

## **Service and Funding Agreement Concerning the Transition of Transit Services**

This Service and Funding Agreement ("Agreement") is made to be effective on the 1<sup>st</sup> day of January, 2016 (the "Effective Date") by and between the Town of Winter Park (the "TOWN"), a Colorado home rule municipality, and Intrawest/Winter Park Operations Corporation, a Delaware corporation ("IWPOC") (each a "Party" and collectively the "Parties").

WHEREAS, the Parties agreed in concept to transfer the operation of existing transit services to a public operation, as described in the Memorandum of Understanding ("MOU") approved by both the TOWN and IWPOC dated May 5, 2015;

WHEREAS, this Agreement defines how the Parties will pursue an orderly transition of services to a public transit system needed in a resort community;

WHEREAS, IWPOC has operated transit services open to the public, but should not be expected to solely maintain, develop, and expand services in the manner needed by the region;

WHEREAS, IWPOC wishes to support an orderly transition from the private operation of a transit system to the public operation of a transit system;

WHEREAS, the Parties wish to identify levels of service and a budget for the upcoming 2015/2016 winter season and additional operations into the future; and

WHEREAS, the voters of the Towns 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 public transit on November 3, 2015.

NOW, THEREFORE, in consideration of the foregoing, the mutual agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

### **1) Definitions.**

- a) Transit Advisory Committee ("TAC"). The three-member advisory committee established pursuant to the MOU to guide transit-related matters.
- b) Current Transit System. The transit routes in effect during the 2014/2015 winter ski season, further defined as:
  - i) The 2014/2015 advertised "day schedule" system that operated within the Winter Park Town boundaries, noticed as the following routes: Green Line, Orange Line, Brown Line, Blue Line, Mary Jane Shuttle.
  - ii) The 2014/15 advertised "day schedule" system that operated both within and outside of the Winter Park Town boundaries, noticed as the following routes: Black Line, Yellow Line, and the Meadow Ridge Express.

- iii) Employee shuttles to both Fraser and Granby, as they operated during the 2014/15 ski season.
  - iv) The 2014/15 advertised "night shuttle" system that operated within the Winter Park Town boundaries, noticed as the following routes: The Lift, The Link, and Village Night Line.
  - v) The 2014/15 advertised "night shuttle" system that operated both within and outside of the Winter Park Town boundaries, noticed as the following routes: Fraser Express and Meadow Ridge Night.
  - vi) All Paratransit and ADA services provided within Winter Park and Fraser during the 2014/15 winter season.
  - vii) Additional on-call transit services contracted with First Transit, Inc. ("First Transit") to provide peak demand relief to the existing routes noted above.
- c) Resort System: Transit routes and services under the sole authority of IWPOC, further defined as:
- i) Sunspot wedding and other event transportation.
  - ii) Backup buses for when lifts or the Village Cabriolet is out of service.
  - iii) Any shuttles servicing IWPOC-maintained parking facilities not a part of the Current Transit System, including shuttles providing any additional service to the following parking lots: Bus Barn Lot, Adolf's Lot, Lone Tree Lot, Blue Spruce Lot, North Bench Lot (should it ever be served), B through G Lots, and the Vintage Lot.
  - iv) Intra-Resort shuttles (*i.e.* the "Willie Cab").
- d) Existing Service Contract. The current contractual agreement for transit services between IWPOC and First Transit. The Existing Service Contract continues through August 2017 and includes an assignment clause.
- e) Revenue-Supported Budget. The long-term, sustainable budget designated for the maintenance and operation of the Current Transit System, which accounts for costs of the Current Transit System and any modifications thereto as approved by the TAC. The 2015/16 Revenue-Supported Budget is attached hereto as **Exhibit A** and incorporated herein by this reference.
- f) Charter Service. Contracted transit services between IWPOC or any other private party and First Transit wholly separate and distinct from the Current Transit System or the authority of the TOWN.
- 2) **Description of Service.** The TOWN and IWPOC (as well as the Town of Fraser and others) contribute to and control the Current Transit System. The Parties desire to extend the Current Transit System from a seasonal service to a year-round service available to the public. The TOWN and IWPOC agree to maintain the winter season service in at least the same fashion as in previous years, and further will offer shoulder and summer season transit service beginning in April of 2016. The TOWN and IWPOC acknowledge that changes to levels of service, the service

area, fleet management, and other similar transit activities may be necessary in the future; however, any changes shall be governed by the TAC.

