

## INTERGOVERNMENTAL AGREEMENT FOR TRANSIT SERVICE

This Intergovernmental Agreement for Transit Service (the "Agreement") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2018 (the "Effective Date"), by and between the Town of Winter Park, Colorado, a Colorado home rule municipality with an address of P.O. Box 3327, 50 Vasquez Road, Winter Park, Colorado 80482, ("Winter Park"), and the Town of Fraser ("Fraser"), a Colorado municipality with an address of P.O. Box 370, Fraser, Colorado 80442 (each individually a "Party" and collectively the "Parties").

WHEREAS, on November 3, 2015, the voters of Winter Park and Fraser approved a long-term, sustainable revenue source for the purpose of funding the study, design, engineering, construction, acquisition, operation and maintenance of a public transit system;

WHEREAS, in January of 2016, Winter Park Resort, as the former private operator of the transit system, assigned its rights and obligations to Winter Park, creating a public transit system owned by Winter Park (the "Transit System"), with service provided by a contractor selected by Winter Park (the "Transit Contractor");

WHEREAS, since that time, Winter Park has been operating the Transit System for the benefit of both Winter Park and Fraser as well as the region more broadly;

WHEREAS, Fraser desires that Winter Park provide transit service in Fraser;

WHEREAS, the Parties are authorized by Article XIV, § 18 of the Colorado Constitution and C.R.S. § 29-1-201, *et seq.*, to enter into this Agreement;

WHEREAS, the Parties find it in the best interest of the public health, safety and welfare to provide such additional transit service to Fraser; and

WHEREAS, the Parties now wish to formally memorialize their obligations related to the Transit System.

NOW THEREFORE, in consideration of the mutual promises herein and other good and valuable consideration, the receipt and adequacy of which is acknowledged, the Parties agree as follows:

1. Transit Advisory Committee. The Transit Advisory Committee (the "TAC") shall be comprised of one member selected by Winter Park, one member selected by Winter Park Resort, and one member selected by Fraser.

2. Service.

a. General. Throughout the term of this Agreement, Winter Park shall provide transit service as set forth in **Exhibit A**, attached hereto and incorporated herein by this reference (the "Route"), in compliance with all applicable law, including without limitation applicable Federal law.

b. Additional Service. Additional transit service may be provided by Winter Park, in its discretion, as Winter Park determines appropriate given the demand for service, available resources, and cost allocation. Additional transit service shall be at Winter Park's sole cost unless Fraser agrees to additional funding, or Winter Park identifies another revenue source to fund such additional service.

c. Buses. Winter Park shall provide buses sufficient to serve the Route, in Winter Park's sole discretion. Fraser shall not be responsible for capital rolling stock acquisition or for costs associated with replacement of buses.

d. Marketing. Winter Park shall provide all marketing and advertising products, materials, expenditures and revenues, which shall be designed, developed and implemented in Winter Park's sole discretion.

3. Term and Termination.

a. Term. This Agreement shall commence on the Effective Date, and shall continue in full force and effect until December 31, 2018, unless sooner terminated as herein provided. This Agreement shall automatically renew for up to 10 additional one-year periods unless either Party provides written notice of nonrenewal on or before June 30<sup>th</sup> of the prior year.

b. Termination. Either Party may terminate this Agreement upon 180 days' prior written notice, for any reason.

4. Payment.

a. Cost Apportionment. Fraser shall pay for its attributable share of the costs to provide the Route (the "Fraser Portion") pursuant to the formula set forth in **Exhibit B**. Any change to the formula set forth in **Exhibit B** must be first recommended by the TAC and then approved by both Parties. Winter Park shall invoice Fraser for the Fraser Portion on a monthly basis.

b. Management Fee. Fraser shall also pay a monthly management fee equal to 10% of the Fraser Portion to cover Fraser's attributable portion of Winter Park's management costs in operating the Transit System (the "Fraser Management Fee"). The Fraser Management Fee is intended to compensate Winter Park for its costs of overall administration of the system, administration of contracts with the Transit Contractor and Additional Supporting Entities, legal fees, costs of federal and state grant applications and reporting, transit personnel employed by Winter Park, public relations and customer service, meeting management and hosting, financial budgeting and tracking, route analysis and reporting, and all other related management activities common to municipal transit systems. Winter Park shall invoice Fraser for the Fraser Management Fee on a monthly basis.

