

## Mayor's Office: Council Agenda Item Request Form

*This form and supporting documents (if applicable) are due the Wednesday before the COW meeting by noon.*

|                                      |  |
|--------------------------------------|--|
| <b>Date Received</b><br>(office use) |  |
|--------------------------------------|--|

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| <b>Date of Request</b>                                                                                                                                                                                                                                                                                                                                                                             | 4/25/2018                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>Requesting Staff Member</b>                                                                                                                                                                                                                                                                                                                                                                     | Carlton Christensen                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>Requested Council Date</b>                                                                                                                                                                                                                                                                                                                                                                      | May 1, 2018                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <b>Topic/Discussion Title</b>                                                                                                                                                                                                                                                                                                                                                                      | Consideration of a resolution authorizing a Revised Contribution Agreement with SLC Bike Share (dba Green Bike) incorporating technical changes to operations, disbursement period, and process.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <b>Description</b>                                                                                                                                                                                                                                                                                                                                                                                 | The County previously approved an agreement for \$2.3M for certain capital costs and operating costs for the construction, installation, and maintenance of GREENbike. The County understands that GREENbike plans to add 14 new stations during this new phase of expansion and that the County's contribution under this Agreement will pay only for a portion of the total costs of expanding the system. Operation and maintenance associated with the new GREENbike stations installed will be for a period of five (5) years, so long as such costs are consistent with the allowable uses for County Transportation Funds described in Subsection 72-2-121(4)(i) of the Transportation Code. These revisions adjust the operations, disbursement period, and process of the agreement. |
| <b>Requested Action<sup>1</sup></b>                                                                                                                                                                                                                                                                                                                                                                | Approval / Consent agenda                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>Presenter(s)</b>                                                                                                                                                                                                                                                                                                                                                                                | Helen Peters & Carlton Christensen                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <b>Time Needed<sup>2</sup></b>                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>Time Sensitive<sup>3</sup></b>                                                                                                                                                                                                                                                                                                                                                                  | Yes                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>Specific Time(s)<sup>4</sup></b>                                                                                                                                                                                                                                                                                                                                                                | No                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <b>Will You Be Providing a PowerPoint</b>                                                                                                                                                                                                                                                                                                                                                          | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>Will You Be Providing Back-Up Documentation or Handouts?</b><br><br>Please attach the supporting documentation you plan to provide for the packets to this form. While not ideal, if supporting documents are not yet ready, you can still submit them by 10 am the Friday morning prior to the COW agenda. Items without documentation may be taken off for consideration at that COW meeting. | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |

**Mayor or Designee approval:** \_\_\_\_\_

<sup>1</sup> What you will ask the Council to do (e.g., discussion only, appropriate money, adopt policy/ordinance) – in specific terms. <sup>2</sup> Assumed to be 10 minutes unless otherwise specified. <sup>3</sup> Urgency that the topic to scheduled on the requested date. <sup>4</sup> If important to schedule at a specific time, list a few preferred times.

**SALT LAKE COUNTY, UTAH**

RESOLUTION NO. \_\_\_\_\_, 2018

**A RESOLUTION OF THE COUNTY COUNCIL OF SALT LAKE COUNTY  
APPROVING AND AUTHORIZING EXECUTION OF AN AGREEMENT  
BETWEEN SALT LAKE COUNTY AND SLC BIKE SHARE D/B/A GREEN  
BIKE PROVIDING FOR A CONTRIBUTION OF COUNTY  
TRANSPORTATION FUNDS FOR A TRANSPORTATION PROJECT**

**RECITALS**

A. Salt Lake County (the "County") is a county existing pursuant to Article XI, Section 1 of the Utah Constitution. SLC Bike Share d/b/a Green Bike (the "Recipient") is a nonprofit organization meeting the requirements of Section 501(c)(3) of the Internal Revenue Code that operates a bike share program in the Salt Lake City area.

B. During the 2015 General Session, the State Legislature amended Section 72-2-121 of the Utah Transportation Code, Utah Code Ann. §§ 72-1-101 *et seq.*, to provide for the transfer of certain funds from the County of the First Class Highway Projects Fund to the legislative body of the County to be used for certain transportation purposes (hereinafter "County Transportation Funds").

C. The County desires to use the County Transportation Funds to further regional transportation by financing all or a portion of the costs of transportation projects throughout the County in accordance with Section 72-2-121 of the Utah Transportation Code and all other applicable federal, state and local laws, rules and regulations.

D. The County and the Recipient now desire to enter into the Contribution Agreement attached hereto as ATTACHMENT A (the "Agreement"), which provides for the transfer of up to Two Million Three Hundred Thousand Dollars and No Cents (\$2,300,000.00) of County Transportation Funds to the Recipient on certain terms and conditions to reimburse the Recipient for certain capital costs and operating costs incurred by the Recipient to complete and operate the transportation project described in the Agreement, so long as such costs are consistent with the allowable uses for County Transportation Funds described in Subsection 72-2-121(4)(i) of the Transportation Code

E. In the judgment of the County Council, its contribution and assistance under the Agreement will contribute to the prosperity, moral well-being, peace and comfort of Salt Lake County residents.

