



In Reply Refer to: HCR-20  
DOT# 2020-0028

January 17, 2023

[REDACTED]

**Subject:** Resolution of Complaint #2020-0028

Dear [REDACTED]

The Federal Highway Administration (FHWA) has resolved your complaint against the Salt Lake City GREENbike program. Your complaint, which was received by this office on November 25, 2019, alleged that GREENbike violated Title VI of the Civil Rights Act of 1964 (Title VI) and its implementing regulations, including Title VI regulations administered by the United States Department of Transportation (49 C.F.R. Part 21) and FHWA (23 C.F.R. Part 200).

FHWA reached a voluntary resolution agreement with the Utah Department of Transportation on November 10, 2022 (enclosed). The agreement pertains to the future expansion of the GREENbike program. This letter closes FHWA's inquiry of your complaint.

Please be advised that no one may intimidate, threaten, coerce, or engage in other discriminatory conduct against anyone because he or she has either taken action or participated in an action to secure rights protected by the civil rights requirements that we enforce. Any individual alleging such harassment or intimidation may file a complaint with the FHWA.

Sincerely,

*Nichole McWhorter*

Nichole McWhorter  
Title VI Team Leader  
Office of Civil Rights

Enclosure:  
Title VI Voluntary Resolution Agreement

cc: Ivan Marrero, Division Administrator, FHWA Utah Division Office  
Brigitte Mandel, Deputy Division Administrator, FHWA Utah Division Office  
Russell Robertson, Civil Rights Program Manager, FHWA Utah Division Office  
Jim Esselman, Senior Attorney-Advisor, FHWA Office of Chief Counsel  
Irene Rico, Associate Administrator, FHWA Civil Rights Office  
Irene Marion, Director, Departmental Office of Civil Rights  
Yvette Rivera, Associate Director, Equity and Access Division, Departmental Office of Civil Rights  
Barbara Dougherty, Deputy Director, Departmental Office of Civil Rights  
Sara Kluberanz, Lead Program Analyst, Departmental Office of Civil Rights

## Voluntary Resolution Agreement

### I. Purpose

The Federal Highway Administration (FHWA) and the Utah Department of Transportation (UDOT) hereby enter into this Voluntary Resolution Agreement (Agreement) regarding the Salt Lake City GREENbike Program, to resolve allegations against UDOT, Salt Lake City, and GREENbike of noncompliance with Title VI of the Civil Rights Act of 1964 (Title VI). In entering into this Agreement, FHWA is not making a noncompliance finding against UDOT, and UDOT is not admitting a violation of Title VI or another unlawful act.

### II. Background

- A. On November 14, 2019, FHWA received a Title VI complaint against UDOT, Salt Lake City, and GREENbike. The complaint alleges that the GREENbike bike share program discriminates against the Hispanic residents of Salt Lake City. The complaint alleges that Hispanic residents are not afforded the benefits of the bike share program because the program's bike stations are in areas with predominately white residents. The complaint alleges there are no bike stations located in predominately Hispanic areas west of Interstate 15.
- B. GREENbike is a public-private, non-profit bikeshare program in Salt Lake City. Users can rent electric assist bikes at stations located throughout the city. The public-private partnership includes UDOT and Salt Lake City.
- C. GREENbike entered into a concessionaire agreement with Salt Lake City on September 15, 2012, to operate the bikeshare program.
- D. Since 2014, FHWA has awarded UDOT more than \$1 million of financial assistance for the expansion of the GREENbike program. UDOT passed the FHWA financial assistance to Salt Lake City for the GREENbike expansion.
- E. On October 17, 2022, UDOT entered into an agreement with Salt Lake City about the installation of eight new GREENbike station locations. This agreement titled AGREEMENT TO ENSURE THE ESTABLISHMENT OF BIKE-SHARE STATIONS IN UNDERSERVED AREAS OF SALT LAKE CITY (hereinafter "the UDOT/SLC Agreement") is incorporated into this Agreement as Appendix A.

