

INTERGOVERNMENTAL AGREEMENT FOR THE MANITOU SHUTTLE SERVICE
BETWEEN THE CITY OF COLORADO SPRINGS, COLORADO
AND THE CITY OF MANITOU SPRINGS, COLORADO

This Intergovernmental Agreement (IGA), dated for reference this 6th day of January, 2015, is made by and between the City of Colorado Springs, a Colorado municipal corporation and home rule city ("City") and the City of Manitou Springs, a Colorado municipal corporation and home rule city ("Manitou").

Paragraph 1. Authority: This IGA is made under authority of C.R.S. § 29-1-203, and Article XX of the Colorado Constitution.

Paragraph 2. Purpose: The purpose of this IGA is to relieve traffic and parking congestion and to improve air quality during the summer months by providing safe public shuttle transportation in Manitou Springs utilizing federal, state, and local funds as may be available from time to time.

Paragraph 3. Term: The term of this IGA shall commence at 12:01 am on the 1st day of March, 2015 and shall end at 11:59 pm on the 31st day of December, 2020 unless sooner terminated or extended per the provisions of this IGA.

Paragraph 4. Manitou Shuttle Service (MSS or the "Service"):

- A. The Parties agree that the City shall provide MSS in the City of Manitou Springs. The initial hours and times of service and the bus stops are as shown in Exhibit A, attached and made a part of this IGA. In accord with Paragraph 19, the IGA Administrators may amend Exhibit A from time to time to reflect changes in MSS after consultation.
- B. The Parties agree that this IGA is for Transit Services only and that Manitou shall be responsible for all non-transportation related items such as parking lot leasing, portable toilets, signage (except for bus stop signs), etc. for the term of the IGA as set forth in Exhibit A.
- C. Transportation, including passenger boarding and alighting, shall be provided from locations at the designated stops set forth in Exhibit A. No passenger drop off or pickup will be performed except at these designated stops, or as otherwise authorized in writing. The Parties all consent to the use of the stops identified within their jurisdictions.
- D. The Parties understand and acknowledge that the City may provide some or all of the MSS through a City bus service contract or through independent contractors.
- E. Americans With Disabilities Act (ADA) accommodations on buses for MSS shall be the responsibility of the City. Manitou shall be responsible for meeting ADA accessible requirements to bus stops within Manitou's territory as needed for the performance of this IGA at Manitou's expense.
- F. Equipment. Upon termination of this IGA, all vehicles and other personal property or equipment, including but not limited to benches and bus shelters, previously owned by either Party or procured pursuant to this IGA shall be and remain the property of the Parties. Bus stop pads, sidewalks, and curb ramps located in Manitou shall be the property of Manitou.
- G. Additional Revenues. The City may receive additional revenues, from advertising or other sources, during the operation of the Service. Any potential revenue received will follow FTA (Federal Transit Administration) program guidelines. The City's advertising guidelines will apply to all advertising selection, and the procurement of advertising services will follow FTA's procurement guidelines.

- H. The bus schedules must be agreed upon eight (8) weeks prior to the first day of service each year of this IGA. Any changes made after this date that affect Revenue Service Hours will be charged extra fees to be determined at the time of the change. Changes to schedules that do not affect the total number of Revenue Service Hours can be made at any time.
- I. Except as reasonably required for internal reporting and administration purposes, the use of the terms "Mountain Metropolitan Transit", "Manitou Free Summer Shuttle", and "Manitou Shuttle Bus Service", and the logos and other symbols relating to those terms, shall not be used by the Parties to this IGA without the prior written permission of the City. The use of the terms "Manitou Springs" and the logos and other symbols relating to the City of Manitou Springs, shall not be used in marketing or promoting MSS without the prior written permission of Manitou.
- J. Separate Funding Agreements. Each Party is free to negotiate or otherwise enter into separate agreements with third parties or other governmental funding sources for the purpose of funding the Party's contribution obligations under this IGA. However, no separate agreement shall be deemed to amend or otherwise affect any term, condition, or obligation whatsoever of this IGA. No separate agreement shall give or grant any right, benefit, or privilege whatsoever under this IGA. Any separate agreement shall be solely an agreement between the entities making the separate agreement.