## RESOLUTION

NOW, THEREFORE, IT IS HEREBY RESOLVED, by the County Council of Salt Lake County that:

1. The Agreement between the County and the Recipient is approved, in substantially the form attached hereto as **ATTACHMENT A**, and that the Salt Lake County Mayor is authorized to execute the same.
2. In the judgment of the County Council, its contribution and assistance to the Recipient under the Agreement will contribute to the safety, health, prosperity, moral well-being, peace, order, comfort, or convenience of Salt Lake County residents as outlined in Utah Code Ann. § 17-50-303(3).
3. The Agreement will become effective as stated in the Contribution Agreement.

**APPROVED AND ADOPTED** in Salt Lake City, Salt Lake County, Utah, this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Aimee Newton, Chairperson

ATTEST:

\_\_\_\_\_  
Sherrie Swensen  
Salt Lake County Clerk

Voting:

|                          |       |
|--------------------------|-------|
| Council Member Bradley   | _____ |
| Council Member Bradshaw  | _____ |
| Council Member Burdick   | _____ |
| Council Member DeBry     | _____ |
| Council Member Granato   | _____ |
| Council Member Jensen    | _____ |
| Council Member Newton    | _____ |
| Council Member Snelgrove | _____ |
| Council Member Wilson    | _____ |

APPROVED AS TO FORM:

**Melanie  
Mitchell**

Digitally signed by Melanie Mitchell  
DN: dc=org, dc=slcounty,  
ou=Departments, ou=District  
Attorney, ou=Users, ou=GC,  
cn=Melanie Mitchell,  
email=MMitchell@slco.org  
Date: 2018.04.18 15:49:42 -06'00'

\_\_\_\_\_  
Deputy District Attorney

## **ATTACHMENT A**

**Contribution Agreement between Salt Lake County and SLC Bike Share d/b/a Green Bike**

**CONTRIBUTION AGREEMENT**

*between*

**SALT LAKE COUNTY**

*and*

**SLC BIKE SHARE d/b/a GREEN BIKE**

This Contribution Agreement (this “Agreement”) is entered into by and between **SALT LAKE COUNTY**, a body corporate and politic of the State of Utah (the “County”) and **SLC BIKE SHARE d/b/a GREEN BIKE**, a Utah nonprofit corporation (the “Recipient”). The County and the Recipient may each be referred to herein as a “Party” and collectively as the “Parties.”

**RECITALS:**

A. The County is a county existing pursuant to Article XI, Section 1 of the Utah Constitution. The Recipient is a nonprofit organization meeting the requirements of Section 501(c)(3) of the Internal Revenue Code.

B. During the 2015 General Session, the State Legislature amended Section 72-2-121 of the Utah Transportation Code, Utah Code Ann. §§ 72-1-101 *et seq.*, to provide for the transfer of certain funds from the County of the First Class Highway Projects Fund to the legislative body of the County to be used for certain transportation purposes (hereinafter “County Transportation Funds”).

C. The County desires to use the County Transportation Funds to further regional transportation by financing all or a portion of the costs of transportation projects throughout the County in accordance with Section 72-2-121 of the Utah Transportation Code and all other applicable federal, state and local laws, rules and regulations.

D. The County and the Recipient now desire to enter into this Agreement providing for the transfer of up to Two Million Three Hundred Thousand Dollars and No Cents (\$2,300,000.00) of County Transportation Funds to the Recipient to reimburse the Recipient for certain capital costs and operating costs incurred by the Recipient to complete and operate the transportation project described in the Project Description attached hereto as **Exhibit A** (the “Project”), so long as such costs are consistent with the allowable uses for County Transportation Funds described in Subsection 72-2-121(4)(i) of the Transportation Code.

## **AGREEMENT:**

NOW, THEREFORE, in consideration of the mutual representations, warranties, covenants and agreements contained herein, the sufficiency of which is hereby acknowledged, the Parties represent and agree as follows:

### **ARTICLE 1 - INCORPORATION AND DEFINITIONS**

1.1. **Incorporation and Definitions.** The foregoing recitals and all exhibits hereto are hereby made a part of this Agreement. Unless otherwise defined in this Agreement, terms shall have the meaning set forth in the Transportation Code. The following terms shall have the following meanings in this Agreement:

- (a) **Capital-Related Reimbursable Project Costs:** Reimbursable Project Costs associated with Project Item #1 of the Project Description.
- (b) **County Transportation Funds:** As defined in the Recitals above.
- (c) **Event of Default:** As defined in Section 6.1 below.
- (d) **Event of Force Majeure:** As defined in Section 7.3 below.
- (e) **Maximum Reimbursable Amount:** The amount specified for each item listed in the Project Description attached hereto as Exhibit A.
- (f) **Operations Disbursement Period:** The five-year period commencing on either January 1, 2019 or January 1, 2020, as determined by the Recipient, and ending five years after such date, on either December 31, 2023 or December 31, 2024.
- (g) **Operations-Related Reimbursable Project Costs:** Reimbursable Project Costs associated with Project Item #2 of the Project Description.
- (h) **Project:** The transportation project described in the Project Description.
- (i) **Project Description:** The project description attached hereto as Exhibit A.
- (j) **Project Element.** A discrete portion of a Project.
- (k) **Reimbursable Project Costs:** Costs incurred by the Recipient during the Reimbursement Term for the Project, so long as such costs are consistent with the allowable uses for County Transportation Funds described in Subsection 72-2-121(4)(i) of the Transportation Code.
- (l) **Reimbursement Term:**
  - (1) With respect to Capital-Related Reimbursable Project Costs, the period of time commencing with the effective date of this Agreement and expiring

upon the earlier of (i) the date the Recipient has been disbursed, in aggregate, the Maximum Reimbursable Amount; (ii) the date this Agreement is terminated; or (iii) December 31, 2019, which date may be extended by the County, in its sole discretion, but only in writing, upon receipt of a written request from the Recipient setting forth the Recipient's justification for such an extension.

(2) With respect to Operations-Related Reimbursable Project Costs, period of time commencing with the start of the Operations Disbursement Period and expiring upon the earlier of (i) the date the Recipient has been disbursed, in aggregate, the Maximum Reimbursable Amount; (ii) the date this Agreement is terminated; or (iii) the expiration of the Operations Disbursement Period, which date may be extended by the County, in its sole discretion, but only in writing, upon receipt of a written request from the Recipient setting forth the Recipient's justification for such an extension.

(m) Request for Disbursement: A statement from the Recipient, in the form attached hereto as **Exhibit B**, requesting an amount of Transportation Funds to be disbursed to the Recipient for reimbursement of Reimbursable Project Costs.

(n) Transportation Code: Utah Code Ann. §§ 72-1-101 *et seq.*

(o) Transportation Funds: As defined in Section 2.1 below.

1.2. Interpretation of Action That May be Taken by the County. Whenever in this Agreement an action may be taken or not taken by the County, in its sole discretion, this shall mean that the action may be taken or not taken by the Mayor of the County, or his/her official designee (or the Director of the Department of Regional Planning, Housing and Economic Development, if such duty is so delegated to him/her by the Mayor of the County), in his/her sole discretion.

## **ARTICLE 2 - DISBURSEMENT OF COUNTY TRANSPORTATION FUNDS**

2.1. County Transportation Funds. During the Reimbursement Term, the County shall disburse County Transportation Funds (hereinafter "Transportation Funds") to the Recipient to reimburse the Recipient for Reimbursable Project Costs, up to the Maximum Reimbursable Amount for each item listed in the Project Description, all on the terms and subject to the conditions of this Agreement. Unless otherwise agreed to in writing by the County, in its sole discretion, the County will not disburse more than the Maximum Reimbursable Amount to the Recipient for each item listed in the Project Description, even if the Recipient seeks or is disbursed less than the Maximum Reimbursable Amount for any one item listed in the Project Description.

2.2. Annual Status Update. Until the Project has been completed and Transportation Funds have been fully disbursed to the Recipient, the Recipient shall, on an annual basis, update the County on the status of (a) the Project and (b) the anticipated timing and amount of future Request for Disbursement submittals. This annual update shall be submitted to the County in writing (via letter or email) on or before June 30<sup>th</sup> each year.

### **ARTICLE 3 - REPRESENTATIONS AND WARRANTIES**

3.1. **Recipient's Representations and Warranties.** In addition to any other representations, covenants, and warranties contained in this Agreement, the Recipient hereby represents, covenants, and warrants to the County as follows:

(a) **Use of County Transportation Funds.** Any Transportation Funds disbursed to the Recipient by the County under this Agreement will be used by the Recipient: (1) solely to reimburse the Recipient for costs actually incurred by the Recipient for the Project during the Reimbursement Term, so long as such costs are consistent with the allowable uses for County Transportation Funds described in Subsection 72-2-121(4)(i) of the Transportation Code; and (2) in accordance with all other applicable federal, state and local laws, rules and regulations.

(b) **No Default.** No default or Event of Default has occurred and is continuing, and no event has occurred and is continuing which with the lapse of time or the giving of notice, or both, would constitute a default or an Event of Default in any material respect on the part of the Recipient under this Agreement.

(c) **Information.** To the best of the Recipient's knowledge, any information furnished to the County by the Recipient under this Agreement or in connection with the matters covered in this Agreement are true and correct and do not contain any untrue statement of any material fact and do not omit any material fact.

(d) **Relationship of County and Recipient.** The County is not acting as a lender to the Recipient. The County has no fiduciary or other special relationship with the Recipient and therefore no fiduciary obligations are created by this Agreement or are owed to the Recipient or any third parties.

(e) **Recipient's Organization Status.** The Recipient is a Utah nonprofit corporation and has been recognized by the Internal Revenue Service as a tax-exempt organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

(f) **Effect of Request for Disbursement.** Each Request for Disbursement shall constitute a representation and warranty that the information set forth in such Request for Disbursement is true and correct.

