

TOWN OF WINTER PARK

RESOLUTION NO. 1481
SERIES OF 2015

APPROVAL OF A MEMORANDUM OF UNDERSTANDING CONCERNING THE
TRANSITION OF TRANSIT SERVICES BETWEEN THE TOWN OF WINTER PARK
AND WINTER PARK RESORT

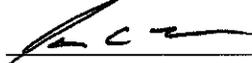
WHEREAS, the Town Council of the Town of Winter Park has reviewed and considered the Memorandum of Understanding and its recitals therein, and adopts those recitals as its findings of fact; and

WHEREAS, the Town Council believes the Memorandum of Understanding is in the best interest of the health, safety and welfare of the citizens and guests of the Town of Winter Park because of the significant economic development opportunities it presents.

NOW THEREFORE, BE IT RESOLVED by the Town Council of Winter Park, Colorado that the attached Memorandum of Understanding Concerning the Transition of Transit Services Between the Town of Winter Park and Winter Park Resort (attached hereto as Exhibit "A") is hereby approved by the Winter Park Town Council.

APPROVED AND PASSED this 5th day of May, 2015, by a vote of 5 to 0 .

TOWN OF WINTER PARK



James Lahrman, Mayor

ATTEST:



Taryn Martin, Town Clerk

Memorandum of Understanding Concerning the Transition of Transit Services

This Memorandum of Understanding ("MOU") is made this 11th day of MAY, 2015 (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 agree in concept to transfer the operation of existing transit services to a public operation, as described in this MOU;

WHEREAS, this MOU also describes the process the Parties will follow in pursuing an orderly transition of services and providing for proper transit services needed in a resort community;

WHEREAS, the Parties recognize the role of effective transit services in the economic development of the region and recognize the need to provide a means to upgrade and develop public transit services in the region;

WHEREAS, the TOWN wishes to:

- Increase the availability of services to the residents and visitors to Winter Park and the surrounding community;
- Improve the condition and accessibility of rolling stock and system facilities; and,
- Provide for sustainability and stability of transit services to better meet the needs of residents and visitors;

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; and

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

NOW THEREFORE, the Parties enter into this MOU to describe their intent to pursue an orderly transition of transit operations to the TOWN.

1) Transition.

- a) It is the intention of the Parties that a transition of the current private transit system to a public transit system occur by November 15, 2015. If this is not feasible, the transition may be delayed until November 15, 2016. For purposes of this MOU, the Current Transit System shall be defined as follows:
 - 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 2014/2015 advertised “day schedule” system that operates 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 2014/2015 advertised “night shuttle” system that operates within the Winter Park Town boundaries, noticed as the following routes: The Lift, The Link, and Village Night Line.
 - v) The 2014/2015 advertised “night shuttle” system that operates 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 during 2015/2015 within Winter Park and Fraser.
 - vii) Additional on-call transit services currently contracted with First Transit, Inc. ("First Transit") to provide peak demand relief to the existing routes noted above.
- b) This MOU shall not include the transition of the following services, which shall remain the responsibility of IWPOC or First Transit, as applicable:
- i) Special charters for visiting groups, YMCA, Granby Ranch, or Devil’s Thumb Ranch.
 - ii) Employee charters to Front Range events.
 - iii) Rafting charters.
 - iv) Sunspot wedding and other event transportation.
 - v) Backup buses for when lifts or the Village Cabriolet is out of service.
 - vi) 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.
 - vii) Intra-Resort shuttles (*i.e.* the “Willie Cab”).
- b) The Parties will establish a Transit Advisory Committee ("TAC") to guide the transition of services, beginning on the Effective Date and continuing through the first year after the transition. The TAC will be responsible for drafting a Service and Funding Agreement between the TOWN and IWPOC as well as any ancillary agreements that are needed for the transition. The TAC shall serve in an advisory capacity to the Winter Park Town Council. The TAC shall be comprised of a TOWN representative selected by the Winter Park Town Council and two IWPOC representatives selected by IWPOC until such time as the Revenue Stream is in effect as identified below. If Revenue Stream is approved and in effect, the TAC shall be comprised of a Town representative selected by the Winter Park Town Council, an IWPOC representative

selected by IWPOC, and one member from the community at large selected and agreed upon by the other two representatives.

- c) Transit services will remain as similar as possible to 2014/21015 operations between November 15, 2015 and April 30, 2016. However, year-round services are anticipated to begin in the spring of 2016. Any changes to the Current Transit System shall be approved by the TAC.