- 3) **Assignment of Existing Service Contract with First Transit.** IWPOC hereby agrees to work in good faith with First Transit and the TOWN to assign or amend or create a new contract to replace the Existing Service Contract between IWPOC and First Transit so that a portion of the services to be provided can be provided by First Transit under terms and conditions consistent with this Agreement. Under the Transition Plan approved by the TOWN, this shall include 28,000 hours of service for the Current Transit System and not including the Resort System. IWPOC shall continue to own, operate, and otherwise be solely responsible for the Resort System.
- 4) **Budget/Revenues.**
  - a) The TOWN and IWPOC agree and approve the 2015/16 Revenue-Supported Budget. The TOWN will invoice IWPOC on a monthly basis only for of its share of the agreed upon fixed costs invoiced to the TOWN by First Transit.
  - b) The TOWN shall be responsible for expenditures associated with the Revenue-Supported Budget, as recommended by the TAC and approved by the Winter Park Town Council during its annual budget process, in its sole discretion. IWPOC shall be responsible for a payment of \$3,000,000 payable in 10 equal \$300,000 payments payable on or before November 30<sup>th</sup> of every year, commencing in 2016.
  - c) The TOWN reserves the right to seek funding from other jurisdictions and private parties in which any routes provide access, and IWPOC agrees to work in conjunction with the TOWN in pursuit of these additional funding arrangements. Both Parties will work to engage the Town of Granby, Grand County, and other third parties to participate in paying for their fair share of services, fixed costs and variable rates, either through contracts or revenue streams as they see fit.
- 5) **Transition of Rolling Stock.** The TOWN hereby agrees to be solely responsible for any and all fleet upgrades necessary to maintain the Current Transit System and/or to expand the Current Transit System. However, any purchase of new rolling stock shall be at the sole discretion of the TOWN.
- 6) **Radio/Communications System.** IWPOC hereby agrees to lease 12 radios, 3 base/charging stations and ancillary communication equipment, if any, used in connection with the Current Transit System to the TOWN in exchange for a lease payment in the amount of \$15.00 per month per radio. The TOWN and First Transit shall be allowed to utilize the system only for the purpose of operation of the Current Transit System and shall follow all official protocols and policies of IWPOC related to phraseology and terminology for the Current Transit System and use of the radios and ancillary equipment.
- 7) **Infrastructure Maintenance.** The TOWN and IWPOC agree to mutually maintain all infrastructure necessary to operate the Current Transit System, a list of which is attached hereto as **Exhibit B** and incorporated herein by this reference, in the same fashion as done in the 3 years prior to this Agreement. This shall include snow removal, bus stop provision, access to walkways and sidewalks, bus storage, parking and maintenance facilities, and pavement

management. Any changes to the infrastructure maintenance plan must be approved by the TAC.