3.2. **Recipient's Additional Representations – Liability and Reliance.** Notwithstanding anything to the contrary in this Agreement, the Recipient further represents that the County has not opined on and will not at any point be deemed to have opined on whether any particular Reimbursable Project Cost for which a disbursement of Transportation Funds is made to the Recipient under this Agreement is consistent with the allowable uses for County Transportation Funds described in Subsection 72-2-121(4)(i) of the Transportation Code or in accordance with other applicable federal, state and local laws, rules and regulations. As such, notwithstanding anything to the contrary in this Agreement, the Recipient agrees to be liable for and indemnify the County from any improper use of the Transportation Funds, as indicated in Section 5.1 below. Furthermore, the Recipient agrees that it will independently determine

whether any particular Reimbursable Project Cost for which a disbursement of Transportation Funds is sought by and made to the Recipient under this Agreement is consistent with the allowable uses for County Transportation Funds described in Subsection 72-2-121(4)(i) of the Transportation Code, and, as indicated in Section 4.2(e) below, the Recipient agrees that it will not rely on the County's review or acceptance of any Request for Disbursement, the Project Description, or any other information submitted to the County by the Recipient, in making that determination.

#### **ARTICLE 4 — DISBURSEMENTS**

4.1. **Conditions for Each Disbursement of Transportation Funds.** The County will not be obligated to disburse Transportation Funds to the Recipient to cover Reimbursable Project Costs unless and until the following conditions have been satisfied:

(a) With respect to Capital-Related Reimbursable Project Costs:

(1) **Documents to be Furnished.** The Recipient has furnished to the County, for each and every disbursement:

(i) a Request for Disbursement for Capital-Related Reimbursable Project Costs;

(ii) invoices for any Capital-Related Reimbursable Project Cost incurred or to be incurred by the Recipient for which the Recipient is seeking reimbursement/disbursement from the County pursuant to the Request for Disbursement;

(iii) in accordance with the timing outlined under Section 4.2(c)(1), below, proof of installation or completion of the Project Element or Elements to which the Request for Disbursement relates and for which Reimbursable Project Costs were incurred by the Recipient; and

(iv) in accordance with the timing outlined under Section 4.2(c)(1), below, proof of payment for the Project Element or Elements to which the Request for Disbursement relates and for which Reimbursable Project Costs were incurred by the Recipient; and

(b) With respect to Operations-Related Reimbursable Project Costs:

(1) **Documents to be Furnished.** The Recipient has furnished to the County, for each and every disbursement, which the Parties agree shall occur once annually on or before January 1 of each year during the five-year Operations Disbursement Period:

(i) a Request for Disbursement for Operations-Related Reimbursable Project Costs;

(ii) projected Operations-Related Reimbursable Projects Costs for the year for which the Recipient is seeking disbursement from the County pursuant to the Request for Disbursement; and

(iii) except for the first year of the Operations Disbursement Period, a report outlining:

(A) how the Transportation Funds disbursed to the Recipient for the prior year were expended by the Recipient; and

(B) the amount, if any, of Transportation Funds disbursed to the Recipient for the prior year that remained unexpended by the Recipient at the end of the prior year.

(c) No Event of Default. No Event of Default has occurred and is continuing beyond any applicable cure period.

(d) Warranties and Representations True. All warranties and representations made by the Recipient in this Agreement have remained true and correct and all warranties and representations made by the Recipient in the Request for Disbursement are true and correct.

#### 4.2. Disbursements.

(a) In General. For any and all desired disbursements of Transportation Funds, the Recipient shall submit a Request for Disbursement directly to the County. The Recipient agrees to respond in a timely manner to any reasonable requests made by the County for additional information relating to any Request for Disbursement. In the event that the County declines to make the full disbursement requested in any Request for Disbursement for failure to comply with the terms of this Agreement, the County shall notify the Recipient promptly and shall provide a written explanation of the specific reasons for such decision. The Recipient shall submit a Request for Disbursement to the County no more frequently than once every thirty (30) days.

(b) Amount of Disbursement. Subject to compliance with the terms and conditions of this Agreement, the County shall disburse to the Recipient the amount of Transportation Funds requested by the Recipient in a Request for Disbursement for Reimbursable Project Costs in accordance with Section 4.2(c), but in no event shall the County be required to disburse more than the Maximum Reimbursable Amount, in aggregate, over the Reimbursement Term. However, if the County determines that the Recipient has not complied with all terms and conditions set forth in this Agreement or determines that the Recipient's Request for Disbursement is deficient in any respect, the County may, in its sole discretion, decline to make a disbursement, or may make a partial disbursement based on the extent to which the Recipient has complied with the terms and conditions set forth in this Agreement. Notwithstanding the foregoing, the County will not reimburse the Recipient for Reimbursable Project Costs to the extent such costs have

been funded with non-Recipient funds (e.g., other federal, state, or local grant funds).

