

**COOPERATIVE AGREEMENT BETWEEN THE CITY OF MOAB AND  
THE UTAH DEPARTMENT OF TRANSPORTATION FOR THE  
PROVISION OF THE GRAND COUNTY AND MOAB  
SHUTTLE / TRANSIT PILOT**

THIS AGREEMENT (“Agreement”), made and entered into on the executed date, by and between the UTAH DEPARTMENT OF TRANSPORTATION (“UDOT”), an agency of the State of Utah, and the CITY OF MOAB (“Moab”), a political subdivision of the State of Utah, hereinafter referred to collectively as the “Parties” for the provision of the Grand County and Moab Shuttle / Transit Pilot hereinafter referred to as “Transit Service.”

**RECITALS**

WHEREAS, Moab is authorized by Utah Code § 10-8-86 to organize, operate, and maintain a system for public transit; and

WHEREAS, Moab does not currently operate a public transit service within Moab and the adjacent communities in Grand County, Utah nor does any nearby municipality; and

WHEREAS, the State of Utah has determined a need exists to provide public transit service within Grand County, Utah; and

WHEREAS, the Parties have determined it will be mutually beneficial and in the best interests of the residents of Moab and Grand County and the State of Utah to enter into this Agreement to provide a transit service.

NOW THEREFORE, in consideration of the mutual covenants set forth herein, the Parties agree as follows:

**SECTION 1: SPECIFIC TERMS**

1.1 Moab Rights and Obligations.

- a. Moab shall:
  - (i) Develop and execute an operational plan for Transit Service in coordination with UDOT.
  - (ii) Complete a Request for Proposal (RFP) to solicit a third party microtransit service provider, adhering to all City and/or County established bidding rules and processes.
  - (iii) Contract with a third party to provide a microtransit solution that services the area presented to the Utah Transportation Commission on June 25, 2021.
  - (iv) Provide any required fleet maintenance or accommodations for transit vehicles providing services under this Agreement that are not already provided by the third party.
  - (v) Contribute \$700,000 in funds for the Transit Service per the agreed to

schedule: Year 1 = \$0; Year 2 = \$60,000; Year 3 = \$120,000; Year 4 = \$230,000; Year 5 = \$290,000.

(vi) Request periodic (may include monthly) payment from UDOT pursuant to the terms of this Agreement not to exceed the amount of \$1,585,000 (excludes City Contribution, and any Federal Transit Authority (FTA) contributions) per the agreed to schedule: Year 1 = \$500,000; Year 2 = \$400,000; Year 3 = \$300,000; Year 4 = \$200,000; Year 5 = \$100,000 (with \$85,000 available to float). The City shall prepare an invoice with appropriate documentation of the requested funds for the Transit Service. The invoices shall be sent to: Devin Squire, Project Manager, UDOT, Pin #18980, 210 West 800 South, Richfield, Utah 84701

(vii) Provide to UDOT an annual financial report and detailed accounting of expenditures associated with establishing and operating Transit Service under this Agreement.

(viii) Ensure the Transit Service complies with the FTA 5311 funding requirements.

(ix) Provide the Transit Service for five (5) years of active service, or until terminated or renegotiated per Section 1.10.

1.2 UDOT Rights and Obligations. Within 30 days from receiving Moab's invoice, UDOT will pay Moab the funds for the invoices that comply with this Agreement.

1.3 Fares, Fees and Other Additional Revenues. The Parties acknowledge that any fares, fees, or other additional revenues derived as a result of the Transit Service shall be used to supplement UDOT and City funding for the Transit Service and shall not be used for any other purpose.

1.4 Administration. Moab shall manage the Transit Service. Moab and its contractor shall be solely responsible for the operation, management, and administration of the service, including provision of vehicles, vehicle maintenance, insurance and accounting for the Transit Service and routes and will include this information in the yearly operational and financial reports to UDOT.

1.5 Audits. Upon UDOT's request, Moab shall provide a copy of financial audits related to Transit Service that are performed for any year that Transit Service are provided under this Agreement.

1.6 Term. This Agreement shall be effective upon execution by all Parties and shall continue for five (5) years from the commencement of Transit Service under this Agreement or until terminated or renegotiated per Section 1.10. Moab shall provide written notice to UDOT of the commencement date of Transit Service.

#### 1.10 Termination.

a. The Parties understand and agree that the services under this Agreement are subject to and federal and state Laws governing the services. As a result, there is potential that requirements may change. While it is generally expected that the services under this Agreement extend through five (5) years, this Agreement may be terminated or renegotiated if any of the following conditions arise:

(i) There is a substantial change in the cost, scope, or ridership of services;

- (ii) Either Party or its contractor defaults in its obligations; or
- (iii) FTA or other governmental entity adopts laws or regulations or changes funding that significantly affect the services or cost of services to either Party.

b. Notwithstanding any provisions of this Agreement, either party may terminate this Agreement by providing written notice of such termination, specifying the effective date thereof, at least one (1) year prior to such date. Such notice is subject to paragraph 2.19 below.

1.11 Default. The occurrence of any of the following events shall constitute a default under this Agreement:

- a. UDOT fails to make payments within sixty (60) days of the request for payment that is supported by sufficient documentation.
- b. Moab fails to fulfill any of its obligations under this Agreement.
- c. In the event this Agreement is terminated due to default by Moab, Moab shall refund any unused or unobligated portion of its payments and Moab will provide a report showing expended funds were matched appropriately.
- d. In the event that service needs to be terminated, Moab and UDOT will negotiate terms of termination mutually agreed upon by both parties.