Paragraph 5. Party Financial Contributions To The MSS:

- A. For each year of Service, or partial year of Service, Manitou and the City shall agree on each Parties payment amount as indicated in Exhibit B - PAYMENT AMOUNT, attached and made a part of this IGA. In accord with Paragraph 19, the IGA Administrators may amend Exhibit B from time to time to reflect changes in MSS service after consultation with Manitou. In the event the City and Manitou cannot agree on terms, then, at the City's option, the City may immediately terminate Manitou's participation under this IGA and may terminate Service under this IGA to Manitou. Manitou would be responsible for any amounts due to the City's subcontracting bus provider for early termination costs.
- B. For the FIRST YEAR OF IGA Service period (2015), City shall first use any remaining grant funds from the Manitou grant for the costs of the MSS as set forth in Exhibit B until these funds are exhausted. The amount left in the grant for this year is \$35,601. After these funds are exhausted, the City will invoice Manitou for costs monthly and within sixty (60) days of the close of every years Service and Manitou shall make payment to the City net thirty (30) days from invoice date.
- C. All payments to the City shall be made payable to the "City of Colorado Springs - Transit Services Division". All payments to the City under this IGA shall be made at the following address:

Transit Services Division
ATTN: Transit Finance
1015 Transit Drive
Colorado Springs, Colorado 80903

Paragraph 6. Manitou Participation:

Coordination with Manitou. Manitou and the City shall coordinate any ingress and egress to stops in Manitou, including any schedule changes, through these designated representatives listed in Paragraph 20. In addition, any isolated schedule changes due to unforeseen events including weather, traffic accidents, irregular operations, or emergency stops or deviations shall be coordinated when possible and needed, with City Transit dispatchers at 719-385-7410.

Paragraph 7. Withdrawal by a Party For Convenience: Any Party may withdraw from this IGA for convenience at any time for any or no reason upon ninety (90) days prior written notice to the other Party to this IGA. The notice of withdrawal shall state specifically the effective date of withdrawal. Upon withdrawal notice by a Party, the service shall be terminated by the City, at the City's sole option. Nothing in this IGA shall relieve Manitou of the obligation to make the payments identified in Exhibit B, or Manitou's payments set forth in any payment amendment signed by Manitou as provided in this IGA.

Paragraph 8. This IGA shall not be construed to create a duty as a matter of law or contract for the provision of Service in any of the Parties' jurisdictions, the Parties recognizing and intending to exercise rights for mutual convenience which they may exercise independently, nor shall this IGA be construed as creating a benefit or enforceable right for any person. This IGA shall not be construed to create a duty as a matter of law or contract for any of the Parties to assume any liability for injury, property damage, or any other damage that may occur by any action or non-action taken, or service provided to the public or any person, as a result of this IGA.

Paragraph 9. The Parties agree that this IGA may only be amended or altered by written IGA signed by both Parties as designated in Paragraph 20. No other parties may make commitments to this IGA.

Paragraph 10. Any notice required by this IGA shall be sent in writing by United States Mail, first class postage prepaid, or by e-mail.

Paragraph 11. No Party shall assign or otherwise transfer this IGA or any right or obligation under this IGA without prior written consent of the other Parties.

Paragraph 12. Except as otherwise stated in this IGA, no Party to this IGA shall be required to pay any compensation to the other Party or the other Party's personnel or subcontractor for any services rendered under this IGA. Nothing in this IGA shall be construed to place the personnel or subcontractors of any Party under the control or employment of another Party. Each Party remains responsible for all pay, entitlement, employment decisions, and workers' compensation liabilities for its own personnel. Nothing in this IGA is intended to create or grant to any third party or person any right or claim for damages or the right to bring or maintain any action at law, nor does any Party waive its immunities at law, including immunity granted under the Colorado Governmental Immunity Act.

Paragraph 13. Expenditures and Fees of Each Party Deemed Expenditures of That Party: The Parties to this IGA agree that the purpose of this IGA is to accomplish, pursuant to C.R.S. § 29-1-203, joint activities which could be performed separately by each Party. Accordingly, it is agreed and understood for purposes of the Colorado Constitution Art. X § 20, the Colorado Springs City Charter, and any other applicable laws, that any fees contributed or paid, or otherwise provided by any Party to this IGA to another Party to this IGA are and remain an expenditure of the contributing, paying, or otherwise providing Party, and are not revenue or expenditures of the receiving Party.

Paragraph 14. This IGA is subject to and shall be interpreted under the law of the State of Colorado, and the Charter, City Code, Ordinances, Rules and Regulations of the City of Colorado Springs, Colorado, and the City of Manitou Springs, both Colorado home rule cities. Court venue and jurisdiction shall exclusively be in the Colorado District Court for El Paso County, Colorado.

Paragraph 15. Appropriation and Availability of Funds: In accord with the Colorado Constitution Art. X § 20, and the respective Party's Charters, rules and regulations, the performance of any Party's obligations under this IGA is expressly subject to the lawful appropriation and availability of funds in accord with the Party's local laws, rules and regulations.

Paragraph 16. Local Concern: The Parties agree and acknowledge that the Services contemplated by this IGA are matters of local concern only, and that the Parties have joined together for the performance of the matters of local concern, and that nothing in this IGA shall be construed as making any of the matters of mixed concern or statewide concern.