2) Funding.

- a) The TOWN will actively begin to seek funding to allow for the operation of the Current Transit System and the expansion of transit services. This includes:
 - i) Seeking grant funds from Colorado Department of Transportation (CDOT) for all aspects of operating public transit services.
 - ii) Considering a ballot issue for a voter-approved revenue stream, in the form and manner determined appropriate in the sole discretion of the Winter Park Town Council, to provide local funds for transit services within the TOWN (the "Revenue Stream").
- b) The TOWN and the IWPOC will continue to provide funding to operate the Current Transit System, as defined under Section 2.D. of the Development Agreement between the TOWN and IWPOC dated February 7, 2006, based upon their existing cost allocation of the overall service ("Existing Cost Allocation"). The funding obligation under the Existing Cost Allocation shall be terminated should a Revenue Stream for transit services be approved. If the Revenue Stream is approved, IWPOC shall contribute \$300,000 annually for a period of 10 years from the effective date of the ballot measure to the TOWN for transit-related capital infrastructure (new buses, multi-modal nodes, parking structures, bus shelters, maintenance facility improvements, etc.). The TOWN shall not be required to spend this contribution annually, and may allow this money to accrue over many years to pay for large capital improvements (*i.e.* a new maintenance facility). In addition, these contributions may be transferred to the Town's General Fund for repayment of any large transit capital costs. At the sole discretion of IWPOC, the TOWN shall accept a "present value" payment to fulfill this obligation at any time during the term of these payments. So long as IWPOC continues to contribute more than \$100,000 annually to the operation of the Current Transit System, the TOWN agrees to include in any request for proposals for an operator of the Current Transit System that IWPOC will receive at least at the same percentage discount that IWPOC receives under the terms of the Service Contact, as defined below.
- c) Both Parties will work to engage the Towns of Fraser and Granby as well as Grand County to participate in paying for their fair share of services, either through contracts or revenue streams as they see fit.
- d) 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.

3) Development of Regional System.

- a) This MOU covers the transition of the Current Transit System, but the Parties agree to work towards the development of transit services that could, over time and with the financial participation of additional stakeholders, be expanded to provide transit services and connections to other communities and to regional transit services.
- b) The Parties will actively engage with CDOT to improve regional connectivity through U.S. 40 bus services, rail services, and other transit opportunities as they arise.

4) Contract for Operation of Services.

- a) IWPOC operates the Current Transit System and additional transit services through a service contract (the "Service Contract") with First Transit. The Service Contract continues through August 2017 and includes an assignment clause. It is the intention of the Parties that they will:
 - i) Seek the agreement of First Transit in assigning the Service Contract to the TOWN with the necessary modifications including those addressing use of the maintenance facility and Federal Transit Administration conformance, and continue the contract at least until August 2017.
 - ii) Seek the agreement of CDOT in continuing the Service Contract under the sole source procurement guidelines to ensure a smooth transition of services.
 - iii) Continue IWPOC's right to receive additional transportation services at rates at least as favorable to IWPOC as contained in the current Service Contract.

5) Budgeting.

- a) The TAC shall develop a transition budget (the "Transition Budget") that covers the costs of the Current Transit System and allocates the revenues and costs according to the Existing Cost Allocation to the respective Party, based on the average annual cost over the life of the Service Contract, with annual increases to both Parties respectively based on the Producer Price Index (PPI), except as otherwise agreed by the Parties. The Transition Budget will be one that meshes with the existing Service Contract and meets the needs of IWPOC and the TOWN. It is anticipated that the Transition Budget will include all costs, including those costs that may not presently be included in the Existing Cost Allocation. Changes in cost allocation in the transition budget must be approved by the TAC.
- b) The Parties agree that no passenger fares will be charged for the Current Transit System, unless otherwise agreed by the Parties, but the TOWN will reserve the right to charge fares on regional services at a later date as approved by the TAC.

6) Charter Services.

- a) The Parties understand the importance of charter services in the region and will work towards continuing a strong charter industry in the region. It is the Parties' understanding that separate service contracts for charter services may be necessary between private parties and First Transit.

- b) Any amendments to the Service Contract and in the development of a license agreement for the current maintenance facility will be made with a view towards maintaining a strong charter industry while abiding by all Federal Transit Administration regulations regarding charter services.
- c) The TOWN will use its best efforts to assist in contracting, maintaining, or procuring private charter service for TOWN residents and businesses.

