CITY OF ENGLEWOOD

NOTICE OF APPROVAL
OF A BILL FOR AN ORDINANCE

On the 15th day of June 2020, the City Council of the City of Englewood, Colorado, approved on first reading the following Council Bill:

BY AUTHORITY
COUNCIL BILL NO. 24
INTRODUCED BY
COUNCIL MEMBER WINK

A BILL FOR AN ORDINANCE
AUTHORIZING AN
INTERGOVERNMENTAL
AGREEMENT FOR 2020 RTD
FUNDING OF LOCAL
TRANSPORTATION
SERVICES WITH THE CITY OF
ENGLEWOOD FOR THE
ENGLEWOOD TROLLEY

Copies of the aforesaid council bill are available for public inspection in the office of the City Clerk, City of Englewood, Civic Center, 1000 Englewood Parkway, Englewood, Colorado 80110 or it can be found at http://www.englewoodco.gov, Government, Legal/Public Notices.

Published June 17, 2020
Official Website of the
City of Englewood, Colorado
BY AUTHORITY

ORDINANCE NO. _____ COUNCIL BILL NO. 24
SERIES OF 2020 INTRODUCED BY COUNCIL
MEMBER ______________

A BILL FOR

AN ORDINANCE AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT FOR 2020 RTD FUNDING OF LOCAL TRANSPORTATION SERVICES WITH THE CITY OF ENGLEWOOD FOR THE ENGLEWOOD TROLLEY

WHEREAS, Council has approved Intergovernmental Agreements (IGA) between the City and the Regional Transportation District (RTD) for funding of the Englewood Trolley from 2004 through 2019;

WHEREAS, the City will reimburse RTD in an amount equal to the local fares that would have been collected had the trolley operated as a fare service rather than free service; and

WHEREAS, for calendar year 2020, the estimated lost fare amount equals $85,000, which has been budgeted.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ENGLEWOOD, COLORADO, THAT:

Section 1. The City Council of the City of Englewood, Colorado hereby authorizes the IGA entitled “2020 RTD Funding of Local Transportation Services” (Englewood Trolley) between the Regional Transportation District (RTD) and the City of Englewood, Colorado, as attached hereto as Exhibit A.

Section 2. The Mayor and City Clerk are authorized to execute and attest said Intergovernmental Agreement for and on behalf of the City of Englewood.

Introduced, read in full, and passed on first reading on the 15th day of June, 2020.

Published by Title as a Bill for an Ordinance in the City’s official newspaper on the 18th day of June, 2020.

Published as a Bill for an Ordinance on the City’s official website beginning on the 17th day of June, 2020 for thirty (30) days.

________________________________________
Linda Olson, Mayor

ATTEST:

________________________________________
Stephanie Carlile, City Clerk
I, Stephanie Carlile, City Clerk of the City of Englewood, Colorado, hereby certify that the above and foregoing is a true copy of the Bill for an Ordinance introduced, read in full, and passed on first reading on the 15th day of June 2020.

________________________________________
Stephanie Carlile
This Intergovernmental Agreement for 2020 RTD Funding of Local Transportation Services with the City of Englewood for the Englewood Trolley (“Agreement”) is made and entered into as of the 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 of Englewood, Colorado, a Colorado home rule city (“Local Entity”). The Local Entity and RTD may also be referred to herein individually as a “Party” and collectively 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 Local Entity 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 Local Entity.

D. The Parties agree that the transit services provided by the City of Englewood described in Exhibit A (“Services”) provide mobility and access to the business and residential areas in and around the Local Entity.

E. Local Entity wishes to continue to provide the Services in 2020 and RTD wishes to financially contribute to the provision of such Services in 2020 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: Communication and Notices – Contacts
   Exhibit D: Special Provisions
   Exhibit E: Transit Equity

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

C. Effective Date. This Agreement will be effective as of January 1, 2020.

D. 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 Local Entity shall continue to manage and operate, either directly or through its designated agent(s), the Services. The Local Entity 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 Local Entity 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 Local Entity 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 Local Entity ceases to provide the Services.
3. **SERVICES.** The Services must be provided as described in **Exhibit A**. No material changes may be made to the Services during the term of this Agreement without the written agreement of both Parties, or if changes are made to the Services without the written consent of RTD, then RTD may, at its sole option, terminate this Agreement with 30 business days’ notice by RTD and 30 business days for Local Entity to cure the deficiency (“the cure period”). In the event that RTD terminates this Agreement in accordance with this Section 3, RTD will not provide any funding for the Services after the cure period, provided that the Local Entity has not cured the deficiency.

4. **RTD FUNDING.** RTD will reimburse Local Entity as partial funding for eligible Services provided in accordance with **Exhibit A** at the rates set forth in **Exhibit B**, but such amount will not exceed $325,501.00 (“RTD Funding”). RTD Funding does not include any additional operating costs for services in excess of the Services as set out 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 Local Entity.

