

GRANT AGREEMENT

between

SALT LAKE COUNTY

and

VISIT SALT LAKE

for

Cottonwood Canyons Transportation Grant

This Grant Agreement (the “Agreement”) is entered into this ____ day of _____, 2023, between SALT LAKE COUNTY, a body corporate and politic of the State of Utah (the “County”); and VISIT SALT LAKE, a Utah nonprofit corporation, with its principal place of business at 90 South West Temple Street, Salt Lake City, UT 84101 (the “Grantee”). The County and the Grantee may be referred to herein as the “Parties.”

A G R E E M E N T

IN EXCHANGE FOR valuable consideration, including the mutual covenants contained in this Agreement, the Parties covenant and agree as follows:

1. CONTRIBUTION

1.1 Within 45 days after the execution of this Agreement, the County shall transfer \$320,000 to Grantee to provide the services described in section 2.1, below.

1.2 All funds transferred by the County to the Grantee under this Section 1 are referred to herein as the “Grant Funds.” In no event shall the total cumulative amount of Grant Funds payable by the County pursuant to this Agreement exceed \$320,000.

2. GRANTEE’S OBLIGATIONS

2.1 Grantee agrees to expend the Grant Funds only for the purpose of providing public transportation services, including management of routes and operations, to recreational users of Big Cottonwood Canyon and Little Cottonwood Canyon (collectively, the “Cottonwood Canyons”) from December 23, 2023, to April 14, 2024. The goal of this service is to increase the number of people riding public transportation to ski resorts by supplementing the reduction of existing ski bus services provided by Utah Transit Authority to and through the Cottonwood Canyons, thereby helping to reduce traffic congestion and improve air quality and visitor experience. Routes include stops at Alta Ski Resort, Snowbird Ski Resort, Solitude Ski Resort, and Brighton Ski Resort. Grantee may use subgrantees or contractors to fulfill its obligations under this Agreement.

2.2 Use of Grant Funds for any purpose not described in Section 2.1 (without prior express written consent of the County) will constitute a material breach of this Agreement.

Within five days of the end of the Term, Grantee shall return to the County any Grant Funds that are unexpended within the Term.

2.3 Grantee agrees to submit a “Disbursement of Funds Report” within six months of receipt of the Grant Funds outlining what was accomplished with the Grant Funds. The form for this report is available in Salt Lake Countywide Policy 1200, which is incorporated herein by this reference. Grantee shall submit the report to the County Mayor and the County’s legislative body and acknowledges that any failure of Grantee to submit the report in a timely manner may subject Grantee to potential legal action for recovery of the Grant Funds.

2.4 The Grantee shall collect ridership data (collectively, the “Data”) during the Term and shall cause its contractor(s) and subgrantee(s) to do the same. No later than thirty days following the expiration or termination of this Agreement, the Grantee shall provide the County with copies of all such Data. The Data shall include, at a minimum: a) each on a daily total basis, the total number of trips made, the total number of riders, and the total number of available seats that were unsold for any route; b) information regarding the demographics of the customers; c) information regarding when and how reservations were made; d) a log of individual trips where service deviated by more than 5 minutes from the original schedule; e) information regarding the individual riders’ trip origin and final destination; and f) copies of all communications—including survey responses, suggestions and complaints—received from customers and the public about the program and services provided hereunder. Grantee agrees and acknowledges and shall cause its contractor(s) and subgrantee(s) to agree and acknowledge that the County may share the Data with the Utah Department of Transportation and/or the Utah Transit Authority.

2.5 The County may, in its sole discretion, require a financial or performance audit of the use of the Grant Funds. Any such audit shall be performed in accordance with Salt Lake Countywide Policy 1200. Grantee agrees to submit to such an audit upon thirty-days written notice from the County.

2.6 Grantee shall repay to the County any Grant Funds expended in violation of this Agreement. Grantee will also be liable to the County for any costs, fees, or fines that arise out of Grantee’s violation of this Agreement.

3. EFFECTIVE DATE/TERM

This Agreement shall be effective upon execution by both parties and shall continue until May 15, 2024 (the “Term”). The Term may be extended by written amendment(s) to the Agreement signed by both Parties.

