

**TRIP REDUCTION AGREEMENT**

between  
The Utah Department of Environmental Quality,  
Division of Air Quality  
and  
The Utah Transit Authority

WHEREAS, pursuant to Title 19, Chapter 1, Section 105 of the Utah Code, the Utah Department of Environmental Quality, Division of Air Quality (the “Division”) administers the Air Conservation Act within the State of Utah;

WHEREAS, pursuant to Utah Code § 19-2-101, the purpose of the Air Conservation Act is to achieve and maintain levels of air quality which will protect human health and safety;

WHEREAS, daily, the Division analyzes atmospheric and meteorological data to forecast a three-day Health and Action Forecast in various counties throughout the State, including to forecast “mandatory action days;”

WHEREAS, during the 2019 General Session, the Utah State Legislature (“Legislature”) enacted the Reduction of Single Occupancy Vehicle Trips Pilot Program, Utah Code §19-2a-104, and instructed the Division to administer a Trip Reduction Program (“Program”);

WHEREAS, also during the 2019 General Session, the Legislature appropriated funds to the Division to implement the Program to fund, promote, and analyze free public transportation fares on certain days (referred to as “free fare days”) to encourage alternative transportation on days expected to be mandatory action days during fiscal years 2021 and 2022;

WHEREAS, the Utah Transit Authority (the “Authority”), created under the laws of the State of Utah, provide public transportation services in the State of Utah;

WHEREAS, the Legislature intended portions of its 2019 appropriation for the Program to be pass through funding<sup>1</sup> to the Authority to fund free fare days;

WHEREAS, pursuant to Utah Code §§ 19-2a-104 and 63J-1-220(2), the Division and the Authority, voluntarily enter into *Trip Reduction Agreement between the Utah Department of Environmental Quality, Division of Air Quality and the Utah Transit Authority*, (“2020 Agreement”), effective January 30, 2020, for the purpose of promoting, implementing and analyzing alternative transportation by funding, in part, free fare days on the Authority’s public transportation services;

NOW, THEREFORE, the Utah Division of Air Quality and the Utah Transit Authority (collectively the “Parties”) agree to to rescind the 2020 Agreement in its entirety and replace it with this Agreement as follows:

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<sup>1</sup> As defined in Utah Code § 63J-1-220(1)(b)(i).

1. The Legislature appropriated monies to the Division to implement the Program to:
  - 1.1. Fund free fare days on the Authority's public transportation system: Local Bus, Express Bus, TRAX, Streetcar, FrontRunner, Paratransit, Ski Bus, PC-Salt Lake Connect Bus and Microtransit Services;
  - 1.2. Analyze the impact of free fare days on air quality.
2. Accordingly, the Division may reimburse the Authority up to \$492,000 of pass through funding (hereinafter referred to as "Funds") to fund free fare days during probable mandatory action days as described in paragraph 6 below.
3. Pursuant to Utah Code § 63J-1-220, the Authority shall be the recipient entity to receive pass through funding as reimbursement of fares not collected on free fare days funded by this Agreement.
4. The Authority may only be reimbursed for fare revenue not collected on a free fare day.

#### **Designation of Free Fare Days**

5. The Division will post its three-day Health and Action Forecast on its "3 Day Forecast" website at <https://air.utah.gov/forecast.php?id=slc>.
6. The Authority shall select each free fare day as follows:
  - 6.1. Free fare days may occur anytime after the effective date of this Agreement through June 30, 2022.
  - 6.2. Subject to the restrictions in paragraph 6.8, the Authority may implement an unlimited number of free fare days under the Program so long as the total amount reimbursed by this Agreement does not exceed \$492,000.
  - 6.3. The Authority may select a "possible" free fare day or days based on the Division's Daily Action and Health Forecast analysis for Salt Lake County published on the Division's "3 Day Forecast" website. Within twenty-four hours of its initial identification of a possible free fare day, the Authority shall notify the following of its initial selection: (1) the Division's lead forecaster, Kimberly Kreykes, or an individual identified by the Division by email, and (2) Glade Sowards, or an individual identified by the Division by email.
  - 6.4. Following notification to the Division, the Authority may proceed with each selected free fare day if the Division confirmed to the Authority that:
    - 6.4.1. The selected dates are likely to be mandatory action days; and
    - 6.4.2. the Authority's survey questions are adequate to allow the Division to analyze the impacts of free fares on air quality.