1.12 Dispute Resolution. The parties to this Agreement are governmental entities working together for mutual advantage. In the event a dispute arises with respect to this Agreement the parties agree to first submit the matter to non-binding mediation with a mediator agreeable to both parties. In the event that the parties are not able to resolve the dispute after participating in non-binding mediation, the venue for any subsequent legal action, if any, shall be the Seventh Judicial District Court for the State of Utah.

## **SECTION 2: GENERAL TERMS**

2.1 Recitals. The Recitals contained in this Agreement are incorporated into the Agreement.

2.2 Paragraph Headings. The paragraph and subparagraph headings used herein are for convenience only and shall not be considered in the interpretation of this Agreement.

2.3 Authorization. Each individual executing this Agreement does represent and warrant to each other so signing that he or she has been duly authorized to sign this Agreement in the capacity and for the entities set forth where he or she so signs.

2.4 Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument and shall be filed immediately with the keeper of records of each Party.

2.5 Utah Law to Govern: Governmental Immunity. This Agreement has been drafted and executed in

the State of Utah. All questions concerning the meaning, intention, and enforcement of any of its terms or its validity shall be determined in accordance with the laws of the State of Utah. Jurisdiction for any dispute and venue shall be in the Seventh Judicial District Court of the State of Utah. Both Parties to this Agreement are governmental entities under the Governmental Immunity Act of Utah and nothing in this Agreement shall be construed as a waiver of the requirements, protections, rights, defenses, or immunities granted to the Parties under the act.

2.6 Inducement. The drafting and execution of this Agreement has not been induced by any representation, statement, warranty, or agreement other than those herein expressed.

2.7 Integration. All agreements heretofore made in the negotiation and preparation of this Agreement between the Parties hereto are superseded by and merged into this Agreement, no statement or representation not embodied herein shall have any binding effect upon the Parties hereto and there shall be no amendments hereto except those in writing signed by the Parties hereto.

2.8 Time is of the Essence. Time is of the essence with regard to this Agreement as to each covenant, term, condition, representation, warranty and provision hereof.

2.9 Necessary Acts and Cooperation. The Parties hereby agree to do any act or thing and to execute any and all instruments required by this Agreement and which are necessary and proper to make effective the provisions of this Agreement.

2.10 Partial validity. If any portion of this Agreement shall be held invalid or inoperative, then insofar as is reasonable and possible:

- a. The remainder of this Agreement shall be considered valid and operative, and,
- b. Effect shall be given to the intent manifested by the portion held invalid or inoperative.

2.11 Ambiguities. This Agreement has been negotiated and drafted by all Parties hereto and the general rule of contract construction that ambiguities shall be construed against the draftsman shall have no application to this Agreement.

2.12 No Third-Party Beneficiaries. This Agreement is not intended to be a third-party beneficiary contract for the benefit of any third parties, including but not limited to any customer of any Party, and no such persons shall have any right of subrogation or cause of action against any Party for any breach or default by any Party hereunder. In addition, no third parties shall have any rights hereunder that would, in any way, restrict the Parties' right to modify or renew this Agreement at any time or in any manner. Nothing in this Agreement is intended to relieve or discharge the obligation or liability of any third persons to any Party to this Agreement.

2.13 Laws and Regulations. Any and all actions performed pursuant to this Agreement will comply fully with all applicable federal and state laws and regulations.

2.14 Binding on successors in interest. This Agreement shall bind the Parties hereto and their successors, heirs, assigns and representatives, and the obligations of the Parties shall survive closing and shall not merge with any document of title.

2.15 Assignment. No rights or obligations of any Party under this Agreement shall be assigned without the prior written consent of the Parties. This Agreement is voidable and subject to immediate

cancellation upon either Party becoming insolvent, or filing proceedings in bankruptcy or reorganization under Title XI, United States Code.

2.16 Notice. Any notice to be given or payment to be made hereunder shall have been properly given or made when received by the respective Party when deposited in the United States mail, certified or registered, postage prepaid, addressed as follows:

As to: City of Moab  
 Attention: City Manager  
 217 East Center Street  
 Moab, UT 84532

As to: UDOT  
 Attention: Region Director  
 Pin #18980  
 210 West 800 South  
 Richfield, Utah 84701

2.17 Waiver. The waiver by any Party to this Agreement of a breach of any provision of this Agreement shall not be deemed to be a continuing waiver or a waiver of any subsequent breach, whether of the same or any other provision of this Agreement. Any waiver shall be in writing and signed by the waiving Party.

2.18 Rights and Remedies. The Parties shall have all rights and remedies provided under applicable federal or state law for a breach or threatened breach of this Agreement. These rights and remedies shall not be mutually exclusive, and the exercise of one or more of these rights and remedies shall not preclude the exercise of any other rights and remedies. Each Party confirms that damages at law may be an inadequate remedy for a breach or threatened breach of any provision hereof and the respective rights and obligations of the Parties hereunder shall be enforceable by specific performance, injunction, or other equitable remedy. Nothing in this Agreement shall be construed to waive the sovereign immunity of the government Parties.

2.19 Amendments. This Agreement may not be amended except by written amendment signed by the Parties.

IN WITNESS WHEREOF, the Parties hereto have executed or caused to be executed by their duly authorized officials, this Agreement on the date first above written.

City of Moab		Utah Department of Transportation	
Signature:		Signature:	
Mayor Emily Niehaus	Date:	Monte Aldridge, R4 Deputy Director	Date:
Signature:		Signature:	
Sommar Johnson, City Recorder	Date:	Renee Spooner, Legal Counsel for UDOT	Date: