

**2024 FUNDING AGREEMENT
FOR RTD FUNDING OF LOCAL TRANSPORTATION SERVICES
OF DENVER WEST CONNECTOR MICROTRANSIT PILOT**

This 2024 Funding Agreement for RTD Funding of Local Transportation Services of Denver West Connector ("**Agreement**") is made and entered into as of January 1, 2024 ("**Effective Date**"), between the Regional Transportation District, a political subdivision of the State of Colorado organized pursuant to the Regional Transportation District Act, C.R.S. § 32-9-101, *et seq.*, ("**RTD**") and The City and County of Denver ("**Denver,**" or "**City**"). The City and RTD may also be referred to herein individually as a "**Party**" and together as the "**Parties**".

RECITALS

- A.** RTD is authorized by the Regional Transportation District Act, C.R.S. §§ 32-9-101, *et seq.* (the "**RTD Act**"), to develop, maintain, and operate a mass transportation system for the benefit of the inhabitants of its District, as defined by the RTD Act.
- B.** Pursuant to the Colorado Constitution, Article XIV, Section 18(2)(a), and C.R.S. §§ 29-1-203 *et seq.*, both RTD and the City may cooperate or contract with each other to provide any function, service, or facility lawfully authorized to each, and any such contract may provide for sharing of costs.
- C.** RTD currently operates a variety of fixed-route bus, light rail, and other transit services in and around the City.
- D.** The Parties agree that the transit services provided by the City's designated contractor described in **Exhibit A** ("**Services**") provide mobility and access to the business and residential areas in and around the City.
- E.** In order to support transit services supplemental to those services provided by RTD in the City, RTD wishes to contribute local funds to the City for the provision of Services within the RTD District from 2024 to 2026 according to the terms and conditions as agreed by the Parties, as set forth herein.

TERMS AND CONDITIONS

NOW THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

1. GENERAL.

A. Exhibits. The following exhibits are attached and incorporated into this Agreement by this reference:

- Exhibit A:** Description of the Services
- Exhibit B:** Description of the RTD Funding
- Exhibit C:** Performance Expectations
- Exhibit D:** Communication and Notices – Contacts
- Exhibit E:** Special Provisions
- Exhibit F:** Transit Equity
- Exhibit G:** Insurance Requirements

B. Recitals. The recitals set forth above are incorporated herein by this reference.

C. Other Agreements. The Parties may have previously entered into various other agreements which remain in effect until terminated and are not voided by or otherwise amended by this Agreement, unless expressly set forth herein.

2. OPERATIONS, MANAGEMENT AND CONTROL OF THE SERVICES. The City shall continue to manage and operate, either directly or through its designated agent(s), the Services as described in **Exhibit A**. The City and/or its designated agent(s) shall be solely responsible for all operations, management, marketing, administration, and Services delivery functions, including provision of vehicles, vehicle maintenance, insurance and accounting. Except as specifically provided herein, RTD shall have no responsibility for the operations and management of the Services. RTD shall have no responsibility for, or authority or control with respect to, the supervision and management of any employees or contractors who work in connection with the Services. The City shall operate the Services in compliance with all applicable laws, regulations, orders, codes, directives, permits, approvals, decisions, decrees, ordinances or by-laws having the force of law and any common or civil law, including any amendment, extension or re-enactment of any of the same, and all other instruments, orders and regulations made pursuant to statute (collectively, "**Laws**"), and the City shall be solely responsible for compliance with all applicable Laws. Notwithstanding RTD's right to cease funding as provided in this Agreement, RTD has no obligation or intent, nor right pursuant to this Agreement, to otherwise continue the Services, if the City ceases to provide the Services.

- 3. SERVICES.** The Services subject to funding pursuant to this Agreement must be provided as described in **Exhibit A**. No material changes shall be made to the Services during the term of this Agreement without the advance written agreement of both Parties. In the event that changes are made to the Services without the written consent of RTD, then RTD may, at its sole option, terminate this Agreement with thirty (30) business days' prior notice by RTD to the City. The City shall have thirty (30) business days from the date of notice to cure the deficiency to the reasonable satisfaction of RTD ("**Cure Period**"). In the event that the City has not cured the deficiency within the thirty (30) business days, this Agreement will terminate, and RTD will not provide any funding for the Services after the Cure Period.
- 4. RTD FUNDING.** RTD will reimburse the City as partial funding for eligible Services provided in accordance with **Exhibit A** in the amount set forth in **Exhibit B**, but such amount will not exceed \$750,000 ("**RTD Funding**") for the term of this Agreement (January 1, 2024 to December 31, 2026). RTD Funding does not include any additional operating costs for services in excess of the Services as set forth in **Exhibit A**, including any special events and holidays. Under no circumstances will RTD be obligated to pay more than the RTD Funding or for Services not actually provided by the City or its agent.
- 5. INVOICING AND PAYMENT.**

 - A.** The City will submit an invoice to RTD on a quarterly basis requesting payment of the RTD Funding for the Services. Unless otherwise agreed by the Parties, the invoice shall include a summary of service hours, mileage, passenger boardings, origin and destination information for services operated alongside a list of trips completed by month, and any other information that RTD otherwise reasonably requests.
 - B.** RTD will pay all approved invoices within thirty (30) calendar days after RTD has received the invoice. If RTD does not approve an invoice from the City, RTD will provide a written explanation of disputed items within ten (10) calendar days after RTD has received the invoice.
 - C.** Invoicing to RTD will require backup documentation showing payment of services either in-house or through the City's designated agent. The balance shall show the total requested versus the annual balance for both RTD and local matches.
- 6. ELIGIBLE EXPENDITURES**

 - A.** In the event that the City incurs direct, out-of-picket expenses other than for eligible expenditures in accordance with the approved project budget in

Exhibit B, RTD shall reimburse the City only for eligible expenditures in accordance with the approved project budget in **Exhibit B**.

B. The City shall be responsible for ensuring that all items in **Exhibit A** meet the following guidelines:

(1) The City agrees to ensure that the program identified in **Exhibit A** as Services funded by this agreement relate to transportation services commencing or concluding in portions of the City of Denver located within the RTD boundaries.

(2) The City agrees to further ensure that all trips paid for under this agreement that fall within the Program category of Transportation Services ("**Transportation Services**") under **Exhibit A** both originate and conclude within the RTD boundaries.

7. RECORDS. The City will maintain full and complete financial records for the provision of the Services. Such records shall include any financial information to support and document the operating costs and revenues relating to the Services and any other financial information specifically requested by RTD. The City shall make these records available to RTD for audit for a period of three (3) years after final payment under this Agreement. If applicable, National Transit Database ("**NTD**") data shall be kept in accordance with Federal Transit Administration ("**FTA**") requirements and shall be reported as part of RTD's NTD submission.

8. AUDIT. RTD reserves the right to audit the City's, or its designated agent's, books and records to determine compliance with the terms of this Agreement. In the event that an audit shows that the City is not in compliance with any term of this Agreement, City staff will meet with RTD staff within fifteen (15) days of notification of audit findings to review and come to an agreement on solutions to any audit conclusions, including but not limited to the return of all or a portion of the RTD Funding previously paid to the City under this agreement. The City shall provide RTD with a copy of the written results of any internal audit performed by the City or another third party related to the performance of the Services within thirty (30) calendar days of the conclusion of such audit.

9. MARKETING.

A. The Services will not be designated, marketed, or promoted as an RTD-branded service, except that the City shall allow RTD to display an appropriate RTD logo

stating that the Services are “in partnership with RTD” on all vehicles used to operate the Services or financially supported in part by RTD, if in the RTD referenced area, through this Agreement.

- B.** The City and/or its designated agent(s) will market the Services, and such marketing will include but is not limited to developing a marketing plan and implementing the plan. A marketing plan may include the following elements: advertising, public relations, collateral materials, websites, coordination with other transportation programs, outreach, and training. RTD will have the advance opportunity to review and approve any marketing materials for the Services. Costs and expenses associated with the City’s marketing efforts are not included in the RTD Funding.

10. PERFORMANCE EXPECTATIONS. RTD will set and assess Performance Expectations (“Performance”) of the Services, as defined in **Exhibit C**. RTD will evaluate the Services on a quarterly basis and notify the City if RTD determines that the Services are not meeting the established Performance. If the Services do not meet the Performance by the end of the term of this Agreement, RTD Funding will not be continued.

11. LIABILITY AND INSURANCE.

- A.** The Parties agree that RTD shall have no liability to the City or its designated agent(s), or to third parties arising out of the operations or management of the Services, or any other service operated, directly or indirectly, by the City. This provision shall survive termination of this Agreement.
- B.** Liability for claims for injuries to persons or property arising from the negligence of the Parties, its departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State’s risk management statutes, §§24-30-1501, et seq. C.R.S. No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.
- C.** The City and/or its designated agent(s) shall cause RTD and its officers and employees to be named as additional insured on all insurance policies covering any operations of the Services.
- D.** Without waiving the privileges and immunities conferred by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 *et seq.*, each Party shall be responsible for any claims, demands or suits arising out of its own negligence. It is specifically understood and agreed that nothing contained in this section or

elsewhere in this Agreement shall be construed as an express or implied waiver by RTD or the City of its governmental immunity including limitations of amounts or types of liability or the governmental acceptance by either Party of liabilities arising as a result of actions which lie in tort or could lie in tort in excess of the liabilities allowable under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 *et seq.*

