

**INTERGOVERNMENTAL AGREEMENT
FOR BUS SERVICE BETWEEN THE CITY OF FORT COLLINS AND
THE TOWN OF BERTHOUD**

This Agreement is made this 28th day of MAY, 2024, between the **City of Fort Collins, Colorado**, a municipal corporation (hereinafter "Fort Collins"), and the **Town of Berthoud**, a public body corporate and politic (hereinafter "Berthoud") (Fort Collins and Berthoud collectively may be referred to as the "Parties" or, individually, as a "Party").

RECITALS

WHEREAS, the Parties desire to provide regional connector bus service between Fort Collins and Berthoud; and

WHEREAS, Fort Collins has its own fixed-route bus system (hereinafter "Transfort");

WHEREAS, FLEX is a regional connector bus service operated by Transfort in partnership with Loveland, Berthoud, Longmont, City of Boulder, and Boulder County (hereinafter "Partners") to provide services to said communities pursuant to separate Intergovernmental Agreements; and

WHEREAS, Transfort is willing and able to extend FLEX services along the U.S. Highway 287 and Highway 119 corridors between Fort Collins and Boulder (hereinafter "FLEX") with stops in Fort Collins, Loveland, Berthoud, Longmont, and Boulder; and

WHEREAS, the Parties have determined that significant economic and efficiency benefits result for each Party through the provision of FLEX by Transfort.

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

AGREEMENT

1. The foregoing recitals are hereby incorporated as though fully set forth herein.
2. Fort Collins shall provide connector bus service, FLEX, in accordance with the terms of this Agreement and as specifically identified and described in **Exhibit A**, attached hereto and incorporated herein by this reference, throughout the term of this Agreement. The services identified and described in **Exhibit A** are subject to increase, modification, reduction, termination, and pursuant to this **Section 2** and **Section 4** of this Agreement.
 - a. Increased service beyond that described in **Exhibit A** may be provided by Fort Collins, at its sole discretion, to the extent Fort Collins determines appropriate given the demand for service and available resources. Prior to providing additional service at Fort Collins' expense, Fort Collins shall provide advance written notice to the Partners. Prior to providing additional service with Partner

contribution, Fort Collins and the Partners will amend Exhibit A and the respective cost share associated with the change. If the Partners and Fort Collins cannot agree to amend Exhibit A for the additional service then any such additional service that exceeds the services described in **Exhibit A** may be reduced or stopped by Fort Collins, at its sole discretion. Prior to reducing or stopping any such additional service, Fort Collins will make reasonable efforts to provide 30 days of advance written notice to the Partners.

- b. In the event Fort Collins determines that circumstances require modification of FLEX services as described in **Exhibit A** to better accommodate the demand for service or the efficient provision of service, Fort Collins shall be entitled to implement such modification at its sole discretion. Fort Collins will make reasonable efforts to provide 30 days of advance written notice of any such modification to the Partners.
3. This Agreement shall commence on January 1, 2024 and shall continue in full force and effect until December 31, 2024 unless sooner terminated as herein provided.
 4. Fort Collins agrees that all services provided under this Agreement shall be consistent with Transfort system operating policies and procedures, as the same may be amended, from time to time, in Fort Collins' sole discretion, and that all such services shall be consistent with the Transfort operation schedule.
 5. In consideration of the services provided by Fort Collins under this Agreement, and the mutual financial commitments herein made, Town of Berthoud agrees to contribute to the direct and indirect costs of operating FLEX, as supplemented by such additional federal or state grant funds as may be available therefor. The Parties agree to use ridership data to formulate the cost share associated with each Partner. Based on average ridership data from 2019, 2021 and 2022 for each term of this Agreement, Berthoud shall pay to Fort Collins the amount of \$44,026 for the year 2024 for its share of direct and indirect costs of operating FLEX subject to any cost share adjustment pursuant to **Section 7** or need for additional service pursuant to Section 1. Fort Collins currently maintains and administers Berthoud's portion of the Urbanized Area Formula Funding (49 U.S.C. § 5307) grant funds (the "5307 Funds"). Berthoud will allow Fort Collins to withhold \$15,901 from its balance of 5307 Funds from the Fiscal Year 2024. Town of Berthoud will remain responsible for the remaining amounts owed under this IGA after deduction of the 5307 Funds, in the amount of \$28,125. Fort Collins will invoice Partners in the first quarter of 2024 for the FLEX service provided in 2024. Such payment shall be made within 60 days after receipt of an invoice.
 6. Any additional revenues collected by Berthoud from the operation of FLEX, shall be remitted to Fort Collins. Such revenue, and any additional revenues collected by Fort Collins from the operation of FLEX, shall be used to supplement FLEX operation expenses to equally benefit the Parties.
 7. The Parties agree to run a ridership analysis on a triennial basis and adjust cost shares according to ridership quantities relative to each Partner. Ridership data will be an average of the previous year of service.
 8. The Parties acknowledge and agree that the budget proposal for operation of FLEX for 2024 (or any subsequent term of this Agreement if extended pursuant to **Section 2**) includes projected FLEX Revenue and anticipated revenues from bus fares pursuant to **Section 10** ("FLEX Fare Revenue"). If FLEX Revenue