4. INDEPENDENT ENTITY

It is understood and agreed that Grantee’s status in relation to the County is that of an independent entity. Grantee’s acts, made through any of its officers, agents or employees are made without any suggestion, direction, or management whatsoever by the County or any of County’s officers, agents or employees. The Parties stipulate that the Grant Funds do not give County any authority whatsoever over the manner and method by which Grantee carries out its purposes. To the extent that any actions taken by Grantee violate the understanding between the Parties, the County shall have the rights provided under this Agreement to withdraw funding and demand reimbursement of Grant Funds previously expended by Grantee.

5. AGENCY

No agent, employee or servant of Grantee or County is or shall be deemed to be an employee, agent or servant of the other party. None of the benefits provided by each party to its employees including, but not limited to, workers' compensation insurance, health insurance and unemployment insurance, are available to the employees, agents, or servants of the other party. Grantee and County shall each be solely and entirely responsible for its acts and for the acts of its agents, employees, and servants during the performance of this Agreement. Grantee and County shall each make all commercially reasonable efforts to inform all persons with whom they are involved in connection with this Agreement to be aware that Grantee is an independent contractor.

6. INDEMNIFICATION

The Grantee agrees to hold harmless and indemnify the County, its officers, agents and employees from and against any and all actual or threatened claims, losses, damages, injuries, liabilities of, to, or by third-parties, including the Grantee, its contractors, or the employees of either, including claims for personal injury, death, or damage to personal property or profits and liens of workmen and material men (suppliers), however allegedly caused, resulting directly or indirectly from, or arising out of: a) this Agreement; or b) any acts or omissions of or by the Grantee, its agents, representatives, officers, employees or contractors in connection with the performance of this Agreement. This indemnification obligation shall survive the termination of this Agreement. The Grantee agrees that its duty to indemnify the County under this agreement includes all attorney's fees, litigation and court costs, expert witness fees, and any sums expended by or assessed against the County for the defense of any claim or to satisfy any settlement, arbitration award, or verdict paid or incurred on behalf of the County.

7. GOVERNMENTAL IMMUNITY

County is a body corporate and politic of the State of Utah, subject to the Governmental Immunity Act of Utah (the "Act"), UTAH CODE §§ 63G-7-101 to -904 (2023). The Parties agree that County shall only be liable within the parameters of the Governmental Immunity Act. Nothing contained in this Agreement shall be construed in any way, to modify the limits of liability set forth in that Act or the basis for liability as established in the Act.

8. INSURANCE

8.1 Grantee shall, at its sole cost and expense, secure and maintain during the Term of this Agreement, including all renewal or additional terms, the following minimum insurance coverage:

A. Workers' compensation and employer's liability insurance as required by the State of Utah, unless a waiver of coverage is allowed and acquired pursuant to Utah law. This requirement includes contractors who are doing business as an individual and/or as a sole proprietor as well as corporations, limited liability companies, joint ventures and partnerships. In the event any work is subcontracted, the Grantee shall require its subcontractor(s) similarly to provide workers' compensation insurance for all of the latter's employees, unless a waiver of coverage is allowed and acquired pursuant to Utah law.

B. Commercial general liability insurance, on an occurrence form, in the minimum amount of \$2,000,000 per occurrence with a \$3,000,000 general policy aggregate. The policy shall protect the County, the Grantee, and any subcontractor from claims for damages for personal

injury, including accidental death, and from claims for property damage that may arise from the Grantee's operations under this Agreement, whether performed by the Grantee itself, any subcontractor, or anyone directly or indirectly employed or engaged by either of them. Such insurance shall provide coverage for premises operations, acts of independent contractors, and completed operations.

C. Commercial automobile liability insurance that provides coverage in the minimum amount of \$1,000,000 per occurrence per person/ \$2,000,000 per accident / \$500,000 property damage OR single combined limit of \$2,000,000.

8.2 In the event any work is contracted, the Grantee shall require its contractor, at no cost to the County, to secure and maintain all minimum insurance coverages required of the Grantee hereunder.