(c) Payment of Disbursements. The County shall, within ninety (45) days after receiving a Request for Disbursement from the Recipient, either disburse Transportation Funds to the Recipient in accordance with Subsection 4.2(c)(1) or (2), below, whichever is applicable; or provide a written notice to the Recipient setting forth the reasons for non-disbursement or partial-disbursement. The County shall have no obligation to accept a Request for Disbursement or to make a disbursement of Transportation Funds to the Recipient after expiration of the Reimbursement Term. Additionally, following expiration of the Reimbursement Term, the County may, in its sole discretion, reallocate any remaining and undisbursed Transportation Funds (for which a Request for Disbursement has not been submitted and is not pending) toward other projects within Salt Lake County.

(1) With respect to a Request for Disbursement associated with Capital-Related Reimbursable Project Costs and submitted to the County under Subsection 4.1(a), if the Request for Disbursement and its accompanying documentation is not deficient in any respect, the County shall:

(i) within forty-five (45) days after receiving the Request for Disbursement and invoices under Subsection 4.1(a), disburse to the Recipient 50% of the amount of Transportation Funds requested by the Recipient in the Request for Disbursement and supported by the invoices and any other accompanying documentation; and

(ii) within forty-five (45) days after receiving proof of payment on such invoices and proof of installation or completion of the Project Element or Elements to which the Request for Disbursement relates and for which Reimbursable Project Costs were incurred by the Recipient, disburse to the Recipient the remaining 50% of the amount of Transportation Funds requested by the Recipient in the Request for Disbursement.

Additionally, within forty-five (45) days after installation or completion of the Project Element or Elements to which the Request for Disbursement relates and for which Reimbursable Project Costs were incurred by the Recipient, the Recipient shall submit proof of payment for the Project Element or Elements to which the Request for Disbursement relates and for which Reimbursable Project Costs were incurred by the Recipient. If the Recipient does not provide proof of payment within the forty-five day window, the Recipient shall be liable for and shall pay the County an amount equal to the amount disbursed to the Recipient pursuant to such Request for Disbursement.

(2) With respect to a Request for Disbursement associated with Operations-Related Reimbursable Project Costs and submitted to the County under Subsection 4.1(b), if the Request for Disbursement and its accompanying

documentation is not deficient in any respect and if the County is satisfied with the Recipient's use of the Transportation Funds disbursed to it for the prior year as outlined in the report under Subsection 4.1(b)(1)(iii) (if applicable), the County shall, within sixty (60) days after receiving the Request for Disbursement, projections, and report under Subsection 4.1(b), disburse to the Recipient:

(i) the amount of Transportation Funds requested by the Recipient in the Request for Disbursement and supported by the projects provided to the County under Subsection 4.1(b)(1)(ii); less

(ii) any amounts disbursed to the Recipient for prior years that were not expended by the Recipient in those prior years.

Notwithstanding the foregoing, the Parties agree that the Recipient shall not request and the County shall not disburse more than \$500,000 to the Recipient for Operations-Related Reimbursable Project Costs in any one year of the Operations Disbursement Period.

(d) Acquiescence Not a Waiver. To the extent that the County may have acquiesced in noncompliance with any conditions precedent to the disbursement of Transportation Funds, such acquiescence shall not constitute a waiver by the County and the County at any time after such acquiescence may require the Recipient, as to future requests for disbursements, to comply with all such applicable conditions and requirements under this Agreement.

(e) Disclaimer of Liability.

(1) The County will not be responsible in any manner to the Recipient or any third-party for the quality, design, construction, structural integrity, or health or safety features of any Project for which Transportation Funds are disbursed to the Recipient to reimburse Reimbursable Project Costs, notwithstanding the County's review and approval of the Recipient's Requests for Disbursement or any other information submitted to the County under this Agreement.

(2) Furthermore, the Recipient acknowledges and agrees that the County's review and approval of the Recipient's Request for Disbursement, Project Description, or any other information submitted to the County under this Agreement will not be deemed to be a review by the County as to whether any particular Reimbursable Project Cost for which a disbursement of Transportation Funds is sought by and made to the Recipient under this Agreement is consistent with the allowable uses for County Transportation Funds described in Subsection 72-2-121(4)(i) of the Transportation Code or in accordance with other applicable federal, state and local laws, rules and regulations. As such, the Recipient agrees to be liable for and to indemnify the County from any improper use of the Transportation Funds, as indicated in Section 5.1 below.

## **ARTICLE 5 — COVENANTS AND AGREEMENTS**

### **5.1. Indemnification and Liability.**

(a) **Liability.** The County is a governmental entity under the Governmental Immunity Act of Utah, Utah Code Ann. §§ 63G-7-101 *et seq.* (the “**Immunity Act**”). The County does not waive any defenses or limits of liability available under the Immunity Act and other applicable law. The County maintain all privileges, immunities, and other rights granted by the Immunity Act and all other applicable law.