c. Startup Fee. Winter Park incurred costs to establish the Transit System prior to the Effective Date, including: transit consultant services for 2015, 2016, and 2017; new signage provided in 2016 and 2017; RideHop application deployment in 2016 and 2017; and administration of the transit service transition plan, transit service agreement, and service and

funding agreements for 2015, 2016, and 2017 (the "Startup Costs"). To compensate Winter Park for the Startup Costs, Fraser shall pay to Winter Park a fee of \$73,900.15 (the "Startup Fee"), which equals 23% of the Startup Costs (slightly less than the amount of hours of transit service provided to Fraser, which is 23.43% of the total hours). The Startup Fee shall be due and payable on the Effective Date, provided that Fraser may elect to pay the Startup Fee in 12 equal monthly installments. The break down of the Startup Costs and Startup Fee is as follows:

	2015	2016	2017	Total	Fraser Portion (23%)
Transit Consultant	\$38,086	\$56,976	\$6,900	\$101,962	\$23,451.26
Signage		\$10,017	\$10,582	\$20,599	\$4,737.77
RideHop		\$16,210	\$3,240	\$19,450	\$4,473.50
Administration	\$5,290	\$80,709	\$93,295	\$179,294	\$41,237.62
TOTAL	\$43,376	\$163,912	\$114,017	\$321,305	\$73,900.15

d. Future Costs. Fraser shall pay a proportional share of any future transit consultant services or other costs determined necessary by the TAC and approved by both Parties. The cost sharing shall be approved by the Parties prior to any expenditures. Should either Party determine that additional services or other items are of importance, but agreement on cost sharing cannot be reached with the other Party after reasonable efforts, that Party may proceed to obtain the services or other items at that Party's sole expense, and such services or items shall remain the sole property of that Party.

e. Other Contributions. The Parties acknowledge that the Transit System may be supported by additional contributions from other entities ("Additional Supporting Entities") pursuant to separate agreements with Winter Park. The budget for the Route includes projected contributions from Additional Supporting Entities. If any of the Additional Supporting Entities do not contribute as projected, the Route may be modified pursuant to Section 8.

f. Maintenance Facility. Fraser will not be required to contribute to the construction costs of a maintenance facility used to serve the Transit System, should it occur. Fraser shall have no authority over any such maintenance facility, if constructed.

5. Operation.

a. General. Winter Park agrees that the Route shall be operated consistent with the current Transit System operating policies and procedures, as recommended by the TAC and as adopted by the Winter Park Town Council.

b. Signage and Bus Stops. Winter Park shall be solely responsible for the costs of signage and bus stop improvements in Winter Park, and Fraser shall be solely responsible for the costs of signage and bus stop improvements in Fraser. Winter Park may install and maintain signage at bus stops in Granby and unincorporated Grand County, at Winter Park's sole discretion, provided that Winter Park will not be responsible for maintaining any shelters or benches at bus stops located outside of Winter Park. If the Parties and any Additional

Supporting Entities mutually agree to share in the cost of bus stop improvements that serve regional facilities, such as community recreation centers, schools and libraries, a cost-sharing arrangement shall be recommended by the TAC, approved by the Parties and memorialized by separate agreement.

6. Grants. Revenues received from any state or federal grants for operations shall be apportioned as determined by Winter Park so that Fraser receives a proportional benefit of such revenues, subject to the applicable grant documents and after consideration of any recommendation from the TAC.

7. Fares. The Transit System is currently free of charge to passengers. However, Winter Park, after consideration of any recommendation from the TAC, reserves the right to charge fares as necessary for the efficient and cost-effective operation of Transit System. Winter Park shall provide advance notice of any such fares to Fraser, and Fraser shall receive a proportional benefit of such fares.

8. Modification of Route.

a. General. Changes in levels of service, hours of operation or other matters that impact the Route shall be first recommended by the TAC and then approved by both Parties; provided that changes affecting only Fraser need only be approved by Fraser, and changes affecting only Winter Park need only be approved by Winter Park.

b. Emergencies. Winter Park may suspend the Route at any time Winter Park determines that such suspension is necessary for safety reasons, including without limitation inclement weather, road construction or equipment failure, and such suspension may continue for as long as Winter Park determines necessary.