- 6.5. The Division will analyze the air quality data and the ridership data collected by the Authority pursuant to paragraph 10 to determine the impact of free fares on the air quality.

#### **Promotion of Free Fare Days**

7. The Authority and the Division shall timely promote free fare days, funded under this Agreement, through tools such as press releases and social media postings.
8. Each party shall provide copies of press releases to the other party at the time of the initial press release.

#### **Data Collection**

9. For each free fare day partially funded under this Agreement, the Authority shall survey a representative portion of the free fare day ridership as described in Attachment 1, Scope of Work.
10. On before the selection of a possible free fare day as designated in paragraph 6.6, the Authority shall coordinate with the Division to develop survey questions to ensure that the Authority collects sufficient data to allow the analysis of the impacts of free fare days on air quality

#### **Reimbursement of Lost Fare**

11. The Division shall reimburse the Authority for each free fare day that is confirmed by the Division in accordance with Paragraph 6 as follows:
  - 11.1. For calendar year 2021, the Division shall reimburse the Authority foregone fare revenue in an amount not to exceed \$82,000 per free fare day.
  - 11.2. For calendar year 2022, the Division shall reimburse the Authority foregone fare revenue in an amount not to exceed \$82,000 per free fare day.
  - 11.3. The Authority shall calculate the average daily foregone fare revenues specified in paragraphs 11.1 and 11.2 using daily revenue data from the most up to date and most recent two-month period preceeding the month of the specific free fare day in which the Authority seeks reimbursement.
  - 11.4. Foregone fare revenue, is defined as an estimate of fares not collected based on data from the following revenue categories: Contracts, Farebox, FAREPAY, Paratransit, Ticket Vending Machine, Microtransit, and Mobile Ticketing. The Authority shall use the following assumptions to calculate the average weekday and/or weekend day foregone fare revenue:
    - 11.4.1. All Pass Sales and Vanpool revenue is excluded;

- 11.4.2. For Contracts revenue, all revenue except pay-per-trip and daily contract amounts are excluded;
- 11.4.3. For Paratransit, a daily rate of \$4,500 may be included;
- 11.5. Based upon the foregone fare revenue calculation in paragraph 11.3, the Division Director may separately authorize in writing a reimbursement amount in excess of the maximum amounts allowed in paragraphs 11.1 or 11.2 so long as the total amount reimbursed under this Agreement does not exceed \$492,000.
- 12. To be reimbursed for uncollected fares on each free fare day, the Authority shall submit an invoice to the Division that specifies:
  - 12.1. This Agreement number;
  - 12.2. The date of each free fare day;
  - 12.3. Documentation demonstrating how the Authority calculated the average weekday and/or weekend day forgone revenue; and
  - 12.4. If applicable, the Division Director's written authorization to exceed the maximum amount specified in paragraphs 11.1 and 11.2.
- 13. Within thirty (30) days after a correct invoice is received, the Division will remit the reimbursement to the Authority by mail or electronic funds transfer.
- 14. The Division reserves the right to request an additional report accounting for lost fare calculations. If requested, the Authority shall submit the additional report within fifteen (15) calendar days of the request.
- 15. The Division's disbursement of pass through money does not constitute a waiver of any kind, shall not be deemed an endorsement of the services, and is without prejudice to any and all claims that the Division or the State of Utah may pursue against the Authority.