(b) **Indemnification.** The Recipient agrees to indemnify, hold harmless, and defend the County, its officers, agents, and employees from and against any and all actual or threatened claims, losses, damages, injuries, debts, and liabilities of, to, or by third Parties, including demands for repayment or penalties, however allegedly caused, resulting directly or indirectly from, or arising out of (i) the Recipient’s breach of this Agreement; (ii) any acts or omissions of or by the Recipient, its agents, representatives, officers, employees, or subcontractors in connection with the performance of this Agreement; (iii) any improper use of the Transportation Funds; or (iv) the Recipient’s breach of the Certificate of Grant Recipient attached hereto as Exhibit B. The Recipient agrees that its duty to defend and 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, debt, penalty, or verdict paid or incurred on behalf of the County. The Recipient further agrees that the Recipient’s indemnification obligations in this Section 5.1 will survive the expiration or termination of this Agreement.

5.2. **Recordkeeping.** The Recipient agrees to maintain its books and records in such a way that any Transportation Funds received from the County will be shown separately on the Recipient’s books. The Recipient shall maintain records adequate to identify the use of the Transportation Funds for the purposes specified in this Agreement. Upon request of the County, the Recipient shall make its books and records related to the Transportation Funds available to the County at reasonable times.

5.3. **Assignment and Transfer of Transportation Funds.** The Recipient shall not assign or transfer its obligations under this Agreement nor its rights to the Transportation Funds under this Agreement without prior written consent from the County. The Recipient shall use the Transportation Funds provided pursuant to this Agreement exclusively and solely for the purposes set forth in the Agreement.

## **ARTICLE 6 —DEFAULTS AND REMEDIES**

6.1. **Recipient Event of Default.** The occurrence of any one or more of the following shall constitute an “**Event of Default**” as such term is used herein:

(a) Failure of the Recipient to comply with any of the material terms, conditions, covenants, or provisions of this Agreement that is not fully cured by the

Recipient on or before the expiration of a sixty (60) day period (or, if the County approves in writing, which approval shall not be unreasonably withheld, conditioned or delayed, such longer period as may be reasonably required to cure a matter which, due to its nature, cannot reasonably be cured within 60 days) commencing upon the County's written notice to the Recipient of the occurrence thereof.

6.2. County's Remedies in the Event of Default. Upon the occurrence of any Event of Default, the County may, in its sole discretion, and in addition to all other remedies conferred upon the County by law or equity or other provisions of this Agreement, pursue any one or more of the following remedies concurrently or successively, it being the intent hereof that none of such remedies shall be to the exclusion of any other:

- (a) Withhold further disbursement of Transportation Funds to the Recipient; and/or
- (b) Reduce the amount of any future disbursement of Transportation Funds to the Recipient by the amount incurred by the County to cure such default; and/or
- (c) Terminate this Agreement.

6.3. Termination Prior to Disbursement. The County may terminate this Agreement for convenience by providing thirty (30)-day's written notice specifying the nature, extent and effective date of the termination. However, the County may not terminate this agreement once the Transportation Funds have been provided to the Recipient and have been expended by the Recipient for the purposes set forth by this Agreement.

6.4. Other Grounds for Termination of County's Obligation. The Parties acknowledge and agree that if the disbursement or transfer of Transportation Funds to the Recipient under this Agreement is ever held to be invalid or unenforceable by a court of competent jurisdiction or as a result of legislative or administrative action, the County's obligation to disburse or transfer Transportation Funds to the Recipient under this Agreement will immediately terminate and the Recipient will have no right to seek or receive any disbursement or transfer of Transportation Funds from the County under this Agreement.

## **ARTICLE 7 — MISCELLANEOUS**

7.1. Term of Agreement. This Agreement shall take effect immediately upon the completion of the following: (a) the approval of this Agreement by the County legislative body following or concurrent with a declaration by the County legislative body, in a resolution approving this Agreement, that in the judgment of the County legislative bod the assistance under this Agreement will contribute to the safety, health, prosperity, moral well-being, peace, order, comfort, or convenience of Salt Lake County residents; and (b) the execution of this Agreement by a duly authorized representative of each of the Parties. This Agreement shall terminate upon expiration of the Reimbursement Term, except that the rights and obligations of the Parties set forth in Sections 5.1 and 5.2, and any right or obligation of the Parties in this Agreement which, by its express terms or nature and context is intended to survive termination or expiration of this Agreement, will survive any such termination or expiration. If

upon expiration of the Reimbursement Term, the County has not disbursed to the Recipient the Maximum Reimbursable Amount for each item listed in the Project Description, then all such undisbursed Transportation Funds may be used by the County as the County deems appropriate.

7.2. Non-Funding Clause.

(a) The County has requested or intends to request an appropriation of Transportation Funds from the legislative body of the County to be paid to the Recipient for the purposes set forth in this Agreement. If Transportation Funds are not appropriated and made available beyond December 31 of the county fiscal year in which this Agreement becomes effective, the County's obligation to contribute Transportation Funds to the Recipient under this Agreement beyond that date will be null and void. This Agreement places no obligation on the County to Contribute Transportation Funds to the Recipient in succeeding fiscal years. The County's obligation to contribute Transportation Funds to the Recipient under this Agreement will terminate and become null and void on the last day of the county fiscal year for which funds were budgeted and appropriated, except as to those portions of payments agreed upon for which funds are budgeted and appropriated. The Parties agree that such termination of the County's obligation under this Paragraph will not be construed as a breach of this Agreement or as an event of default under this Agreement, and that such termination of the County's obligation under this Paragraph will be without penalty and that no right of action for damages or other relief will accrue to the benefit of the Recipient, its successors, or its assigns as to this Agreement, or any portion thereof, which may terminate and become null and void.