5. **INVOICING AND PAYMENT.**

   A. The Local Entity will submit an invoice to RTD on a monthly basis requesting payment of the RTD Funding. Unless otherwise agreed by the Parties, the invoice shall include an itemized list of reimbursable operating expenses and a summary of service hours, mileage, passenger boardings, origin and destination information, and any other information that RTD otherwise reasonably requests, deducting the amount for estimated farebox revenue per **Exhibit B**.

   B. RTD will pay all approved invoices within thirty calendar (30) days after RTD has received the invoice. If RTD does not approve an invoice from the Local Entity, RTD will provide a written explanation of disputed items within ten (10) calendar days after RTD has received the invoice.

6. **RECORDS.** The Local Entity, or its designated agent, 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 Local Entity, or its designated agent, 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.
7. MARKETING.

A. The Services will not be designated, marketed, or promoted as an RTD-branded service, except that the Local Entity shall allow RTD to display an appropriate RTD logo stating that the Services are “in partnership with RTD” on all new vehicles used to operate the Services and financially supported in part by RTD, if in the RTD referenced area, through this Agreement. Costs for purchase, operations and maintenance of vehicles for the Services are not included in the RTD Funding.

B. The Local Entity 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. Marketing efforts are not included in the RTD Funding.

8. LIABILITY AND INSURANCE.

A. The Parties agree that RTD shall have no liability to third parties arising out of the operations or management of the Services, or any other service operated, directly or indirectly, by the Local Entity, and the Local Entity shall have no liability to third parties arising out of the operations or management of any RTD services. This provision shall survive termination of this Agreement.

B. The Local Entity 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.

C. 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 either Party 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.

9. TRANSIT EQUITY. RTD has established a Title VI Program. The Local Entity must adhere to all conditions in Exhibit E.
10. GENERAL PROVISIONS.

A. **Available Funding.** This Agreement does not contain any multiple-fiscal year financial obligations by either Party that extend beyond its current fiscal year (2020). The financial obligations of each Party under this Agreement shall be subject to and limited by the appropriation of sufficient funds therefore by its governing body. Funds for this Agreement, as set out in Exhibit B, have been budgeted, authorized and appropriated by the RTD Board of Directors only for the current fiscal year. If the Parties intend to provide RTD Funding for future years, Exhibit B must be amended in accordance with Section 10.G. 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 Local Entity from collecting contributions or fees from entities other than RTD to help defray costs of providing the Service that are not subsidized 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 following addresses specified on Exhibit C. 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 the Effective Date and shall remain in effect until terminated in writing by the Parties or by court order. Unless otherwise agreed, either Party may terminate this Agreement on sixty (60) calendar days’ 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 the Agreement, the terms of the 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 the 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 Local Entity and/or its designated agent(s). The Local Entity acknowledges that it and its employees are not entitled to workers’ compensation benefits or unemployment insurance benefits from RTD, unless the Local Entity or a third party provides such coverage, and that RTD does not pay for or otherwise provide such coverage. The Local Entity 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. Electronic and faxed signatures shall constitute original signatures.

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

**REGIONAL TRANSPORTATION DISTRICT**

By: ____________________________
    Paul J. Ballard
    Interim General Manager & CEO

**CITY OF ENGLEWOOD**

By: ____________________________
    [Name] [Title]

**ATTEST:**

______________________________

Approved as to legal form for RTD:

______________________________

Dana E. Steele
Senior Associate General Counsel
Exhibit A
Description of the Services

Span of Service:

Weekday- 6:30 AM- 6:30 PM
Saturday- No service provided
Sunday- No service provided
Holidays- No service provided

Service Frequency:

Weekday every 15 minutes
Saturday- Not Applicable
Sunday- Not Applicable
Holidays- Not Applicable

Annual Revenue Hours:

Weekday- 6,189
Saturday- Not Applicable
Sunday- Not Applicable
Holidays- Not Applicable

Total 6,189
Exhibit B
Description of the RTD Funding

I. Expenses- January 1, 2020 – December 31, 2020 Not to exceed amount

Operating hours expense-6189 hours @ $61.17 per hour $ 378,581
fuel expenses  based upon actual costs $ 31,920
Total Expenses $ 410,501

II. Deductions - Estimated Farebox Revenue- January 2020 – December 2020

Estimated Farebox Revenue* $ 85,000

* Because the City offers the Trolley as a fare-free service, An average fare that would have been collected had the City charged RTD’s local fare for the Trolley service, and using the Operating Parameters set out in Exhibit A has been agreed upon by the parties.