### **General Provisions**

- 16. DEFINITIONS: The following terms shall have the meanings set forth below:
  - 16.1. "Confidential Information" means information that is deemed as confidential under applicable state and federal laws, including personal information. The Division reserves the right to identify, during and after this Agreement, additional reasonable types of categories of information that must be kept confidential under federal and state laws.
  - 16.2. "The Authority" means the the Utah Transit Authority as the entity to receive funding pursuant to the terms of this Agreement. The Authority as used in this Agreement shall

include the Authority's agents, board members, officers, employees, and partners.

- 16.3. "State of Utah" means the State of Utah, in its entirety, including its institutions, agencies, departments, authorities, instrumentalities, boards, commissions, elected or appointed officers, employees, agents, and authorized volunteers.
17. GOVERNING LAW AND VENUE: This Agreement shall be governed by the laws, rules, and regulations of the State of Utah. Any action or proceeding arising from this Agreement shall be brought in a court of competent jurisdiction in the State of Utah. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.
18. LAWS AND REGULATIONS: At all times during this Agreement, the Authority shall comply with all applicable federal and state constitutions, laws, rules, codes, orders, and regulations, including applicable licensure and certification requirements.
19. EMPLOYMENT PRACTICES: The Authority agrees to abide by the following employment laws: (i) Titles VI and VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e) which prohibits discrimination against any employee or applicant for employment, or any applicant or recipient of services, on the basis of race, religion, color, or national origin; (ii) Executive Order No. 11246, as amended, which prohibits discrimination on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin; (iii) 45 C.F.R. § 90 which prohibits discrimination on the basis of age; (iv) Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disabilities; and (v) the State of Utah Executive Order No. 2006-0012, dated December 13, 2006, which prohibits unlawful harassment in the work place. The Authority further agrees to abide by any other laws, regulations, or orders that prohibit discrimination of any kind by any of the Authority's employee who implement free fare days under this Agreement.
20. RECORDS ADMINISTRATION: The Authority shall maintain all records specified in this Agreement. These records shall be retained by the Authority for at least six (6) years after final reimbursement, or until all audits initiated within the six (6) years have been completed, whichever is later. The Authority agrees to allow, at no additional cost, State of Utah auditors, federal auditors or any firm identified by the Division, access to all such records.
21. INDEPENDENT CAPACITY: The Authority shall act in an independent capacity and not as officers or employees or agents of the Division or the State of Utah, other than the Authority.
22. INDEMNITY: The Utah Department of Environmental Quality (the "Department"), the Division, and the Authority are governmental entities as defined in the Utah Governmental Immunity Act (Utah Code § 63G-7-101 et. seq.). Nothing in this Agreement shall be construed as a waiver by the Department, the Division, or the Authority of any rights, limits, protections, or defenses provided by the Act. Nor shall this Agreement be construed as a waiver of any governmental immunity to which a party to this Agreement is otherwise entitled. Each Party is responsible for its own actions or negligence and will defend against any claims or lawsuit brought against it. There are no indemnity obligations between these Parties.
23. TERMINATION: This Agreement may be terminated, with cause by the Division, upon

written notice. The Authority will be given ten (10) days after written notification to correct and cease the violations, after which this Agreement may be terminated for cause immediately and subject to the remedies below. The Authority may terminate this Agreement in writing at any time.