### III. Applicability

Title VI provides that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. 42 U.S.C. 2000d. Title 49 of the Code of Federal Regulations (CFR), Part 21, implements Title VI for the U.S. Department of Transportation (DOT) and provides that DOT Recipients may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, or national origin. 49 CFR § 21.5(b)(2).

All FHWA recipients shall, as a condition to their approval and the extension of Federal assistance, provide an assurance that their programs and activities will be conducted in compliance with Title VI. FHWA requires that State Highway Agencies (SHAs) create methods of administration for their Title VI programs such that they give reasonable guarantee that the SHA and all subrecipients and contractors follow Title VI. 49 CFR § 21.7(b). Recipients are required to provide access to data and information to DOT which the Agency will use to determine compliance with Title VI. See 49 CFR § 21.9(c)

UDOT is a Recipient of Federal financial assistance from the FHWA. Salt Lake City is a sub-Recipient of FHWA financial assistance as it received FHWA funds from UDOT for expanding GREENBIKE.

#### **IV. UDOT Actions**

As a primary recipient of Federal-Aid Highway funding from FHWA, UDOT is responsible for implementing FHWA Title VI Program requirements. See 23 CFR § 200.3. UDOT is solely responsible for effectuating the actions described in this Agreement by taking the following actions:

- A. Ensure that the eight proposed GREENbike stations are built and fully operational by May 13, 2024, per the terms of the UDOT/SLC Agreement. UDOT shall promptly notify FHWA in writing upon the completion of each station.
- B. UDOT shall send written progress reports to FHWA annually for three years beginning October 1, 2023. The reports will include a summary of all activities related to the planning, development, and installation of any new GREENbike station location, other than those encompassed under the UDOT/SLC Agreement, during the year preceding the report submission date. For any new bike station location, UDOT shall identify the location and describe the criteria used, including Title VI considerations, for the selection of the new location. Further, UDOT will cooperate with FHWA regarding all additional requests for documentation, pursuant to 49 C.F.R. § 21.9, et seq.
- C. UDOT shall promptly notify FHWA in writing if any of the eight GREENbike stations developed under the UDOT/SLC Agreement ceases to operate at any time within five years of the date of this Agreement, other than for routine, temporary maintenance. Upon receipt of the notice, FHWA will assess and address with UDOT whether alternative remedies may be necessary to ensure the GREENbike program's continued compliance with Title VI.
- D. If the UDOT/SLC Agreement is terminated prior to the completion of the requirements outlined above in items A through C, UDOT shall notify FHWA promptly in writing. Upon receipt of the notice, FHWA will assess and address with UDOT whether alternative remedies may be necessary to ensure the GREENbike program's continued compliance with Title VI.

#### **V. Modification of Agreement**

This Agreement may be modified only in writing by mutual agreement of both FHWA and UDOT.

#### **VI. Third-Party Agreement**

FHWA acknowledges that UDOT has entered into a separate agreement with Salt Lake City, the UDOT/SLC Agreement, for purposes of implementing this Agreement, and that Salt Lake City under the UDOT/SLC Agreement must carry out actions to install additional GREENbike stations. No provision in the UDOT/SLC Agreement shall be construed to (1) diminish or reduce UDOT's obligations to FHWA under this Agreement, or (2) supersede any provision described in this Agreement to the extent the UDOT/SLC Agreement conflicts with any provision of this Agreement or Federal law or regulation.

#### **VII. Intimidation or Retaliatory Acts Prohibited**

Neither UDOT nor any entity or business party to an agreement to carry out the actions herein shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Section 601 of Title VI or 49 C.F.R. Part 21, or because such individual has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing pursuant to 49 C.F.R. Part 21.

**VIII. Compliance**

FHWA may review UDOT’s compliance with this Agreement at any time. If FHWA believes UDOT has failed to comply in a timely manner with any requirement of this Agreement, FHWA will so notify UDOT in writing and will attempt to resolve the issue or issues in good faith.