9. Transit Manager. The Transit Manager shall be responsible for the day-to-day operation of the Transit System, including coordination with the Transit Contractor, oversight of all transit-related consultants, oversight of all marketing activities, providing information about the Transit System to the public and business community, applying for and tracking grants, ridership and routing analysis, capital rolling stock acquisition, facility acquisition, complaint monitoring and response, and all other job functions as noted in the Transit Manager job description, and shall, at all times, be an employee of Winter Park.

10. Miscellaneous.

a. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Grand County, Colorado.

b. No Waiver. Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by any Party shall not constitute a waiver of any of the other terms or obligation of this Agreement.

c. Integration. This Agreement constitutes the entire agreement between the Parties, superseding all prior oral or written communications.

d. Third Parties. There are no intended third-party beneficiaries to this Agreement.

e. Notice. Any notice under this Agreement shall be in writing, and shall be deemed sufficient when directly presented or sent pre-paid, first class U.S. Mail to the Party at the address set forth on the first page of this Agreement.

f. Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.

g. Modification. This Agreement may only be modified or amended upon written agreement of the Parties. No agent, employee, or representative of either Party is authorized to modify any term of this Agreement, either directly or implied by a course of action.

h. Assignment. Neither this Agreement nor any of the rights or obligations of the Parties hereto, shall be assigned by either Party without the written consent of the other.

i. Governmental Immunity. Both Parties and their officers, attorneys and employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities or protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to the Parties and their officers, attorneys or employees.

j. Subject to Annual Appropriation. Consistent with Article X, § 20 of the Colorado Constitution, any financial obligation of either Party not performed during the current fiscal year is subject to annual appropriation, shall extend only to monies currently appropriated, and shall not constitute a mandatory charge, requirement, debt or liability beyond the current fiscal year.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

**TOWN OF WINTER PARK, COLORADO**

\_\_\_\_\_  
Jimmy Lahrman, Mayor

ATTEST:

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Danielle Jardee, Town Clerk

**TOWN OF FRASER**

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Philip Vandernail, Mayor

ATTEST:

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Town Clerk

## **EXHIBIT A THE ROUTE**

Winter Park will use the Transit System to provide bus service between Winter Park and Fraser as follows:

Days of Service: Year-round, 365 days per year.

Hours of Service: 6:30 a.m. through 2:30 a.m., including pre- and post-route vehicle inspection.

Frequency of Service: Hourly service, expanded to half-hourly service during peak periods to meet demand typically found in a winter resort community.

Routes: The following routes have traditionally been provided by Winter Park to Fraser, servicing stops within the municipal boundaries of Fraser, and will be continued under this Agreement:

- Summer Route
- Black Route
- Link Call-and-Ride
- Purple Express
- Purple Circulator
- Red Route
- ADA Paratransit
- Granby Route

**EXHIBIT B  
COST APPORTIONMENT**

The costs of the Route shall be apportioned among Winter Park, Fraser and Additional Supporting Entities, which include the unincorporated Meadowridge area ("Meadowridge"), the Town of Granby and Grand County.

The formula to be used for the apportionment of such costs is as follows:

Summer: The minutes of service for the Summer route are split between Fraser (40%) and Winter Park (60%), and the costs shall be apportioned accordingly.

Black and Night Lift Routes: The minutes of service for the Black and Night Lift routes are split between Fraser (40%) and Winter Park (60%), and the costs shall be apportioned accordingly.

Link Call and Ride: The minutes of service for the Link Call-and-Ride are split between Fraser (40%) and Winter Park (60%), and the costs shall be apportioned accordingly.

Purple Express: The Purple Express minutes of service are split evenly between Fraser, Winter Park and Meadowridge, so each shall be apportioned 33.3% of such costs.

Purple Circulator: The Purple Circulator circulates through both Fraser and Meadowridge, so the costs shall be apportioned 50% to Fraser and 50% to Meadowridge.

Paratransit: Paratransit is an essential service that is required to be provided in Fraser, Winter Park, and unincorporated Grand County within three-quarters of a mile from any fixed route. These costs shall be split equally among Fraser, Winter Park, and Meadowridge, with each apportioned 33.3% of such costs.

Granby Route: The Granby route includes stops in Winter Park, Fraser and Additional Supporting Entities, with 27 total stops. The formula for apportionment of these costs shall be:

Winter Park (10 stops): 37%

Fraser (4 stops): 14.8%

Granby (6 stops): 22.2%

Grand County: (7 stops): 26%