



Office of the City Manager

PUBLIC HEARING

April 30, 2019

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Phillip L. Harrington, Director, Department of Public Works  
 Subject: FlixBus Franchise Agreement for Long-Distance Bus Service

RECOMMENDATION

Pursuant to Berkeley Municipal Code Chapter 9.60, conduct a public hearing and upon conclusion, adopt the first reading of an Ordinance granting a franchise agreement between FlixBus, Inc. and the City of Berkeley to provide long distance bus service to the public.

FISCAL IMPACTS OF RECOMMENDATION

The current proposal is for the FlixBus stop to be located on the University of California, Berkeley (UC Berkeley) campus on the West Crescent, east of Oxford Street between Center and Addison Streets. The fees associated with the Franchise Agreement are proposed to be structured as follows and as shown in Exhibit B.

- With the FlixBus stop located on the UC Berkeley campus, as currently proposed, the franchise fee would consist of a roadway usage fee of \$0.10 per trip, for an annual total of \$169 to be deposited in the General Fund (Fund 011). This is in addition to the diesel fuel tax collected by the State, part of which is returned to the cities for roadway maintenance.
- If FlixBus instead were to locate its stop within City right-of-way, a bus-stop maintenance fee of \$400 would be added to the roadway usage fee, for an annual total of \$569. The maintenance fee would be deposited in the General Fund (Fund 011).
- If the FlixBus stop were to be located in the City right-of-way where there are currently metered parking spaces, FlixBus would also pay the parking meter rate for the total annual dwell time of the buses. This amount is estimated to be \$986 for the first year, for a total annual fee of \$1,555 (\$169+\$400+\$986). The parking meter fee would be deposited into the Parking Meter Fund (Fund 631).

In addition to the above-listed fees, FlixBus would need to separately pay a permit application fee, to reimburse staff time for reviewing the application, before being issued a permit for any bus stop proposed to be located within City right-of-way. As mentioned

above, the current proposal is for the FlixBus stop to be located on the UC Berkeley campus.

#### CURRENT SITUATION AND ITS EFFECTS

There is no direct access to long distance (intercity or interstate) bus service in Berkeley. Current operators (Greyhound, Megabus, Hoang Express) have their stops in Oakland, the closest of which is the Greyhound bus terminal on San Pablo Avenue at 21<sup>st</sup> Street. The only Berkeley access to long-distance public transportation is the train station on Second Street, which is served by Amtrak's Capitol Corridor line that runs between the Bay Area and Sacramento.

This lack of direct access to long-distance public transportation is surprising given that Berkeley is home to the UC Berkeley campus, which attracts a substantial number of out-of-town students. UC Berkeley in particular has a high concentration of students and individuals who originate from California's central and southern areas.

FlixBus is a long-distance bus company proposing routes that will connect Berkeley to Southern California and Salt Lake City, Utah, with points in between. The company has obtained approval from the California Public Utilities Commission (CPUC) to provide intercity bus service and is already operating at a bus stop in San Francisco. They have worked with UC Berkeley staff to locate a stop on campus adjacent to Crescent Lawn, situated between University Avenue and Center Street east of Oxford Street. They plan to start serving Berkeley in spring 2019.

The City Attorney determined upon a review of the City's Charter that FlixBus must obtain a franchise agreement before operating transportation services on public streets.

#### BACKGROUND

Council adopted a resolution on March 26, 2019, declaring the Council's intention to consider at a public hearing, set for April 30, 2019, whether to grant a franchise to FlixBus to provide long-distance bus service to the Berkeley public. Previous to this action, Council directed the City Manager to initiate a franchise agreement with FlixBus on October 30, 2018. FlixBus contacted staff in late 2017 regarding their desire to provide service in the City and worked with Council, as directed by the Berkeley Municipal Code Chapter 9.60, to get the initiation of a franchise agreement referred by Council to the City Manager.

The City's General Plan contains several policies and actions to support the expansion of public transportation. Entering into a franchise agreement to allow FlixBus service in Berkeley is consistent with "Policy T-2: Public Transportation Improvements: Encourage regional and local efforts to maintain and enhance public transportation services."

FlixBus originated in Europe in 2013 and is currently providing international long-distance bus service between twenty-eight (28) European countries. The company received California Public Utilities Commission (CPUC) approval on June 12, 2018 for

operating intrastate long-distance bus service and has begun operations in California, Nevada, and Arizona.

FlixBus is responsible for network planning, customer service, quality management, marketing and sales, ticketing, pricing, and business development. The company employs existing regional bus operators for the day-to-day transporting of passengers. All buses are equipped with Wi-Fi and power outlets and allow bicycles on-board as luggage. Fare prices are dynamic. As an example, one-way fares from the Bay Area (San Francisco or Oakland) to Los Angeles range from \$4.99 to \$54.99, depending on date and time of travel.

#### ENVIRONMENTAL SUSTAINABILITY

FlixBus will provide long-distance bus service to visitors to and residents of Berkeley and will integrate into the existing transportation network. Buses are one of the most efficient methods of transportation. At a conservative estimate of 5 mpg, a bus carrying half of its capacity, 27 passengers, has an effective fuel economy of 135 passenger miles per gallon, dwarfing that of even the most efficient hybrid personal vehicles which average 45 miles per gallon. Furthermore, buses reduce the number of vehicles on the road, and thus reduce congestion. FlixBus is proposing and promoting carbon-dioxide offsets as an option with ticket purchase to every customer. The FlixBus service will help the City achieve the Berkeley Climate Action Plan greenhouse gas emission reduction targets of 33% below year 2000 levels by the year 2020, and 80% below year 2000 levels by 2050.