**IX. Abeyance**

The FHWA will hold in abeyance conducting a formal investigation regarding the complaint filed in the matter (described above) during the performance of this Agreement. At any time, should UDOT not perform, or ensure performance, under this Agreement, FHWA will notify UDOT as stated in section VIII above. Should UDOT fail to remedy the noncompliance issue within 30 days of notification, FHWA may continue conducting a formal investigation regarding the issue and take such other actions as necessary to ensure UDOT’s compliance with Title VI.

**X. Duration**

The terms of this Agreement shall remain in effect for five years to ensure all eight GREENbike stations included in the UDOT/SLC Agreement are built and fully operational and to ensure future GREENbike expansion efforts comply with Title VI. Expiration of this Agreement does not release UDOT, Salt Lake City, or GREENbike from continued responsibility under Title VI as recipients of federal assistance from FHWA.

FEDERAL HIGHWAY ADMINISTRATION



Ivan Marrero, Utah Division Administrator

Dated: 11/10/2022

UTAH DEPARTMENT OF TRANSPORTATION



Carlos M. Braceras PE, Executive Director

Dated: 11/09/2022



Approved as to Form  
James W. Palmer  
Assistant Attorney General

Dated 11/10/2022

Appendix A:  
UDOT and SLC AGREEMENT

## **AGREEMENT TO ENSURE THE ESTABLISHMENT OF BIKE-SHARE STATIONS IN UNDERSERVED AREAS OF SALT LAKE CITY**

The Utah Department of Transportation (UDOT) and Salt Lake City Corporation, a political subdivision of the State of Utah (the City) collectively known as the Parties, enter this agreement to ensure the establishment of eight proposed bike-share stations in underserved areas of Salt Lake City (the Agreement). This Agreement shall be effective as of October 17, 2022.

### **I. Purpose**

The purpose of the Agreement is to help UDOT and the City fulfill the terms and conditions of the federal funding aid agreements executed for the benefit of the City's GREENbike bikeshare program. Through this agreement, UDOT and the City voluntarily resolve issues raised by a complaint filed with the United States Department of Transportation (USDOT) that alleged UDOT, the City and the GREENbike bikeshare program decided where bikeshare stations would be located throughout the City without considering if placement of the stations might disparately impact a protected class of persons. The Parties enter the Agreement without admitting to violating federal law.

### **II. Recitals**

1. UDOT receives Federal Financial Assistance through the USDOT for transportation projects within the state of Utah.
2. UDOT supplies a part of those funds to the City for local transportation projects. UDOT must ensure that all entities receiving Federal Financial Aid follow all federal statutes and regulations.
3. GREENbike is a public-private, non-profit bikeshare program wherein individual users can rent electric-assist bikes at stations located throughout Salt Lake City. UDOT and the City partnered with GREENbike to provide Federal Financial Assistance through USDOT.
4. Salt Lake City entered into a concessionaire agreement with GREENbike program on September 15, 2012, for GREENbike to operate a bikeshare program, initially with 10 stations and 55 bikes. Within a few months, the program added two more stations, expanded the capacity of five existing stations, and added 20 more bikes. GREENbike currently has approximately 42 stations and 343 electric-assist and unassisted bikes in place and is still growing.
4. GREENbike published a strategic implementation plan for the City in 2014 (the Plan). The Plan acknowledges the need to expand the bike system to serve low-income and other populations situated to the west of Interstate-15 and railroad track corridor, which act as barriers separating the City's far west side from its core business hub.
5. GREENbike Bike Share System (GREENbike) is a beneficiary of Federal Financial Assistance through UDOT as the Recipient and the City as the Subrecipient. Because GREENbike is funded in part by Federal Financial Assistance,

UDOT and the City must ensure all persons have equal access to the benefits of services provided by GREENbike.

6. In 2019, a complaint was filed against UDOT, the City, and GREENbike, alleging that the GREENbike program discriminates against Hispanic residents of Salt Lake City. The complaint further alleges that Hispanic residents are not afforded the benefits of the bikeshare program because the program's bike stations were located in areas with predominately white residents, while no bike stations were located in predominately Hispanic areas.