24. **NONAPPROPRIATION OF FUNDS, REDUCTION OF FUNDS, OR CHANGES IN LAW:** Upon thirty (30) days written notice delivered to the Authority, this Agreement may be terminated in whole or in part at the sole discretion of the Division if the Division reasonably determines that: (i) a change in State legislation or applicable laws materially affects the ability of either Party to perform under the terms of this Agreement; or (ii) that a change in available funds affects the Division's ability to pay under this Agreement. Agreement change of available funds as used in this paragraph includes, but is not limited to, a change in State funding, whether as a result of a legislative act or by order of the Governor.
25. **PUBLIC INFORMATION:** The Authority agrees that this Agreement and related documents, including invoices, ridership surveys and lost fare analyses, shall be public documents and may be available for public and private distribution in accordance with State of Utah, Government Records Access and Management Act ("GRAMA"). The Authority gives the Division and the State of Utah express permission to make copies of this Agreement and related documents in accordance with GRAMA. The Division is not obligated to inform the Authority of any GRAMA requests for disclosure of this Agreement or related documents.
26. **ASSIGNMENT:** The Authority may not assign, sell, transfer or delegate any right or obligation under this Agreement, in whole or in part.
27. **REMEDIES:** Any of the following events will constitute cause for the Division to declare the Authority in default of this Agreement: (i) the Authority's non-performance of its contractual requirements and obligations under this Agreement; or (ii) the Authority's material breach of any term or condition of this Agreement. The Division may issue a written notice of default providing a ten (10) day period in which the Authority will have an opportunity to cure. Time allowed for cure will not diminish or eliminate the Authority's liability for damages. If the default remains after the Authority has been provided the opportunity to cure, the Division may do one or more of the following: (i) exercise any remedy provided by law or equity; (ii) terminate this Agreement or (iii) demand a full refund of any payment that the Division has made to Authority under this Agreement.
28. **FORCE MAJEURE:** Neither the Division nor the Authority will be held responsible for delay or default caused by fire, riot, act of God, and/or war which is beyond that Party's reasonable control.
29. **CONFIDENTIALITY:** The Authority shall be responsible for any breach of this duty of confidentiality, including any required remedies and/or notifications under applicable law. The Authority shall indemnify, hold harmless, and defend the Division, including anyone for whom the Division is liable, from claims related to a breach of this duty of confidentiality, including any notification requirements, by the Authority or anyone for whom the Authority is liable.

30. **WAIVER:** A waiver of any right, power, or privilege shall not be construed as a waiver of any subsequent right, power, or privilege.
31. **PROCUREMENT ETHICS:** The Authority understands that a person who is interested in any way in the receipt of a grant or financial assistance from the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan, reward, or any promise thereof to any person who participates in the award of the grant or assistance on behalf of the Division whether it is given for their own use or for the use or benefit of any other person or organization.
32. **CHANGES IN SCOPE:** This Agreement may be altered, modified or supplemented only by written amendment executed by the Parties and attached to the original signed copies of this Agreement.
33. **ORDER OF PRECEDENCE:** In the event of any conflict in the terms and conditions of this Agreement, the order of precedence shall be: (i) this Agreement, then, (ii) Attachment 1, Scope of Work.
34. **SURVIVAL OF TERMS:** Termination or expiration of this Agreement shall not extinguish or prejudice the Division's right to enforce this Agreement with respect to any default of this or of any of the following clauses, including: Governing Law and Venue, Laws and Regulations, Records Administration, Remedies, Dispute Resolution, Indemnity, Insurance.
35. **SEVERABILITY:** The invalidity or unenforceability of any provision, term, or condition of this Agreement shall not affect the validity or enforceability of any other provision, term, or condition of this Agreement, which shall remain in full force and effect.
36. **ERRORS AND OMISSIONS:** The Authority shall not take advantage of any errors and/or omissions in this Agreement. The Authority must promptly notify the Division of any errors and/or omissions that are discovered.
37. **ENTIRE AGREEMENT:** This Agreement constitutes the entire agreement between the Parties and supersedes any and all other prior and contemporaneous agreements and understandings between the Parties, whether oral or written.

IN WITNESS WHEREOF, as evidenced by the signatures below, the Parties mutually agree to perform and execute this Agreement. This Agreement shall supercede the 2020 Agreement and shall take effect upon the signature date of the Department of Environmental Quality, Deputy Director.

UTAH TRANSIT AUTHORITY  
669 W. 200 S.  
Salt Lake City, Utah 84101

STATE OF UTAH  
DEPARTMENT OF  
ENVIRONMENTAL QUALITY  
195 North 1950 West  
Salt Lake City, Utah 84116

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By:

Date:

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By: Ty L. Howard  
Deputy Director

Date:

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By:

Date:

UTA Legal Counsel

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*Mike Bell*  
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Mike Bell