- 8) **Capital Improvements Plan.** As part of its annual budget process, the TAC shall review and consider a Capital Improvements Plan ("CIP") to perform any replacement, enhancement, or expansion of the current rolling stock and the existing maintenance facility. The CIP shall consist of a five-year financial plan as well as potential revenue sources.
- 9) **Advertising Policy.** The Parties hereby approve the Advertising Policy attached hereto as **Exhibit C** and incorporated herein by this reference. Any modifications to the Advertising Policy must be approved by the TAC and the Parties. The Parties agree and understand that the Advertising Policy may be not to allow any advertising from any third party.
- 10) **Additional TAC Members.** The TOWN and IWPOC hereby agree that the third TAC seat shall be designated for a representative from the Town of Fraser as long as Fraser is paying its fair share for services provided, as agreed by the Parties. Should any other governmental agency, political subdivision, or interested party provide sustainable, permanent revenues, the TAC shall consider adding additional permanent seats on the TAC for said party.
- 11) **Term.** This Agreement shall continue for 10 years from the Effective Date unless terminated by either party pursuant to the terms of this Agreement.
- 12) **Miscellaneous.**
  - a) **Binding Effect; Assignment.** This Agreement shall be binding upon the Parties and their successors and assigns. The TOWN agrees and understands that the City and County of Denver is the beneficial owner of Winter Park Resort and that its agent, Winter Park Recreational Association (WPRA) is the legal title holder to all resort assets including, inter alia the existing maintenance facility and the Resort fleet of vehicles. IWPOC operates the Winter Park Resort pursuant to the terms of an agreement with WPRA. Consequently, this agreement shall be assignable to WPRA or any subsequent operator of Winter Park Resort without the consent or approval of but with written notice to the TOWN.
  - b) **Communication.** The Parties agree to work collaboratively and in cooperation with each other. Each Party will communicate to the other any material change or facts of which it becomes aware and which may impact the provision of the Transit Services or the performance by either Party of its obligations under this Agreement.
  - c) **Severability.** If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement will, unless amended or modified by mutual consent of the Parties, continue in full force and effect.
  - d) **No Third Party Beneficiaries.** No third parties are intended to benefit by the covenants, agreements, representations, warranties or any other terms or conditions of this Agreement. It is the express intent of the Parties that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement are strictly reserved to the Parties and their lawful successors and assigns.





**Exhibit A  
Revenue-Supported Budget**

Revenue-Supported Transit Budget - 2016									
Transit Advisory Committee - January 14, 2016									
	2013	2014	2015	Hourly Rate (2016)	Hours of Service (2016)	2016 (Proposed)	% of Total	% Change 2015 - 2016	\$ Change 2015 - 2016
<b>EXPENSES</b>									
Base Rate (Public)						\$831,247	87.4%		
Base Rate (Resort)						\$120,194	12.6%		
Base Rate (Total)	\$751,084	\$722,216	\$793,948			\$951,441		19.8%	\$157,493
Variable Rate (Public)				\$39.79	27,781	\$1,105,406	87.4%		
Variable Rate (Resort)				\$39.79	4,017	\$159,836	12.6%		
Variable Rate (Total)	\$560,334	\$599,233	\$587,528	\$39.79	31,798	\$1,265,242		115.4%	\$677,714
The Link (Night Service)	\$126,073	\$129,458	\$124,513			\$0			
Marketing						\$30,000			
Consultant Contract						\$50,000			
Miscellaneous						\$100,000			
<b>TOTAL PUBLIC OPERATING EXPENSES</b>	<b>\$1,437,491</b>	<b>\$1,450,907</b>	<b>\$1,505,989</b>			<b>\$2,116,653</b>	<b>67.9%</b>	<b>40.5%</b>	<b>\$610,664</b>
Capital Equipment	\$0	\$0	\$0			\$1,000,000	32.1%		
<b>TOTAL PUBLIC SYSTEM EXPENSES</b>	<b>\$1,437,491</b>	<b>\$1,450,907</b>	<b>\$1,505,989</b>			<b>\$3,116,653</b>		<b>107.0%</b>	
<b>REVENUES</b>									
Sales Tax (Winter Park)	\$418,668	\$449,664	\$454,465			\$1,888,100	78.1%	315.5%	\$1,433,635
Sales Tax (Fraser)			\$52,000			\$329,231	13.6%	533.1%	\$277,231
CDOT Operating	\$0	\$0	\$0			\$100,000	4.1%		\$100,000
Grand County			\$15,300			\$14,000	0.6%	-8.5%	-\$1,300
Meadowridge			\$75,238			\$73,964	3.1%	-1.7%	-\$1,274
Beavers			\$11,604			\$12,741	0.5%	9.8%	\$1,137
Winter Park Resort	\$1,018,823	\$1,001,243	\$897,382			\$0	0.0%	-100.0%	-\$897,382
<b>TOTAL PUBLIC OPERATING REVENUES</b>	<b>\$1,437,491</b>	<b>\$1,450,907</b>	<b>\$1,505,989</b>			<b>\$2,418,036</b>	<b>68.7%</b>	<b>60.6%</b>	<b>\$912,047</b>
CDOT Capital Revenues	\$0	\$0	\$0			\$800,000	22.7%	INF	
Winter Park Resort	\$0	\$0	\$0			\$300,000			
<b>TOTAL PUBLIC SYSTEM REVENUES</b>	<b>\$1,437,491</b>	<b>\$1,450,907</b>	<b>\$1,505,989</b>			<b>\$3,518,036</b>		<b>133.6%</b>	<b>\$2,012,047</b>
<b>CAPITAL RESERVE</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>			<b>\$401,383</b>	<b>11.4%</b>		<b>\$401,383</b>
<b>2016 Hourly Rate</b>	<b>\$39.79</b>								

