Purchase Price multiplied against the total weeks or prorated weeks in the month as described in Exhibit C. UTA will invoice the Sponsor no later than the 8th day of each the month beginning in January 2021. Payment shall be due within thirty (30) days after the invoice date.

6. Confiscation and Unauthorized Use of Pass. UTA shall have the right to confiscate a pass at any time (without notice to the Sponsor) from any person who UTA reasonably believes is not an authorized user or if UTA reasonably believes the pass has been duplicated, altered, or used in an unauthorized way. UTA will immediately deactivate confiscated passes and notify the Sponsor. If the pass is an Sponsor-provided card, UTA will return it to Sponsor.

7. Reporting
 - a. Partner Website. The UTA agrees to provide the following information to Sponsor through www.tap2rideuta.com which may be accessed by Sponsor at any time: (1) Ridership- parameters include a date range with trip counts by pass number or service type; (2) active passes- a count of total active passes; (3) pass Summary- the current status of each pass, the pass number, and property field to the extent completed by Sponsor; and (4) action history- a summary of all changes made to passes. Sponsor may access this information at www.tap2rideuta.com by selecting “reports.”
 - b. Additional Ridership Data. Subject to Utah Code 17B-2a-815(3)(a), which limits the type of ridership data UTA may disclose to third party Sponsors, the UTA will provide additional Authorized User ridership data to Sponsor upon request. Requests for additional ridership data must be emailed to passprograms@rideuta.com.
 - c. Sponsor Data. Sponsor agrees to identify the type of each pass issued (employee or season pass-holder) in the property fields on the UTA Third Party Partner Website or the bulk import spreadsheet. UTA encourages Sponsor to provide additional information in the property fields of the UTA Partner Website or bulk import spreadsheet so that the parties can obtain more comprehensive ridership data in connection with the Ski Bus Service.
 - d. Annual Ridership Report. The UTA will provide Sponsor with an annual written or electronic report summarizing the service provided under the terms of the Agreement. UTA can also provide Sponsor with a breakdown of EFC pass usage if Sponsor provides pass holder information through bulk import.
 - e. Non-Connecting Service Report. The UTA will provide Sponsor with a weekly report summarizing card holder use on non-connecting service under the terms of the Agreement.

8. Termination. This Agreement may be terminated with or without cause by either party by providing thirty (30) days advance written notice of termination. In the event the Agreement is terminated after UTA begins Service, the amount owed under this Agreement shall be prorated based on the number of days UTA provided the Service.

9. Modification of Agreement. This Agreement may be supplemented, amended, or modified only by the mutual agreement of the parties. No supplement, amendment, or modification of this Agreement shall be binding unless it is in writing and signed by the parties.
10. Indemnification. UTA is a governmental entity under the Utah Governmental Immunity Act of the Utah Code, Section 63G-7-101 et seq. 1953 (as amended) (hereinafter, the “Act”). Nothing in this Agreement shall be construed to be a waiver by either UTA of any protections, rights, or defenses applicable under the Act. It is not the intent of either party to incur by contract any liability for the negligent operations, acts, or omissions of the other party or any third party and nothing in the Agreement shall be so interpreted or construed. In the event of any conflict or inconsistency between the provisions of this section and any other provisions of this Agreement, the provisions of this section shall prevail.
11. Default. If either party fails to perform any of the terms and conditions of this Agreement, upon fifteen (15) days’ notice of such failure to perform, the non-defaulting party may terminate this Agreement.
12. Attorney’s Fees. The defaulting party agrees to pay the non-defaulting party’s costs and reasonable attorney’s fees in the event such are incurred to enforce any of the provisions of this Agreement.
13. Assignment. No party shall have the right to assign its right and obligations hereunder without the express written consent of the other parties.
14. Non-discrimination. The parties agree that they shall not exclude any individual from participation in or deny any individual the benefits of this Agreement, on the basis of race, color, national origin, disability, sex, or age in accordance with the requirements of 49 U.S.C. 5332.
15. Relationship of the Parties. The relationship between the parties is an arms-length contractual relationship and is not fiduciary in nature. Nothing contained in this Agreement will be deemed to create an association, partnership, or joint venture between the parties, give rise to fiduciary duties, or cause any of the parties to be liable or responsible in any way for the actions, liabilities, debts or obligations of the other party. The parties shall not have any right, power, or authority to make any representation or to assume or create any obligation, whether express or implied, on behalf of the other party(ies), or to bind the other party(ies) in any manner.
16. Severability. If any part or provision of this Agreement is found to be prohibited or unenforceable in any jurisdiction, such part or provision of this Agreement shall, as to such

jurisdiction only, be inoperative, null and void to the extent of such prohibition or unenforceability without invalidating the remaining parts or provisions hereof, and any such prohibition in any other jurisdiction. Those parts or provisions of this Agreement, which are not prohibited or unenforceable, shall remain in full force and effect.