9. NO OFFICER OR EMPLOYEE INTEREST

It is understood and agreed that no officer or employee of the County has or shall have any pecuniary interest, direct or indirect, in this Agreement or the proceeds resulting from the performance of this Agreement. No officer or employee of Grantee or any member of their families shall serve on any County board or committee or hold any such position which either by rule, practice, or action nominates, recommends, or supervises Grantee's operations, or authorizes funding or payments to Grantee.

10. ETHICAL STANDARDS

Grantee represents that it has not: (a) provided an illegal gift to any County officer or employee, or former County officer or employee, or to any relative or business entity of a County officer or employee, or relative or business entity of a former County officer or employee; (b) retained any person to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, other than bona fide employees of bona fide commercial agencies established for the purpose of securing business; (c) breached any of the ethical standards set forth in State statute or Salt Lake County Code of Ordinances § 2.07 (2023); or (d) knowingly influenced, and hereby promises that it will not knowingly influence, any County officer or employee or former County officer or employee to breach any of the ethical standards set forth in State statute or Salt Lake County ordinances.

11. PUBLIC FUNDS AND PUBLIC MONIES

11.1 Definitions: "Public funds" and "public monies" mean monies, funds, and accounts, regardless of the source from which they are derived, that are owned, held, or administered by the state or any of its boards, commissions, institutions, departments, divisions, agencies, bureaus, laboratories, or other similar instrumentalities, or any county, city, school district, political subdivision, or other public body. The terms also include monies, funds or accounts that have been transferred by any of the aforementioned public entities to a private contract provider for public programs or services. Said funds shall maintain the nature of "public funds" while in Grantee's possession.

11.2 Grantee's Obligation: Grantee, as recipient of "public funds" and "public monies" pursuant to this and other contracts related hereto, expressly understands that it, its officers, and employees are obligated to receive, keep safe, transfer, disburse and use these "public funds" and "public monies" as authorized by law and this Agreement for the provision of services to Salt Lake County. Grantee understands that it, its officers, and employees may be

criminally liable under Utah Code § 76-8-402 (2023), for misuse of public funds or monies. Grantee expressly understands that County may monitor the expenditure of public funds by Grantee. Grantee expressly understands that County may require repayment of Grant Funds from Grantee for contract noncompliance, failure to comply with directives regarding the use of public funds, or for misuse of public funds or monies.

12. TERMINATION

12.1 Termination for Default. County may terminate this Agreement for an “Event of Default” as defined, upon written notice from County to Grantee.

12.2 Termination by Grantee for Default. Grantee may terminate this Agreement for an Event of Default upon written notice from Grantee to County.

12.3 Event of Default. As used in this Agreement, the term “Event of Default” means: a) a party hereto fails to perform any of its material obligations and such failure continues for a period of thirty days after written notice to such defaulting party; or b) any material representation or warranty of a party contained in this Agreement proves to be untrue or incorrect in any material respect when made.

12.4 Force Majeure. Neither party shall be liable for any excess costs if the failure to perform arises from causes beyond the control and without the fault or negligence of that party, e.g., acts of God, fires, floods, strikes, or unusually severe weather. If such condition continues for a period in excess of sixty days, Grantee or County shall have the right to terminate this Agreement without liability or penalty effective upon written notice to the other party.

12.5 No Limitation of Rights. The rights and remedies of the parties hereto are in addition to any other rights and remedies provided by law or under this Agreement. The parties agree that the waiver of any breach of this Agreement by either party shall in no event constitute a waiver as to any future breach.

12.6 Termination for Convenience. County reserves the right to terminate this Agreement, in whole or in part, at any time during the term or any additional terms whenever County determines, in its sole discretion that it is in the County’s interest to do so. If County elects to exercise this right, County shall provide written notice to Grantee at least thirty days prior to the date of termination for convenience. Upon such termination, Grantee shall be paid for all services up to the date of termination. Grantee agrees that the County’s termination for convenience will not be deemed a termination for default nor will it entitle Grantee to any rights or remedies provided by law or this Agreement for breach of contract by the County or any other claim or cause of action.