(b) If Transportation Funds are not appropriated and made available to fund performance by the County under this Agreement, the County shall promptly notify the Recipient of such non-funding and the termination of this Agreement. However, in no event, shall the County notify the Recipient of such non-funding later than thirty (30) days following the expiration of the county fiscal year for which Transportation Funds were last appropriated for contribution to the Recipient under this Agreement.

7.3. Force Majeure. Neither Party will be considered in breach of this Agreement to the extent that performance of their respective obligations is prevented by an Event of Force Majeure that arises after this Agreement becomes effective. "Event of Force Majeure" means an event beyond the control of the County or the Recipient that prevents a Party from complying with any of its obligations under this Agreement, including but not limited to: (i) an act of God (such as, but not limited to, fires, explosions, earthquakes, drought, tidal waves and floods); (ii) war, acts or threats of terrorism, invasion, or embargo; or (iii) riots or strikes. If an Event of Force Majeure persists for a period in excess of sixty (60) days, the County may terminate this Agreement without liability or penalty, effective upon written notice to the Recipient.

7.4. Notices. Any notice required or permitted to be given hereunder shall be deemed sufficient if given by a communication in writing, and shall be deemed to have been received (a) upon personal delivery or actual receipt thereof, or (b) within three days after such notice is deposited in the United States mail, postage pre-paid, and certified and addressed as follows (or

to such other address that may be designated by the receiving party from time to time):

If to Salt Lake County:       Department of Regional Transportation, Housing and  
Economic Development  
2001 South State, S2-100  
Salt Lake City, Utah 84190

With a copy to:               Salt Lake County District Attorney  
2001 South State, S3-600  
Salt Lake City, Utah 84190

If to the Recipient:         SLC Bike Share d/b/a Green Bike  
150 South State Street  
Salt Lake City, Utah 84111

7.5.    Ethical Standards. The Recipient represents that it has not: (a) provided an illegal gift in connection with this Agreement 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 Agreement 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 in connection with this Agreement set forth in State statute or Salt Lake County Code of Ordinances § 2.07; or (d) knowingly influenced, and hereby promises that it will not knowingly influence, in connection with this Agreement, 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.

7.6.    Entire Agreement. This Agreement and the documents referenced herein, if any, constitute the entire Agreement between the Parties with respect to the subject matter hereof, and no statements, promises, or inducements made by either Party, or agents for either Party, that are not contained in this written Agreement shall be binding or valid; and this Agreement may not be enlarged, modified or altered, except in writing, signed by the Parties.

7.7.    Amendment. This Agreement may be amended, changed, modified or altered only by an instrument in writing signed by both Parties.

7.8.    Governing Law and Venue. The laws of the State of Utah govern all matters arising out of this Agreement. Venue for any and all legal actions arising hereunder will lie in the District Court in and for the County of Salt Lake, State of Utah.

7.9.    No Obligations to Third Parties. The Parties agree that the Recipient's obligations under this Agreement are solely to the County and that the County's obligations under this Agreement are solely to the Recipient. The Parties do not intend to confer any rights to third parties unless otherwise expressly provided for under this Agreement.

7.10. Agency. No officer, employee, or agent of the Recipient or the County is intended to be an officer, employee, or agent 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 officers, employees, or agents of the other Party. The Recipient and the County will each be solely and entirely responsible for its acts and for the acts of its officers, employees, or agents during the performance of this Agreement.

7.11. No Waiver. The failure of either Party at any time to require performance of any provision or to resort to any remedy provided under this Agreement will in no way affect the right of that Party to require performance or to resort to a remedy at any time thereafter. Additionally, the waiver of any breach of this Agreement by either Party will not constitute a waiver as to any future breach.

7.12. Severability. If any provision of this Agreement is found to be illegal or unenforceable in a judicial proceeding, such provision will be deemed inoperative and severable, and, provided that the fundamental terms and conditions of this Agreement remain legal and enforceable, the remainder of this Agreement shall remain operative and binding on the Parties.

7.13. Counterparts. This Agreement may be executed in counterparts and all so executed will constitute one agreement binding on all the Parties, it being understood that all Parties need not sign the same counterpart. Further, executed copies of this Agreement delivered by facsimile or email will be deemed an original signed copy of this Agreement.

IN WITNESS WHEREOF, each Party hereby signs this Agreement on the date written by each Party on the signature pages attached hereto.