### **III. Definitions**

1. Beneficiary: The entity that uses Federal Financial Assistance to buy goods or services;
2. Federal Financial Aid or Assistance: A grant or loan of Federal funds;
3. Metropolitan Planning Organization (MPO): The policy board of an organization created and designated to carry out the metropolitan transportation planning process for each urbanized area with a population of more than 50,000 individuals.
4. Recipient: An entity that receives Federal Financial Assistance from a federal entity;
5. Subrecipient: An entity that receives Federal Financial Assistance from a Recipient.

### **IV. Terms of Agreement**

1. The City's general Title VI obligations. Because the City is a Subrecipient of Federal Financial Aid for the GREENbike program through UDOT as the primary Recipient, the City must satisfy the requirements of 49 CFR Part 21, 28 CFR 42.400, and 2 CFR 200. Specifically, the City will:
  - a. Satisfy the required assurances listed in 49 CFR §21.7;
  - b. establish and support a complaint processing process as required by 49 CFR §21.11 and follow Federal Highway Administration (FHWA) guidance;
  - c. disseminate to the public Title VI information as required by 28 CFR §42.405;
  - d. establish internal controls that satisfy the requirements of 2 CFR §200.303;
  - e. follow the Limited English Proficiency guidelines stated in Executive Order 13166 and according to USDOT guidance;



- f. submit signed Title VI Assurances to UDOT annually and insert language from USDOT Order 1050.2A into all contracts and agreements;
  - g. appoint a responsible point of contact to coordinate the City's Title VI efforts;
  - h. route Title IV complaints through UDOT to FHWA;
  - i. collect demographic data on its programs and activities as required by 28 CFR §42.406; including:
    - i. information about the ways and areas GREENbike will supply services and related data needed to learn whether any persons are or will be denied services on the basis of prohibited discrimination;
    - ii. the population eligible to be served by race, color and national origin;
    - iii. GREENbike's plans to use employees, agents, or volunteers, or to otherwise utilize City resources to ensure individuals with relevant bi-lingual skills are available to communicate with segments of the targeted population unable to communicate in English;
    - iv. the current or proposed membership, by race, color and national origin, in any planning or advisory body that is an integral part of the GREENbike program;
    - v. if a station needs relocating, the requirements and steps used or proposed to guard against unnecessary impact on persons on the basis of race, color or national origin;
    - vi. where additional tools such as demographic maps, the racial composition of affected neighborhoods, or census data is necessary or appropriate to facilitate understanding of the information required by subparagraphs 1(i)(i) through 1(i)(vi), the City shall submit copies of such tools to UDOT to the extent that they are readily available or can be compiled with reasonable effort; and;
  - j. conform to the Local Agency Roles and Responsibilities section of the Federal Aid Agreement for Local Agency including:
    - i. Assign a City representative responsible for knowing about requirements and conditions that accompany Federal Financial Assistance;
    - ii. coordinate between the City representative and the assigned UDOT project manager about the Federal Financial Assistance involved;
    - iii. coordinate with representatives of other relevant organizations such as the MPO;
    - iv. manage day-to-day activities of the project; and,
    - v. coordinate with utilities.
2. The City's obligations about operating and expanding the GREENbike Bike Share System:

- a. The City will expand the GREENbike system by establishing the following eight stations in underserved areas of the City (each, a Proposed Station):
    - i. 1200 West North Temple,
    - ii. 855 West California Ave - Sorenson Multicultural and Unity Fitness Center,
    - iii. 500 North 300 West,
    - iv. Wilmington Avenue (2000 South) I-215 East,
    - v. 63 South 600 West,
    - vi. 900 West 200 North,
    - vii. 900 West 800 North,
    - viii. 700 South 20 West.
  - b. the City will ensure that the eight Proposed Stations are built and fully operational by May 13, 2024;
  - c. the City will promptly notify UDOT in writing upon the completion of each Proposed Station;
  - d. the City shall promptly notify UDOT in writing if any of the eight Proposed Stations developed under this Agreement ceases to operate at any time within five years of the date of this Agreement, other than for routine, temporary maintenance. Upon receipt of the notice, UDOT will assess and address with the City whether alternative remedies may be necessary to ensure the GREENbike program's continued compliance with Title VI.
  - e. the City will provide written reports to UDOT quarterly on GREENbike's progress in establishing the Proposed Stations in the City. The quarterly reports must include:
    - i. The precise location of each new Proposed Station built during the quarter along with the demographic data and the criteria used, including Title VI considerations, for the decision of the new location.
    - ii. the identity of contractors hired to build each Proposed Station,
    - iii. the procurement processes the City used to hire each contractor,
    - iv. the start date and completion date for construction of each Proposed Station,
    - v. problems or difficulties the City, GREENbike, or a contractor encounter while building each Proposed Station,
    - vi. statistics on usage of each Proposed Station operational during the quarter,
    - vii. the City will cooperate with UDOT regarding additional requests for documentation, pursuant to 49 C.F.R. part 21.9, et seq.
3. Annual Compliance Review Meeting. The Parties agree to coordinate an annual meeting between a City representative and UDOT representative to review the City's compliance measures with the obligations outlined in Sections 1 and 2 herein.

4. Force Majeure Regarding Unforeseen Superseding Events. In the event the City is unable to ensure GREENbike's progress in establishing the Proposed Stations due to unforeseeable circumstances beyond the control of the City or GREENbike (including, without limitation, strikes, labor disputes, acts of God, governmental restrictions, communicable disease pandemics, fire, casualty, or shortages of, or inability to obtain labor, utilities, or materials, or financial hardship experienced by GREENbike), the Parties agree to negotiate a resolution of the issue with UDOT in a manner that will ensure the ongoing compliance of the GREENbike program with Title VI requirements.
5. No Admissions. This Agreement is not an admission, concession, or evidence that the City is not in compliance with any applicable statute, regulation, or other requirements or otherwise liable for violating any applicable federal statute or regulation.
6. Binding on Successors. This Agreement is binding on the City and its successors, heirs, transferees, and assigns.
7. Costs. Each Party to this Agreement shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.
8. No Additional Releases. The Parties intend this Agreement to be for the benefit of the Parties only. Accordingly, and by this instrument, the Parties do not release any claims against or by any other person or entity.
9. Effect of Agreement. This Agreement constitutes the complete Agreement between the Parties. This Agreement contains material representations, understandings, and promises of the Parties. Modifications to this Agreement must be in writing and signed by the Parties.
10. Disclosure. UDOT places no restriction on the publication of the Agreement. In addition, UDOT and the City may be required to disclose material related to this Agreement to any person upon request consistent with the applicable provisions of the Freedom of Information Act, 5 U.S.C. § 552 (June 30, 2016), or the Government Records Access and Management Act, Sections 63G-2-101 et seq. (2022).
11. Authorizations. The individual(s) signing this Agreement on behalf of the City represent and warrant that the City authorizes them to execute this Agreement. The individual(s) signing this Agreement on behalf of UDOT represent and warrant that they are signing this Agreement in their official capacities and that they are authorized to execute it.
12. Duration. The terms of this Agreement shall remain in effect for five years to ensure all eight Proposed Stations included in this Agreement are built and fully operational and to ensure future GREENbike expansion efforts comply with Title VI.

Signature page below.

SALT LAKE CITY CORPORATION

*Blake Thomas*

Blake Thomas, Director of Community  
and Neighborhoods

Dated: 10/17/2022

ATTEST:

Approved as to Form  
Salt Lake City Attorney's Office

*[Signature]*

Salt Lake City Recorder

*Sara Montoya*

Sara Montoya, Senior City Attorney

UTAH DEPARTMENT OF TRANSPORTATION

*[Signature]*

Carlos Braceras, Executive Director

Dated: 10/17/2022

*[Signature]*

Approved as to Form  
James W. Palmer  
Assistant Attorney General for Utah

Dated: 10/17/2022