RTD Funding*

$410,501 (Expenses)

- $ 85,000 (Estimated Farebox Revenue)

RTD Funding $325,501

*The RTD Funding is calculated as the Net Cost of operating the Trolley service up to the amount set out above. Net Cost is calculated as Expenses (all operating costs for the Trolley including fuel but not administrative costs) less Estimated Farebox Revenue.

Estimated Monthly Invoicing (if all hours/miles provided as in Exhibit A):

Hours: $ 31,548.41 (515 hours @ $61.17)
Fuel Expenses: $ 2,660.00 (estimated – to be calculated @ actual cost)
Estimated Farebox Revenue $ (7,083.33)

Estimated Monthly Total $ 27,125.08
Exhibit C
Communication and Notices – Contacts

For the City:
City of Englewood
Community Development Department
1000 Englewood Parkway
Englewood, Colorado 80110
Attn:

For the RTD:
Regional Transportation District
1660 Blake Street
Denver, Colorado 80202
Attn: Fred Worthen
303.299.2842
Fred.Worthen@rtd-denver.com
Exhibit D
Special Provisions

REPORTS. On a monthly basis the Local Entity and/or its representative will submit a report to RTD providing a summary of Services. The Monthly Report must include the following: (1) ridership by day, and hours and (2) the number passengers, wheelchairs and bikes and (3) the number of days, hours and a monthly breakdown showing boarding’s per hour and by day.

ADDITIONAL RECORD KEEPING AND REPORTING REQUIREMENTS. In addition to the requirements set out in Section 6 of the Agreement, the Local Entity or its designated agent will maintain and make available for RTD audit, records of passenger boarding’s, passenger mileage, vehicle mileage, and any other information RTD requests. Data required by NTD of Parties shall be kept in accordance with FTA requirements and regulations.

MARKETING MATERIALS. The Local Entity will provide RTD with copies of any proposed marketing materials for the. RTD will have 10 business days to review any materials and provide comment to the Local Entity. The Local Entity will have final say on any issues related to marketing materials or marketing plans.

DRUG AND ALCOHOL TESTING PROGRAM. The Local Entity shall require its contractor providing the Services to establish and implement a drug and alcohol testing program that complies with 49 C.F.R. Part 40 and Part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of Colorado, or the Regional Transportation District, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Part 40 and 655 and review the testing process. The Local Entity further agrees to certify annually its compliance with Part 40 and 655 before December 31st of every year and to submit the Management Information System (MIS) reports no later than February 15th of every year to the Substance Abuse Testing Department, Regional Transportation District, 1660 Blake Street, Denver, CO 80202. To certify compliance, the Local Entity will use the “Substance Abuse Certifications” in the “Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements,” which is published annually in the Federal Register.
Transit Equity

RTD has established a Title VI Program in pursuit of transit equity and compliance with Title VI of the Civil Rights Act of 1964, 49 CFR Part 21, Executive Order 12898 (Environmental Justice), and applicable requirements. The objectives of RTD’s Title VI Program include:

1. Ensure that the level and quality of public transportation service is provided in a nondiscriminatory manner;
2. Promote full and fair participation in public transportation decision-making without regard to race, color, or national origin;
3. Ensure meaningful access to transit-related programs and activities by persons with limited English proficiency.

For the purposes of achieving these objectives, the local entity will be treated as an extension of RTD for compliance with the objectives of Title VI.

The local entity agrees to operate its RTD funded services without discrimination based on race, color, or national origin in accordance with RTD’s Title VI Program. Pursuant to compliance with RTD’s Title VI Program, the local entity shall:

1. Post a notice regarding the RTD funded service containing the following language: This service is funded in partnership with RTD. RTD operates its programs and services without regard to race, color, and national origin in accordance with Title VI of the Civil Rights Act of 1964. Any person who believes they have been subjected to unlawful discrimination under Title VI may file a complaint with RTD.

To file a complaint or obtain more information regarding RTD’s complaint procedures, visit https://www.rtd-denver.com/reports-and-policies/title-vi-policy, call 303-299-6000; email titlevicomplaints@rtd-denver.com; or visit RTD’s administrative office at 1660 Blake Street, Denver, CO 80202.

a. The local entity must post a copy of this notice on their website and any vehicles of services that are RTD funded.
2. Notify RTD of any written complaints asserting discrimination based on race, color or national origin involving RTD funded services within 15 calendar days of receipt. The local entity shall comply with any investigations and requests for information regarding complaints of discrimination.

Should RTD find that any practice, policy, or procedure of the local entity result in a discriminatory outcome, RTD will provide specific instructions to the local entity on how corrective action shall be taken.

The local entity is exempt from the RTD Title VI Program requirements if the local entity is a direct recipient of federal financial assistance from the FTA. The local entity must annually submit a letter indicating its direct recipient status to be held exempt from the Title VI Program requirements.