13. COMPLIANCE WITH LAWS

Each party agrees to comply with all federal, state, and local laws, rules and regulations in the performance of its duties and obligations under this Agreement. Grantee certifies it is in compliance with Utah Code § 63G-27-201 (2023) and will remain in compliance for the duration of this Agreement. Any violation by Grantee of applicable law shall constitute an Event of Default under this Agreement and Grantee shall hold the County harmless and indemnify the County pursuant to the terms of Section 6 above. Grantee is responsible, at its expense, to acquire, maintain, and renew during the term of this Agreement, all necessary permits and licenses required for its lawful performance of its duties and obligations under this Agreement..

14. ASSIGNMENT

Grantee shall not assign or transfer its duties of performance under this Agreement without the prior written approval of County. County reserves the right to assert any claim or defense it may have against Grantee and against any assignee or successor-in-interest of Grantee.

15. NOTICES

All notices to be given under this Agreement shall be made in writing and shall be deemed given as follows: a) upon personal delivery; b) upon delivery if sent by email; c) upon the next business day immediately following the day sent if sent by overnight express carrier; or d) upon the third business day following the day sent if sent postage prepaid by certified or registered mail, return receipt requested. Notices to the parties are deliverable to the following addresses (or to such other address or addresses as shall be specified in any notice given):

COUNTY:	Contracts Administrator Salt Lake County 2001 South State, Suite, N-4500 Salt Lake City, Utah 84190-3100 Email: SLCo-Purchasing@slco.org
GRANTEE:	Kaitlin Eskelson President/CEO, Visit Salt Lake 90 South West Temple Street Salt Lake City, UT 84101 Email: keskelson@visitsaltlake.com

16. TIME

The parties stipulate that time is of the essence in the performance of this Agreement. The time set forth for performance in this Agreement shall be strictly followed and any default in performance according to the times required shall be a default of this Agreement and shall be just cause for immediate termination by County of this Agreement and pursuit of any remedy allowed by this Agreement and by law.

17. ENTIRE AGREEMENT

County and Grantee acknowledge and agree that this Agreement constitutes the entire integrated understanding between County and Grantee, and that there are no other terms, conditions, representations or understanding, whether written or oral, concerning the rights and obligations of the parties to this Agreement except as set forth in this Agreement. This Agreement may not be amended, enlarged, modified or altered, except in writing, signed by both Parties.

18. GOVERNING LAW

It is understood and agreed by the parties hereto that this Agreement shall be governed by the laws of the State of Utah and the ordinances of Salt Lake County, both as to interpretation and performance. All actions, including but not limited to court proceedings, administrative proceedings, arbitration and mediation proceedings, shall be commenced, maintained, adjudicated and resolved within the jurisdiction of the State of Utah.

19. COUNTERPARTS

This Agreement may be executed in several counterparts and all so executed shall constitute one agreement binding on all the parties, notwithstanding that each of the parties are

not signatory to the original or the same counterpart. Further, executed copies of this Agreement delivered by facsimile shall be deemed an original signed copy of this Agreement.

20. INTERPRETATION

County and Grantee agree that where possible, each provision of this Agreement shall be interpreted in such a manner as to be consistent and valid under applicable law; but if any provision of this Agreement shall be invalid, prohibited or unenforceable under applicable law, such provision shall be ineffective to the extent of such invalidity or prohibition, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

IN WITNESS WHEREOF, the Parties execute this Agreement the day and year recited above.

SALT LAKE COUNTY:

Mayor or Designee

Date: _____

Recommended for Approval:

By: _____

Department Director

Date: _____

Reviewed as to Form:

By: _____

Deputy District Attorney

VISIT SALT LAKE:

By: _____

Name: _____

Title: _____

Date: _____

The individual signing above hereby represents and warrants that s/he is duly authorized to execute and deliver this Agreement on behalf of the Grantee by authority of law and that this Agreement is binding upon the Grantee. A person who makes a false representation of authority may be subject to criminal prosecution under Utah Code § 76-8-504 (2023).