## **Exhibit B Infrastructure Maintenance**

The TOWN shall be responsible for general maintenance and snow removal for all TOWN-owned infrastructure, inclusive of bus turn-outs, vehicle parking facilities, signage, shelters, benches, trash cans, lighting, landscaping, and other ancillary features as they exist as of January 1, 2016:

- All designated bus stops in downtown Winter Park.
- Certain bus stops in Old Town Winter Park, identified as:
  - Stop 38 – Old Town.
  - Stop 5 – Beaver’s Lodge.
  - Stop 44 – Beaver Village Condominiums.

IWPOC shall be responsible for general maintenance and snow removal for all IWPOC-owned infrastructure, inclusive of bus turn-outs, vehicle parking facilities, signage, shelters, benches, trash cans, lighting, landscaping, and other ancillary features as they exist as of January 1, 2016:

- All designated bus stops in the Winter Park Village, including bus turn-outs located adjacent to the western terminus of the Village Cabriolet, First Bridge and Fourth Bridge on or adjacent to Winter Park Drive. Bus stops shall be provided for the Current Transit System routes identified in the Service and Funding Agreement.
- Designated bus stops at the Mary Jane Base, including bus turn outs located adjacent to the eastern terminus of the Super Gauge Lift.
- Certain bus stops in Old Town Winter Park, identified as:
  - Bus stops for park-and-ride facilities, including the Lone Tree and Blue Spruce parking lots.
  - Stops 45 and 87 – Bus Barn Parking.
  - Stop 97 – F Lot.
  - Stop 91 – G Lot.
  - Stops 3 and 89 – Vintage Hotel.
- The Radio/Communication system necessary to operate the Current Transit System and the Resort System.

Bus stops not located in the municipal boundaries of the TOWN nor under the management of IWPOC shall be the responsibility of the public or private entity in ownership of property in which the stop is located (i.e. Stop 35, owned by the Town of Fraser, shall be the responsibility of the Town of Fraser or its successors or assigns). The TAC may, with the approval of ownership of bus stops outside of the municipal boundaries of the TOWN, add, modify, adjust, or delete bus stops at its discretion.



## Exhibit C Advertising Policy

### OBJECTIVE

It is the purpose of the Lift's advertising program to

- Utilize space on the interior and exterior of its busses and appurtenant vehicles for advertising purposes, Lift Advertising, and public service messages to generate revenue for the construction, operations and maintenance of Winter Park's facilities and services.
- Provide information to the public by or about Winter Park which is produced by Winter Park.
- Provide information to the public about federal, state and local government programs and activities when requested specifically by other government agencies (Government Communications) in furtherance of the Lift's efforts to promote the welfare of the citizens of the state and to cooperate with its federal, state and local partners.

### SCOPE OF ADVERTISING POLICY

The Lift uses the space on its vehicles for the purpose of placement of advertisement only in those locations made available by the Lift for that purpose. This policy applies to sale of that space for advertising purposes. Any naming rights or sponsorship of the Lift lines or facilities will be governed by separate policies.

### DESIGNATION OF FORUM

It is the Lift's intent that advertising be permitted only on vehicles. Advertising will not be placed in stations, buildings, or electronic media. The Lift's advertising space is not intended to provide or create a public forum. The Lift does not intend to accept advertising for non-commercial purposes except for Government Communications. No private, non-profit, or government speech intended to advocate or oppose political candidates, political issues, religious discourses, or advocacy of social policies will be accepted. The Lift reserves the sole right to determine the size, location and placement of advertising space made available for sale.