Paragraph 17. Entire Agreement: This IGA, together with all exhibits attached, constitutes the entire agreement between the Parties, and all other representations or statements heretofore made, verbal or written, are merged, and this IGA may be amended only in writing, and executed by duly authorized representatives of the Parties.

Paragraph 18. No Third-Party Beneficiary: It is expressly understood and agreed that enforcement of the terms and conditions of this IGA, and all rights of action relating to enforcement, shall be strictly reserved to the Parties, and nothing contained in this IGA shall give or allow any claim or right of action by any other or third person or entity on this IGA. It is the express intention of the Parties that any person or entity, other than the Parties to this IGA, receiving services or benefits under this IGA shall be deemed to be incidental beneficiaries only.

Paragraph 19. After execution of this IGA, the City Transit Services Division Manager and the Manitou Planning Director are authorized to administer this IGA on behalf of their respective entities.

Paragraph 20. Correspondence: Except as otherwise set forth in this IGA, correspondence to each Party shall be addressed to the following persons or that person's written designee:

For Manitou:

Wade Burkholder
City of Manitou Springs
Planning Department
606 Manitou Avenue
Manitou Springs, CO 80829
tel: 719-685-4398
e-mail: wburkholder@comsgov.com

For the City:

Brian Vitulli
City of Colorado Springs
Transit Services Division
1015 Transit Drive
Colorado Springs, CO 80903
tel: 719-385-5439
e-mail: bvitulli@SpringsGov.com

Paragraph 21. The Parties to this IGA represent or warrant to each other that they have the necessary authority to enter into this IGA and to perform their obligations and that this IGA does not conflict with any other agreement that any Party is subject to or to which it may be bound.

Paragraph 22. Headings: The headings of the several articles and sections of this IGA are inserted only as a matter of convenience and for reference and do not define or limit the scope or intent of any provisions of this IGA and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction.

Paragraph 23. The signers of this document have the authority to bind the Parties to this IGA.

EXHIBIT A – MSS Scope

- A. Fares. No fares will be charged to passengers for the MSS or the ADA Paratransit service associated with this route.
- B. Route and Bus Stop Locations: MSS buses shall stop to board and alight passengers at the locations to be agreed upon by March 1st of each service year.
- C. The Service Schedule for MSS, specifically the service dates, days, and times each year, begins mid-May through the Sunday after Labor Day, Monday through Sunday, from 06:00 to 22:15. Changes can be made to each year's schedule if agreed upon by March 1st of that year.
- D. The City will not be responsible for any construction of bus stop improvements, trails, signs other than bus stop signs, lot leases, portable toilets, advertising, etc. as these are the responsibility of Manitou. The City will provide vehicles, drivers, bus stop signs, vehicle maintenance, fuel, vehicle wraps, printed and online schedules, and dispatching services.
- E. Manitou shall provide to the City a minimum of seven (7) days notice for any known street closures along the route.
- F. The City reserves the right to modify the Service at any time to meet real-time irregular operations and rider safety needs as determined by the City and/or Federal service requirements. Modifications may include, but are not limited to, schedule amendments, vehicle substitutions, and bus boarding/alighting locations. Scheduled changes that may emerge as necessary, beyond irregular operations needs, will be implemented after consultation with Manitou; provided, however, that the City may not add additional scheduled stops without Manitou's written agreement. Any scheduled Route, Bus Stop Locations, or Service Schedule changes shall be made in writing to the designated signee on this IGA.

EXHIBIT B – Payment Amount

Service Costs

- a. The following costs shall be the basis for expected billing from the Parties. This cost covers the City's actual costs to subcontract the bus service, to include maintenance, bus wraps, communications and fuel costs for this service. There is no mark up or profit being charged.

2015 rate of \$233,823 (\$62.20/RSH)

This rate is based on the estimated Service Hours of 3759 given to us for the 2015 service and includes all items listed in Exhibit A.

The rate for each year may fluctuate depending on costs, routes and schedules.

Future years' rates will be presented to Manitou by January 30th of each service year for acceptance, modification or denial of that years' service.

Extended evening service is available on the Manitou Avenue route only on Friday and Saturday evenings until midnight for an additional cost of \$6428 for the summer (2015 rate).

FOR THE CITY OF MANITOU:

By: Marc A. Snyder this 3rd day of February, 2015
Marc A. Snyder
Mayor

Attest:

[Signature]
City Clerk

FOR CITY OF COLORADO SPRINGS:

By: _____ this _____ day of _____, 2015
Keith King, City Council President

Approved as to Form

Office of the City Attorney
City of Colorado Springs