- 17. Authorization. The persons executing this Agreement on behalf of a party represent and warrant that they are duly authorized and empowered to execute the same, that they have carefully read this Agreement, and that this Agreement represents a binding and enforceable obligation of such party.
- 18. Governing Law and Venue. This Agreement and all transactions contemplated hereunder and/or evidenced hereby shall be governed by and construed under and enforced in accordance with the laws of the State of Utah without giving effect to any choice of law or conflict of law rules or provisions. If either party brings against the other party any proceeding arising out of this Agreement, then that party may bring that proceeding only in the Third District Court in the State of Utah or the United States District Court for the District of Utah if there is federal subject matter jurisdiction.
- 19. Notice or Demands. Any notice or demand to be given by one party to the other shall be given in writing per personal service, express mail, Federal Express, or any other similar form of courier or delivery service, or mailing in the United States Mail, postage prepaid, certified, return receipt requested and addressed to such party as follows:

If to SMHG Management LLC

If to UTA:

Sponsor: SMHG Management LLC
 ATTN: Mark Schroetel
 Address: P.O. Box 119
 Address 2: _____
 City, State, Zip Eden, Utah 84310

Utah Transit Authority
 ATTN: Kensey Kunkel
 669 West 200 South
 Salt Lake City, Utah 84101

Either party may change the address at which such party desires to receive notice on written notice of such change to any other party. Any such notice shall be deemed to have been given, and shall be effective, on delivery to the notice address then applicable for the party to which the notice is directed; provided, however, that refusal to accept delivery of a notice or the inability to deliver a notice because of an address change which was not properly communicated shall not defeat or delay the giving of a notice.

- 20. Counterparts; Electronically Transmitted Signatures. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all such counterparts shall constitute one and the same Agreement. Signatures transmitted by facsimile and/or e-mail shall have the same force and effect as original signatures.

(The remainder of this page intentionally left blank; signature page to follow)

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and year first above written.

UTAH TRANSIT AUTHORITY:

DocuSigned by:
Andres Colman Date 11/18/2020
73879E2C5BD04CB...
By:
Title:

SMGH MANAGEMENT LLC:

DocuSigned by:
[Signature] Date 11/20/2020
C7CA41AA8D2642C...
By: Mark Schroetel
Title: Authorized Signatory

DocuSigned by:
D. Eddy Cumins Date 12/2/2020
D453D789F73D44C...
By:
Title:

Approved As To Form:

DocuSigned by:
Mike Bell 11/21/2020
361F16F838704A9...
UTA Legal Counsel

EXHIBIT A
WEBER COUNTY
SKI SERVICE OPERATING PLAN 2020/21

A. Route. The Ski Bus Service will run route from the Ogden Transit Center, terminating at the Powder Mountain Ski Resort, as shown and depicted on the maps and schedules attached hereto. Buses travelling from the Powder Mountain to the Ogden Transit Center will travel the same routes, in the reverse direction. The routes are depicted on Exhibit 1 hereto.

B. Stops. The Ski Bus Service will stop at some or all of the following locations:

- Ogden Transit Center
- Courtyard by Marriott, Lincoln Ave., North/South bound, Lincoln Ave.
- Ben Lomond Hotel, Washington Blvd., North/South bound, Washington Blvd.
- Hampton and Hilton Hotel, Washington Blvd., North/South bound, Washington Blvd.
- 12th Street and Washington Blvd., East/West bound
- Wolf Creek Resort
- Powder Mountain Ski Resort

The stops are shown on Exhibit 1 hereto.

In the event that snow removal and/or vehicles parked alongside the roadway render any stop and/or Park & Ride lot either unsafe or unworkable, at UTA's sole discretion and determination, then such stops will be eliminated.

C. Park and Ride Lots. The Ski Bus Service will be served by the following park and ride lots:

- Rainbow Gardens
- Eden Park and Ride

D. Buses. The Ski Bus Service will primarily use buses designed for ski services. UTA reserves the right to use buses that meet the demand per trip and time of day.

EXHIBIT 1

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To Powder Mountain

Ogden Station	24th St & Lincoln Ave	26th St & Grant Ave	28th St & Washington	22nd St & Washington	12th St & Washington	Rainbow Gardens Park & Ride	Eden Powder Mountain Park & Ride	Moose Hollow Condominiums	Powder Mtn Ski Resort
700a	702a	704a	705a	707a	711a	715a	731a	738a	802a
730	732	735	736	738	742	747	804	811	840
830	832	835	836	838	842	847	904	911	940
1200p	1202p	1205p	1206p	1208p	1212p	1217p	1234p	1241p	110p
200	202	205	206	208	212	217	234	241	310
410	-----	-----	-----	-----	-----	420	435	-----	502

* -Trips run only on Peak Service Days.