- E.** The City shall require subcontractors to maintain in full force and effect adequate insurance, in the amounts and coverages outlined in **Exhibit G.** At all times during the term of this Agreement, including any renewals or extensions, the Parties shall maintain such insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the CGIA. This obligation shall survive the termination of this Agreement.
- 12. TRANSIT EQUITY.** RTD has established a Title VI Program. The City must adhere to all conditions set forth in **Exhibit F.**
- 13. GENERAL PROVISIONS.**
- A. Available Funding.** This Agreement does not contain any multiple-fiscal year financial obligations by RTD that extend beyond its current fiscal year. The financial obligations of RTD under this Agreement shall be subject to and limited by the appropriation of sufficient funds. RTD Funding for this Agreement, as set forth in **Exhibit B,** has been budgeted, authorized and appropriated by the RTD Board of Directors only for the current fiscal year. Nothing herein obligates either Party to budget, authorize or appropriate funds for any future fiscal year.
 - B. Other Sources of Funding.** Nothing in this Agreement will prevent the City from collecting contributions or fees from entities other than RTD to help defray costs of providing the Services that are not supported by RTD under this Agreement, except that RTD shall not be a party to any such third-party arrangement.
 - C. Merger.** This Agreement represents the entire agreement between the Parties with respect to the subject matter hereof and all prior agreements, understandings or negotiations shall be deemed merged herein. No representations, warranties, promises or agreements, express or implied, shall exist between the Parties, except as stated herein.
 - D. Governing Law.** This Agreement shall be interpreted and enforced according to the laws of the State of Colorado, the ordinances of the City, the applicable provisions of federal law, and the applicable rules and regulations promulgated under any of them. Venue for any action hereunder shall be in Denver District Court, Colorado.

- E. Communication and Notices.** Any notices, bills, invoices or reports required by this Agreement shall be sufficiently delivered if sent by the Parties in the United States mail, postage prepaid, or by email to the Parties at the addresses specified on **Exhibit D**. The addresses or contacts may be changed by the Parties by written notice to the other Party.
- F. Term and Termination.** This Agreement shall be deemed to have commenced on January 1, 2024, and shall remain in effect until December 31, 2026, unless earlier terminated in writing by the Parties or by court order. Unless otherwise agreed, either Party may terminate this Agreement on sixty (60) calendar days' prior written notice. In the event of termination by RTD for any reason other than default, RTD shall pay no more than the reimbursable costs of the Services up to the date of termination. All provisions of this Agreement that provide rights or create responsibilities for the Parties after termination shall survive termination of this Agreement. Nothing herein obligates either Party to make funds available for the Services in any future fiscal year, and nothing herein shall imply funding will be renewed at the same or any level.
- G. Amendment.** The Parties may, by written agreement, amend this Agreement or the Exhibits to account for changes in RTD Funding and service levels. Nothing herein obligates either Party to make funds available other than as specifically provided in the attached Exhibits, and nothing herein shall imply funding or service will be renewed at the same or any level.
- H. Authority.** The Parties represent that each has taken all actions that are necessary or that are required by its procedures, bylaws, or applicable law to legally authorize the undersigned signatories to execute this Agreement on behalf of the Parties and to bind the Parties to its terms.
- I. No Effect on RTD Rights or Authority.** Nothing in this Agreement shall be construed to limit RTD's right to establish routes or services or to perform any functions authorized by C.R.S. § 32-9-101 *et. seq.*
- J. Assignment.** Other than as specifically provided herein, the Parties agree that they will not assign or transfer any of their rights or obligations under this Agreement without first obtaining the written consent of the other Party.
- K. Prohibited Interests.** No director, officer, employee, or agent of RTD shall be interested in any contract or transaction with RTD except in his or her official representative capacity unless otherwise provided by the RTD Code of Ethics.
- L. Severability.** To the extent that this Agreement may be executed and performance of the obligations of the Parties may be accomplished within the intent of this Agreement, the terms of this Agreement are severable, and should any term

or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other terms or provision hereof.