and FLEX Fare Revenue for 2024 (or any subsequent term of this Agreement if extended pursuant to Section 2) is insufficient to meet the budget for operation of FLEX, the Parties may elect to appropriate and pay their pro rata share of any shortage. If either Party does not appropriate and pay its pro rata share of the shortage in FLEX Revenue and FLEX Fare Revenue, Fort Collins in its sole discretion may reduce FLEX services as necessary to reduce operating expenses in an amount sufficient to address such a shortage or terminate FLEX service. Prior to any reduction in service or termination, Fort Collins shall provide advance written notice to the Partners.

9. Fort Collins Transfort buses will utilize Regional Transportation District (hereafter "RTD") stops in Boulder, or as otherwise agreed upon by the Parties.
10. The basic cash fare to be charged for FLEX shall be One Dollar and Twenty-Five Cents (\$1.25) per ride; however, Fort Collins currently is not charging fares for the Transfort bus system. Notwithstanding, Fort Collins in its sole discretion shall be entitled to modify the fare to be charged as necessary for the efficient and cost-effective operation of FLEX, provided that advance written notice of any such modification is provided to the Partners. All Fort Collins discounted fare categories for Transfort bus service will apply to FLEX. Fort Collins shall collect any fares due from passengers and accurately record and account for such fare receipts and ridership levels. Fort Collins shall prepare quarterly reports of such receipts and ridership levels and shall provide such quarterly reports to the Partners.
11. All Fort Collins and City of Loveland bus pass programs will be accepted as full fare to ride FLEX. Transfers from FLEX to the Transfort or COLT bus systems will be honored. RTD Eco Pass will be accepted as full fare to ride FLEX; however, free transfers from FLEX to RTD will not be honored.
12. Each Party shall designate a representative, who shall be responsible for managing such Party's performance of the terms of this Agreement and shall provide the other Party with written notice thereof, along with address, telephone, and email information. All notices to be provided under this Agreement shall be provided to such designated representatives. Any notice pursuant to this Agreement shall be hand-delivered or sent by certified mail, return receipt requested, and addressed to the designated representative. Any such notice shall be deemed given upon hand-delivery to the designated representative or their address, or three (3) days after mailing.

If to Fort Collins:

City of Fort Collins

Transfort & Parking Services Director
City of Fort Collins
250 N. Mason Street
Fort Collins, CO 80522

With a copy to:

City Attorney
City of Fort Collins
P.O. Box 580
Fort Collins, CO 80522

If to Berthoud:

Town of Berthoud
Assistant to the Town Administrator
807 Mountain Ave
Berthoud, CO 80513

13. The Parties agree to cooperate fully, to a reasonable extent, in the development and implementation of any surveys or studies undertaken by the other Party to evaluate demand, usage, cost, effectiveness, efficiency, or any other factor relating to the success or performance of FLEX or the need for such service. Such cooperation shall not require the expenditure of funds more than the specific amounts set forth in **Section 5** and **Exhibit B**, however, unless approved in writing and duly appropriated by the Parties.
14. The Parties acknowledge that their obligations under this Agreement are subject to annual appropriation by the governing body of each respective Party and shall not constitute or give rise to a general obligation or other indebtedness of either Party within the meaning of any constitutional or statutory provision or limitation of the State of Colorado, nor a mandatory charge or requirement against either Party in any ensuing fiscal year beyond the current fiscal year. If the governing body of either Party shall fail to budget and appropriate funds for its share of expenses as described in this Agreement, then this Agreement shall terminate as of the end of the fiscal year for which such funds were last budgeted and appropriated.
15. In the event a Party has been declared in default, such defaulting Party shall be allowed notice thereof from the Party declaring default and a period of thirty (30) days within which to cure said default. In the event the default remains uncorrected, the Party declaring default may elect to terminate the Agreement and so notify the defaulting Party in writing. Any amounts due to the non-defaulting Party shall be paid within fifteen (15) days of the date of notice of termination is received.
16. Liability of the Parties shall be apportioned as follows:
 - a. Fort Collins shall be responsible for all claims, damages, liability and court awards, including costs, expenses, and attorney fees incurred, should Fort Collins be found liable as a result of any action or omission of Fort Collins or its officers, employees, and agents, in connection with the performance of this Agreement.
 - b. Berthoud shall be responsible for all claims, damages, liability and court awards, including costs, expenses, and attorney fees incurred, should Berthoud be found liable as a result of any action or omission of Berthoud or its officers, employees, and agents, in connection with the performance of this Agreement.