To Ogden Station

Powder Mtn Ski Resort	Powder Mtn Night Skiing Area	Moose Hollow Condominiums	Wolf Creek Drive	Moose Hollow	Eden Powder Mountain Park & Ride	Rainbow Gardens Park & Ride	12th St & Washington	22nd St & Washington	Washington Blvd	Washington	26th St & Grant Ave	24th St & Lincoln Ave	Ogden Station
130p	132p	152p	154p	159p	217p	222p	228p	230p	231p	233p	237p		
* 335	337	357	359	404	422	428	434	436	437	439	443		
* 515	517	537	539	544	602	608	614	616	617	619	623		
-----	930	945	947	951	1006	1010	1014	1016	1017	1019	1023		

In order to accommodate the arrival of most passengers on this route, express trips may leave early from destination timepoints

* -On Peak Service Days, these two trips will each be serviced by two buses because of expected high ridership.

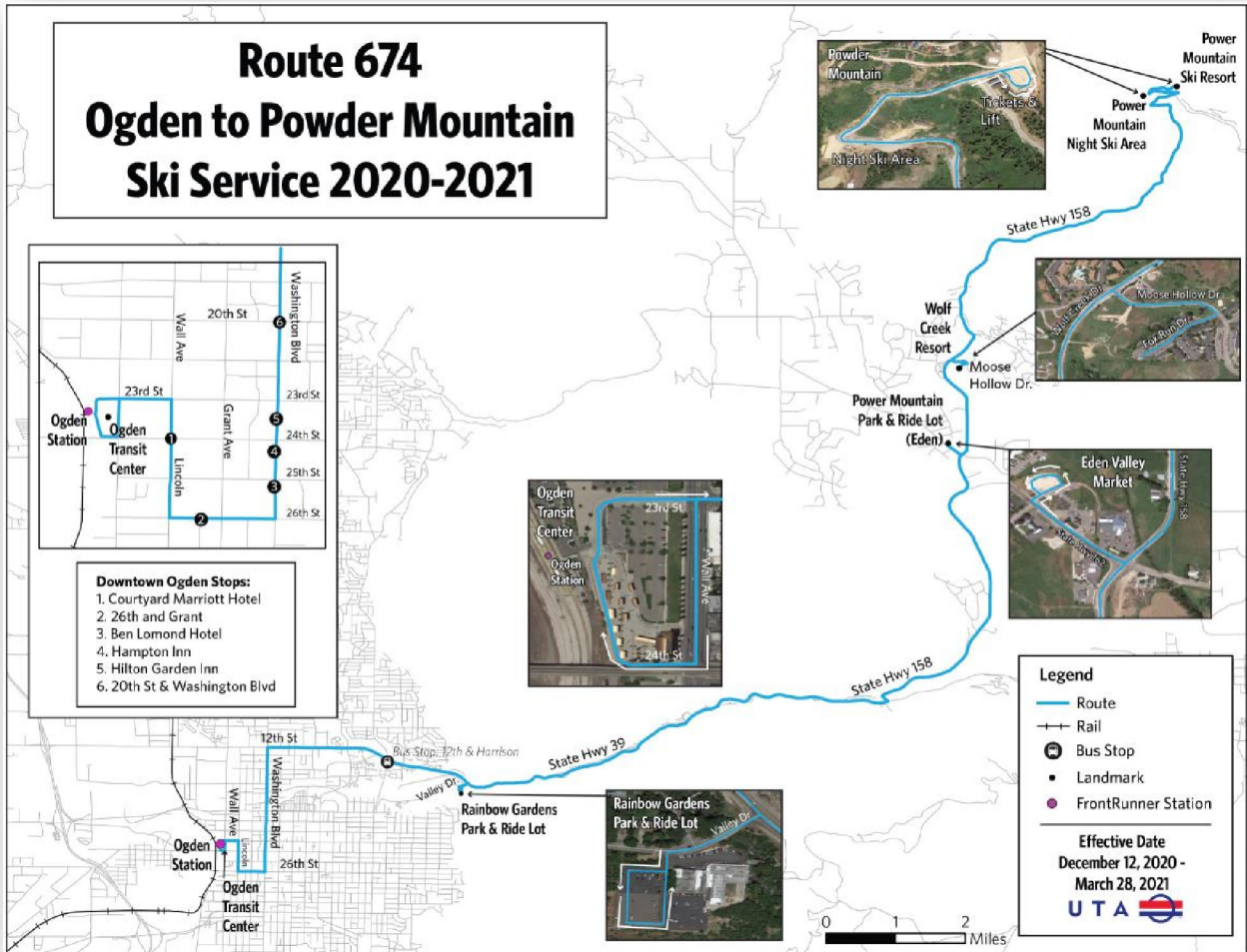


EXHIBIT B
BASE PURCHASE PRICE

Contract Year	Term Dates	Base Purchase Price
Y1	November 1, 2020- April 30, 2021	\$57,438

EXHIBIT C
COVID-19 SERVICE
AND BILLING ADJUSTMENTS

	Base Purchase Price	\$ 57,438
B	Weeks in The Ski Season	18
C	Weekly Base Purchase Price (A/B)	\$ 3,191

Service %	Weekly Base Purchase Price
100%	\$3,191
75%	\$2,393
50%	\$1,596
25%	\$798
0%	\$0

*The service percentage will be based on actual service % performed and may vary from percentages shown above