*[Intentionally Left Blank - Signature Page Follows]*

**CONTRIBUTION AGREEMENT - SIGNATURE PAGE FOR THE COUNTY**

**SALT LAKE COUNTY**

By \_\_\_\_\_  
Mayor Ben McAdams or Designee

Dated: \_\_\_\_\_, 20\_\_\_\_

***Approved by:***

DEPARTMENT OF REGIONAL TRANSPORTATION,  
HOUSING AND ECONOMIC DEVELOPMENT

By Carlton J. Christensen  
Carlton J. Christensen  
Department Director  
Dated: April 25, 2018

***Approved as to Form and Legality:***

By Melanie Mitchell  
Melanie Mitchell  
Deputy District Attorney

Digitally signed by Melanie Mitchell  
DN: dc=org, dc=slcounty,  
ou=Departments, ou=District Attorney,  
ou=Users, ou=GC, cn=Melanie Mitchell,  
email=MMitchell@slco.org  
Date: 2018.04.18 11:31:03 -06'00'

**CONTRIBUTION AGREEMENT – SIGNATURE PAGE FOR RECIPIENT**

**SLC BIKE SHARE d/b/a GREEN BIKE**

By 

Name: Ben J. Bolte

Title: Executive Director

Dated: April 5, 2018

# **EXHIBIT A**

Project Description

# **EXHIBIT A**

Project Description

**PROJECT DESCRIPTION**  
for  
**SLC BIKE SHARE D/B/A GREEN BIKE**

**1) Project Title:** New Green Bike Stations in Salt Lake City, Utah

|                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|-------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Project Item #1 Description:</b> | <p>Construction and installation of a minimum of four new GREENbike stations in Salt Lake City, Utah, to be part of the overall GREENbike nonprofit bike share system, and other equipment associated with expanding the GREENbike system, so long as such costs are consistent with the allowable uses for County Transportation Funds described in Subsection 72-2-121(4)(i) of the Transportation Code. New stations shall have at least 20 docks per station, and ideally more than 30, and shall have at least the same quality and functionality as existing stations currently in the GREENbike nonprofit bike share system.</p> <p>The County understands that Recipient plans to add 14 new stations during this new phase of expansion and that the County's contribution under this Agreement will pay for only a portion of the total costs of expanding the system.</p> |
| <b>Maximum Reimbursable Amount:</b> | \$1,000,000.00                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |

|                                     |                                                                                                                                                                                                                                                                                                                   |
|-------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Project Item #2 Description:</b> | <p>Operation and maintenance associated with the new GREENbike stations installed on or after January 1, 2018 for a period of five (5) years, so long as such costs are consistent with the allowable uses for County Transportation Funds described in Subsection 72-2-121(4)(i) of the Transportation Code.</p> |
| <b>Maximum Reimbursable Amount:</b> | \$1,300,000.00                                                                                                                                                                                                                                                                                                    |

**EXHIBIT B**  
Request for Disbursement Form

**EXHIBIT B**  
Request for Disbursement Form

## REQUEST FOR DISBURSEMENT

To: Salt Lake County

Re: SLC Bike Share d/b/a Green Bike – Contribution Agreement for Transportation Funds  
(DA Log No. 17-09783)

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Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Contribution Agreement (the “Agreement”) between the Salt Lake County (the “County”) and SLC Bike Share d/b/a Green Bike (the “Recipient”) (DA Log No. 17-09783). In connection with said Agreement, the undersigned hereby states and certifies that:

1. Each item listed on **Schedule 1** attached hereto is a Reimbursable Project Cost and was incurred in connection with the Project.
2. These Reimbursable Project Costs have been paid by the Recipient and are reimbursable under the Agreement.
3. Each item listed on **Schedule 1** has not previously been paid or reimbursed from money obtained from the County or any local, state, or federal grant.
4. Invoices and proof of payment for each item listed on **Schedule 1** is attached hereto.
5. There has not been filed with or served upon the Recipient any notice of any lien, right of lien or attachment upon or claim affecting the right of any person, firm, or corporation to receive payment of the amounts stated in this request, except to the extent any such lien is being contested in good faith.
6. All work for which reimbursement is requested has been performed in a good and workmanlike manner and in accordance with the Agreement.
7. The Recipient is not in default or breach of any term or condition of the Agreement, and no event has occurred and no condition exists which constitutes an Event of Default under the Agreement.
8. All of the Recipient’s representations set forth in the Agreement remain true and correct as of the date hereof.
9. The Recipient acknowledges and agrees that the County’s review and approval of this Request for Disbursement will not be deemed to be a review by the County as to whether any particular Reimbursable Project Cost for which a disbursement of Transportation Funds is sought hereunder is consistent with the allowable uses for County Transportation Funds

described in Subsection 72-2-121(4)(i) of the Utah Code or in accordance with other applicable federal, state and local laws, rules and regulations. As such, the Recipient agrees to be liable for and to indemnify the County from any improper use of the Transportation Funds, as indicated in Section 5.1 of the Agreement.

Dated this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

**SLC BIKE SHARE d/b/a GREEN BIKE**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Approved for Payment this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

**SALT LAKE COUNTY**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