- M. Waiver.** The waiver of any breach of a term hereof shall not be construed as a waiver of any other term, or the same term upon a subsequent breach.
- N. No Third-Party Beneficiaries.** It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties hereto, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person under this Agreement. It is the express intention of the Parties to this Agreement that any person or entity other than the Parties receiving services or benefits under this Agreement be deemed an incidental beneficiary only.
- O. Changes in Law.** This Agreement is subject to such modifications as may be required by changes in city, state or federal law, or their implementing regulations. Any such required modification shall automatically be incorporated into and be part of this Agreement on the effective date of such change as if fully set forth herein.
- P. Status of Parties.**
 - (1) The Parties agree that the status of each Party shall be that of an independent contractor to the other, and it is not intended, nor shall it be construed, that one Party or any officer, employee, agent or contractor of such Party is an employee, officer, agent, or representative of the other Party. Nothing contained in this Agreement or documents incorporated by reference herein or otherwise creates any partnership, joint venture, or other association or relationship between the Parties. Any approval, review, inspection, direction or instruction by RTD or any party on behalf of RTD shall in no way affect either Party's independent contractor status or obligation to perform in accordance with this Agreement. Neither Party has authorization, express or implied, to bind the other to any agreements, liability, nor understanding except as expressly set forth in this Agreement.
 - (2) RTD shall have no responsibility for any federal and state taxes and contributions for Social Security, unemployment insurance, income withholding tax, and other taxes measured by wages paid to employees of the City. The City acknowledges that it and its employees are not entitled to workers' compensation benefits or unemployment insurance benefits from RTD, unless the City or a third party provides such coverage, and that RTD does not pay for or otherwise provide such coverage. The City shall provide and keep in force workers' compensation (and provide

proof of such insurance when requested by RTD) and unemployment compensation insurance in the amounts required by law, and shall be solely responsible for its own actions, its employees and agents.

- Q. Paragraph Headings.** The captions and headings set forth in this Agreement are for convenience of reference only and shall not be construed so as to define or limit its terms and provisions.
- R. Counterparts.** This Agreement may be executed in counterparts. Signatures on separate originals shall constitute and be of the same effect as signatures on the same original.
- S. Electronic Signatures.** This Agreement may be executed by electronic signature, which shall be considered as an original signature for all purposes and shall have the same force and effect as an original signature. Without limitation, "electronic signature" shall include faxed versions of an original signature, electronically scanned and transmitted versions of an original signature, and digital signatures.

[Signature pages follow]

Memorandum

We make lives better through connections.



To: Debra A. Johnson, General Manager and CEO

Through: Fred Worthen, Assistant General Manager, Bus Operations

From: Erin Vallejos, Senior Manager, Contracted Services
John Gardocki, Project Manager Partnerships, Contracted Services

Date: September 9, 2024

Re: **Approval Request for Funding Agreement and PR#743339 – City of Denver West Connector Microtransit Pilot with RTD Partnership Program**

On November 28, 2023, the RTD Board of Directors adopted the 2024 Budget, which included funding to support the Partnership Program in the amount of \$2,000,000. The City of Denver's project was selected as a successful Partnership Program applicant in the 2023 cycle for a total funding amount of \$750,000 over a three-year period.

This memorandum serves as staff's explanation of the project and associated funding agreement, which has been approved as to form by legal and reviewed during the application process by Contracting and Procurement and Civil Rights.

Background

During the 2023 Call for Projects, the City of Denver applied for funding for an expansion of a microtransit pilot program within the RTD District. The project was selected as the second priority for the Southwest Subregional Service Council, scored as the second highest project, and was recommended by the Selection Committee for funding.

Discussion

In approving this agreement, RTD seeks to meet the 2021-2026 Strategic Plan priority of Community Value. This new microtransit solution for the residents of the Platte Valley in Denver will help to offer more mobility choices and make connections to the existing RTD fixed route and FlexRide services.

Financial Impact

There is no additional financial impact associated with approval of this agreement as funding for support of the Partnership Program for calendar year 2024 was included in the 2024 Budget. Funding for future years is contemplated in the agency's financial forecast and will be presented for the Board's consideration annually, as identified within each year's respective budget. The project was awarded \$150,000 in 2024, \$300,000 in 2025, and \$300,000 in 2026.

APPROVED:


Debra A. Johnson
General Manager and CEO

DATE:

09.19.24

Cc: Greg Smith, Deputy Assistant General Manager of Bus Operations

Regional Transportation District
1660 Blake Street, Denver CO 80202

rtd-denver.com 




Steven Butcher, Cost Control Supervisor

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WHEREFORE, the Parties have entered into this Agreement as of the Effective Date.

REGIONAL TRANSPORTATION DISTRICT

The City/County of Denver

By: 
Debra A. Johnson
General Manager and CEO

By: **See City Signature Page**
Mike Johnston
Mayor of Denver

ATTEST:

Approved as to legal form for RTD:

Nguyen,
Brandon - 24109

Digitally signed by Nguyen,
Brandon - 24109
Date: 2024.08.28 09:47:28
-06'00'

Brandon H. Nguyen
Associate General Counsel