7) Rolling Stock, Facilities, and Communications System.

- a) In assuming the Service Contract, the TOWN, subject to the agreement of First Transit, will have access to all vehicles presently used in the Current Transit System. IWPOC vehicles used for services to be performed by IWPOC will be retained and used by IWPOC.
- b) The TAC shall develop a vehicle replacement plan as part of the transition planning in order to determine the necessary fleet size and upgrade the fleet to transit-style buses that are ADA accessible. The TOWN shall seek grant funding for fleet replacement. Any fleet replacement shall be the responsibility of the TOWN, in its sole discretion.
- c) The TOWN will operate the Current Transit System out of the existing maintenance facility until such time as a new facility can be developed but not later than May 15, 2025. An extension of the term for the License Agreement may occur at the mutual consent of the Parties.
- d) The TOWN will seek funding for design and construction of a transit operations and maintenance facility.
- e) The Parties will work cooperatively to accommodate the joint Town and IWPOC use of the communications system consistent with the business and legal restrictions and obligations of the parties and, ultimately, to establish a new communications system.

8) Future Agreements.

- a) The TAC will draft a Service and Funding Agreement between the TOWN and IWPOC which details the roles and responsibilities of each Party, the services provided, the funding and financial responsibility of each Party, and other pertinent details in conjunction with this MOU. Some of the items to be included in the Service and Funding Agreement are attached as Exhibit A.
 - b) Subject to the terms and conditions of the Services Contract that contains a license for the maintenance facility, the TAC will, if necessary, draft a separate license agreement for the use of the existing maintenance facility.
 - c) The TOWN and IWPOC will work jointly to transition to the TOWN other funding agreements and service contracts in place for the Current Transit System. This includes contracts between First Transit and other governmental jurisdictions, homeowner associations, and other private parties.
- 9) **Term.** This MOU shall continue for 1 year from the Effective Date, and renew automatically each year for 9 successive years unless either Party notifies the other of termination of this MOU no

less than 90 days prior to the renewal date. Notwithstanding the foregoing, should the Revenue Stream be approved, this MOU shall terminate 10 years after the effective date of the ballot issue.

10) **Miscellaneous.**

- a) Binding Effect; Assignment. This MOU shall be binding upon the Parties and their officers, employees, agents 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 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 the TOWN.
- b) Severability. If any term, provision, covenant or condition of this MOU is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this MOU will, unless amended or modified by mutual consent of the Parties, continue in full force and effect.
- c) 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 MOU. It is the express intent of the Parties that enforcement of the terms and conditions of this MOU, and all rights of action relating to such enforcement are strictly reserved to the Parties and their lawful successors and assigns.
- d) Subject to Annual Appropriation. Consistent with Article X, § 20 of the Colorado Constitution, any financial obligation of the TOWN 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. To the extent that any of the TOWN's obligations under this MOU are deemed to constitute a multi-year fiscal obligation, the TOWN's performance will be conditioned upon annual appropriation by the Town Council, in its sole discretion.
- e) Governing Law and Venue. This MOU 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.
- f) No Joint Venture. Notwithstanding any provision hereof, the TOWN shall never be a joint venture in any private entity or activity which participates in this MOU, and the TOWN shall never be liable or responsible for any debt or obligation of any private entity.
- g) Governmental Immunity. The TOWN and its officers, attorneys and employees are relying on, and do not waive or intend to waive by any provision of this MOU, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to the TOWN and its officers, attorneys or employees.
- h) Amendment. This MOU may be amended or except as provided for in section 9 above, terminated only by mutual written consent in writing of the Parties.

INTRAWEST/WINTER PARK OPERATIONS CORPORATION, a
Delaware Corporation

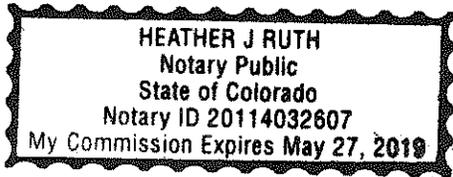
By: [Signature]
Name: Gary DeFrango
Title: President/COO

STATE OF COLORADO)
) ss.
COUNTY OF Grand)

The foregoing instrument was subscribed, sworn to and acknowledged before me this 11th day of May, 2015, by Gary DeFrango as President/COO of Intrawest/Winter Park Operations Corporation, a Delaware corporation.

My commission expires: 5/27/19

(SEAL)



[Signature]
Notary Public