### TYPE OF ADVERTISING PERMITTED

The Lift will permit only commercial advertising. Commercial advertising is advertising that is designed to promote the sale of goods or services or events promoting goods and commercial services, regardless of whether the advertiser is a for-profit, non-profit, or government entity. Notwithstanding the above general rule, the following is allowed:

- Advertising that promotes the Lift transit services, programs or products, including co-sponsorships with commercial or governmental third parties that would increase ridership or otherwise support The Lift's mission.
- Government Communications.

### TYPE OF ADVERTISING PROHIBITED

Any advertising that promotes or depicts the sale, rental, or use of, or participation in, the following products, services or activities; or that uses brand names, trademarks, slogans or other material that are identifiable with such products, services or activities:

- a. **Tobacco:** Advertising promoting or depicting tobacco products, tobacco-related products, and products that simulate smoking or are modeled on the tobacco products, including without limitation cigarettes, cigars, and smokeless (*e.g.*, chewing) tobacco, and electronic cigarettes;

- b. **Marijuana:** Advertising promoting or depicting marijuana, marijuana cultivation, marijuana products or marijuana paraphernalia, or advertising for medical marijuana centers, retail marijuana stores, marijuana testing facilities, marijuana clubs or marijuana cultivation facilities;
- c. **Adult/Mature Rated Films, Television or Video Games:** Advertising promoting or depicting films rated "X" or "NC-17", television rated "MA" or video games rated "A" or "M";
- d. **Sexually Oriented Businesses:** Advertising promoting or depicting sexually oriented businesses, as defined in the Winter Park Town Code;
- e. **Other Adult Services:** Advertising depicting or promoting adult telephone services, adult internet sites or escort services;
- f. **Nudity, Sexual and/or Excretory Subject Matter:** Advertising depicting or promoting nudity, sexual conduct or sexual excitement, as those terms are defined C.R.S. 18-7-501, as amended;
- g. **False or Misleading:** Advertising that is or that the sponsor reasonably should have known is false, fraudulent, misleading, deceptive or would constitute a tort of defamation or invasion of privacy;
- h. **Copyright, Trademark or Otherwise Unlawful:** Advertising that contains any material that is an infringement of copyright, trademark or service mark, or is otherwise unlawful or illegal;
- i. **Illegal Activity:** Advertising that promotes any activity or product that is illegal under federal, state or local law;
- j. **Profanity and Violence:** Advertising that contains any profane language, or portrays images or descriptions of graphic violence, including dead, mutilated or disfigured human beings or animals, the act of killing, mutilating or disfiguring human beings or animals, or intentional infliction of pain or violent action towards or upon a person or animal, or that depicts weapons or devices that appear to be aimed or pointed at the viewer or observer in a menacing manner;
- k. **Disparaging:** Advertising that is intended to be (or reasonably could be interpreted as being) disparaging, disreputable, or disrespectful to persons, groups, businesses or organizations, including advertising that portrays individuals as inferior, evil or contemptible;
- l. **Adverse to the Lift:** Advertising, or any material contained in it, that is directly adverse to the interests of the Lift, or that tends to disparage the quality of service provided by the Lift, or that tends to disparage public transportation generally;
- m. **The Lift Graphics and References:** Advertising that contains the Lift graphics, logos, representations without the express written consent of the Lift;
- n. **Insulting, Degrading or Offensive:** Any material directed at a person or group that is so insulting, degrading or offensive as to be reasonably foreseeable that it will incite or produce lawless action in the form of retaliation, vandalism or other breach of public safety, peace and order;
- o. **Harmful or Disruptive to Transit Services:** Any material that is so objectionable under contemporary community standards as to be reasonably foreseeable that it will result in harm to, disruption of or interference with the Transit Services; or
- p. **Unsafe Transit Behavior:** Advertising that encourages or depicts unsafe behavior with respect to Transit Services, such as non-use of normal safety precautions in awaiting, boarding, riding upon or debarking from vehicles.