- c. Nothing in this **Section 16** or any other provision of this Agreement shall be construed as a waiver of the notice requirements, defenses, immunities, and limitations the Parties may have under the Colorado Governmental Immunity Act (Section 24-10-101, *et seq.*, C.R.S.) or any other defenses, immunities, or limitations of liability available to any Party by law.
 - d. Any liability of the Parties under this Agreement shall be subject to appropriation of funds by their respective governing bodies.
 - e. No elected official, director, officer, agent or employee of the Parties shall be charged personally or held contractually liable under any term or provision of this Agreement, or because of any breach thereof or because of its or their execution, approval or attempted execution of this Agreement.
17. This Agreement embodies the entire agreement of the Parties about the FLEX program. The Parties shall not be bound by or be liable for any statement, representation, promise, inducement or understanding of any kind or nature not set forth herein.
18. The Parties hereto may not assign this Agreement or parts hereof or its rights hereunder without the express written consent of all of the Parties. Any attempt to assign this Agreement in the absence of such written consent shall be null and void *ab initio*.
19. No changes, amendments or modifications of any of the terms or conditions of this Agreement shall be valid unless reduced to writing and signed by the Parties, except as provided herein.
20. The laws of the State of Colorado shall be applied to the interpretation, execution and enforcement of this Agreement. The Parties recognize the legal constraints imposed upon them by the constitutions, statutes, and regulations of the State of Colorado and the United States, and imposed upon the Parties by their respective charters, municipal codes and other similar documents and, subject to such constraints, the Parties intend to carry out the terms and conditions of this Agreement. Notwithstanding any other provision in this Agreement to the contrary, in no event shall any party exercise any power or take any action which shall be prohibited by applicable law.
21. Any provision rendered null and void by operation of law shall not invalidate the remainder of this Agreement to the extent that this Agreement is capable of execution.
22. Either Party's failure to enforce any provision of this Agreement shall not in any way be construed as a waiver of any such provision or prevent that Party thereafter from enforcing each and every other provision of this Agreement.
23. This Agreement does not and is not intended to confer any rights or remedies upon any entity or person other than the Parties.

24. This Agreement may be executed in multiple counterparts; all counterparts so executed shall constitute one agreement binding upon all parties, notwithstanding that all parties are not signatories to the original or the same counterpart.
25. This Agreement may be executed by electronic signature in accordance with C.R.S. § 24-71.3-101, et seq. Documents executed, scanned and transmitted electronically and electronic signatures shall be deemed original signatures for purposes of this Agreement and all matters related thereto, with such scanned and electronic signatures having the same legal effect as original signatures.

26. IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written. By the signature of its representative below, each Party affirms that it has taken all necessary action to authorize said representative to execute this Agreement.

CITY OF FORT COLLINS, COLORADO
a municipal corporation

By: _____
Kelly DiMartino, City Manager

ATTEST:

Name, Title

APPROVED AS TO FORM:

Assistant City Attorney

TOWN OF BERTHOUD, COLORADO

By: _____
Town Administrator

ATTEST: _____
Town Clerk

APPROVED AS TO FORM: _____
Town Attorney



EXHIBIT A

FLEX service will be provided within the following parameters:

- Days of Service: Monday - Friday (between the cities of Fort Collins and Boulder) and Monday
- Saturday (between the cities of Fort Collins and Longmont). No service is provided on New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.
- Hours of Service: 5AM - 8 PM
- Frequency of Service: 60 Minutes

Service Area Maps:

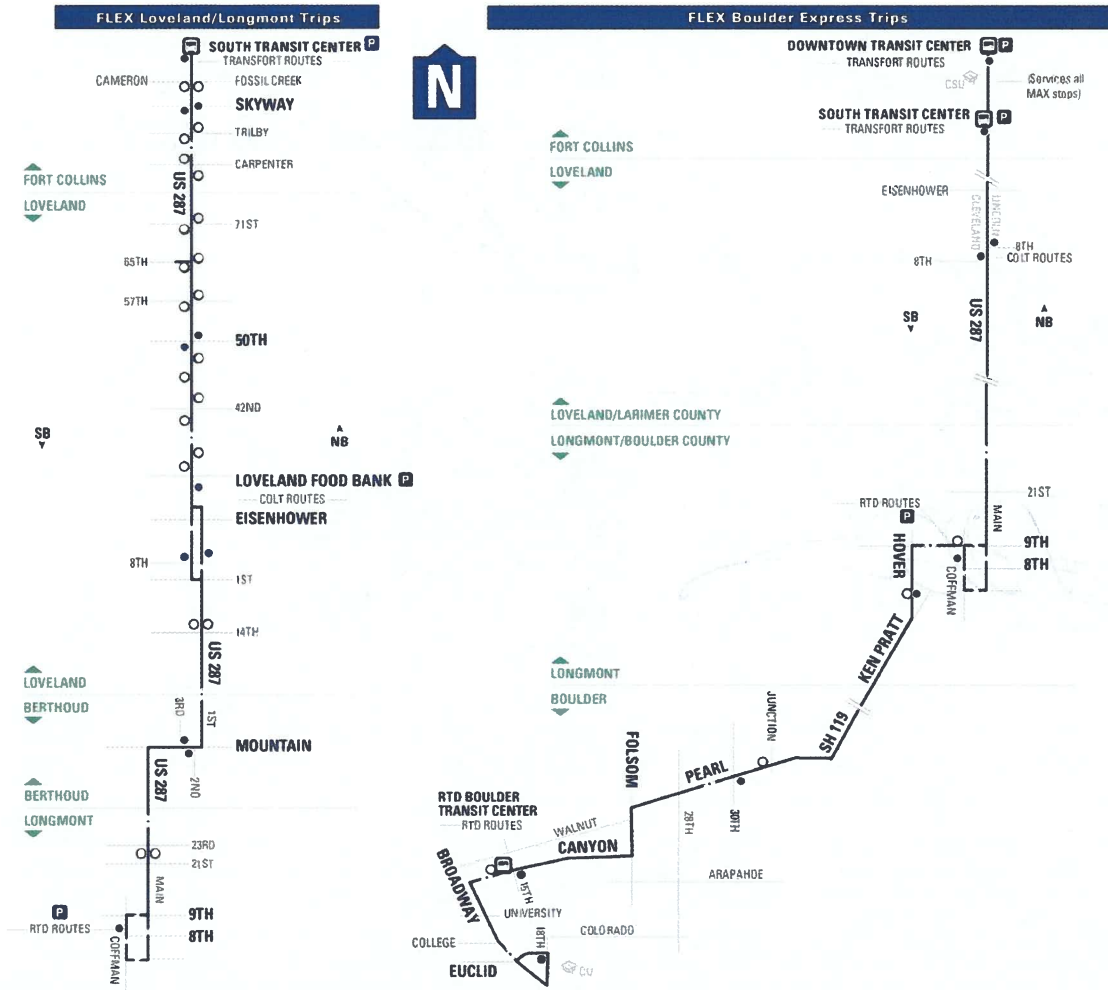


EXHIBIT B

	2022	2023	2024		
Operating Cost	\$2,001,672	\$2,161,806	\$2,248,278		
Fares	\$40,000	N/A	N/A		
CMAQ Flex to Boulder Enhancement	\$218,545	\$225,102	N/A		
EcoPass Reimbursement	\$5,000	\$5,000	N/A		
FASTER Funding	\$200,000	\$200,000	\$200,000		
CSU Contribution	\$63,193	\$63,193	\$65,089		
Remainder to be split among partners	\$1,474,934	\$1,668,511	\$1,983,189		
	% Passenger Activity (2019, 2021, 2022)	Amount Owed	Less 5307 Contribution	Loveland's Additional 5307 Withheld Amount	Loveland's Amount Owed
Fort Collins	46.69%	\$926,002	\$695,555		
Loveland	32.32%	\$641,031	\$537,379	\$268,689	\$268,689
Longmont	7.28%	\$144,439			
Boulder County	6.25%	\$124,043			
City of Boulder	5.23%	\$103,648			
Berthoud	2.22%	\$44,026	\$28,125		
Total		\$1,983,189			
Fort Collins UZA 5307 Breakdown	% TMA Service Area Population				
Fort Collins	65.84%	\$230,447			
Loveland	29.61%	\$103,652			
Berthoud	4.54%	\$15,901			
*highlighted = total owed by partner					