#### RATIONALE FOR RECOMMENDATION

FlixBus will address public demand for direct access to long-distance public transportation. The current proposal to locate the Berkeley bus stop on the western edge of the UC Berkeley campus places it in close proximity to the City's downtown, a transit-rich environment that provides direct and convenient access for Berkeley residents, visitors and the campus community.

#### ALTERNATIVE ACTIONS CONSIDERED

Council could opt to have language edited, added, or removed from the franchise agreement. Council could also reject the franchise agreement in totality, which would result in no direct access in Berkeley to a publicly available long-distance bus service.

#### CONTACT PERSON

Farid Javandel, Transportation Division Manager, Public Works, (510) 981-7061  
Beth Thomas, Principal Planner, Public Works, (510) 981-7068

#### Attachments:

1: Ordinance

Exhibit A: DRAFT Franchise Agreement between FlixBus, Inc., and the City of Berkeley

- Exhibit B: Franchise Fees – Initial Launch and Future Adjustments
- 2: FlixBus Route Maps
  - 3: Public Hearing Notice

ORDINANCE NO. ##,###-N.S.

AUTHORIZING THE CITY MANAGER TO EXECUTE A FRANCHISE AGREEMENT BETWEEN FLIXBUS, INC. AND THE CITY TO OPERATE LONG-DISTANCE BUS SERVICE IN BERKELEY FOR AT LEAST A TEN-YEAR TERM

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. The Council finds as follows:

- a. Council referred to the City Manager the initiation of a franchise agreement with FlixBus, Inc. (FlixBus) on October 30, 2018.
- b. Council adopted a resolution on March 26, 2019, declaring the Council's intention to consider at a public hearing, set for April 30, 2019 at 6:00 p.m., whether to grant a franchise to FlixBus to provide long-distance bus service to the Berkeley public.
- c. The City's Climate Action Plan has set a target of reducing transportation emissions 33% below 2000 levels by 2020, and 80% below 2000 levels by 2050. The Plan states that transportation modes, such as public transit, walking, and cycling, must become primary means of fulfilling the City's mobility needs to achieve these targets.
- d. The City's General Plan includes Policy T-2: Public Transportation Improvements: Encourage regional and local efforts to maintain and enhance public transportation services.
- e. The only current direct access to long-distance public transportation within Berkeley is the Amtrak station located at University Avenue and Second Street for the Capitol Corridor route between Sacramento and San Jose.
- f. FlixBus is a long-distance bus company proposing routes that will connect Berkeley to Southern California and Salt Lake City, Utah, with points in between.
- g. FlixBus has obtained approval from the California Public Utilities Commission (CPUC) to provide intercity bus service and is already operating at a bus stop in San Francisco.
- h. The execution of a franchise agreement with FlixBus will enable long-distance bus service to operate on City streets.
- i. FlixBus will work with City Public Works staff regarding their service and will meet reporting requirements as indicated in Exhibit A.

Section 2. The City Manager is hereby authorized to enter into a 10-year franchise agreement, which may be extended upon mutual consent with FlixBus Inc., as operator

of long-distance bus service in Berkeley. A franchise fee schedule, as proposed in Exhibit B, will be reviewed annually and adjusted as needed based on analysis of staff time, required resources, the stop location(s), service levels, and meter rates. Revenue from the Roadway Usage Fees and Bus Stop Base Fees will be deposited into the Fund 011 General Fund. Revenue from the Bus Stop Usage Fee will be deposited into the Fund 631 Parking Meter Fund. Contract terms are further described in the draft franchise agreement set forth in Exhibit A.

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

Exhibits

A: DRAFT Franchise Agreement between FlixBus, Inc., and the City of Berkeley

B: Initial Franchise Fees

## **FLIXBUS, INC. FRANCHISE AGREEMENT**

**THIS agreement** is made and entered into this day of [REDACTED], 2019 by and between the City of Berkeley, a municipal corporation ("City"), and FLIXBUS, INC., a Delaware corporation with a registration in San Francisco, California ("Grantee").

**WHEREAS**, pursuant to Chapter 9.60 of the Berkeley Municipal Code (BMC), Grantee has applied to City for a Franchise to provide inter-city and inter-state bus service to the public with a stop in the City of Berkeley ("Franchise"); and

**WHEREAS**, on March 26, 2019 and April 2, 2019, the City Council held a public hearing for the purpose of hearing persons in favor of or in opposition to the granting of such Franchise; and

**WHEREAS**, the City Council has determined that the grant of such Franchise to Grantee is in the public interest; and

**WHEREAS**, City and Grantee desire to enter into a Franchise Agreement ("Agreement") in order that Grantee may provide inter-city and inter-state bus service in the City of Berkeley;

**NOW, THEREFORE**, City and Grantee do hereby agree as follows:

### **1. GRANT OF FRANCHISE**

By Ordinance No. [REDACTED] City granted to Grantee an exclusive Franchise authorizing Grantee to provide inter-city and inter-state bus service to the public in the City of Berkeley and to use the public rights of way for such purpose no sooner than thirty (30) days after the second public hearing. Grantee acknowledges that this Franchise is subject to the terms and conditions specified in the City Charter, the terms and conditions specified in Ordinance No. [REDACTED]-N.S., the provisions of Chapter 9.60 of the Berkeley Municipal Code, and the terms and conditions of this Franchise agreement ("Agreement").

### **2. TERM OF FRANCHISE**

Subject to Section 11 of this Agreement, the Franchise shall be not less than 10 years. Grantee shall pay annual Franchise fees as set forth by the Public Works Department. Initial fees are set forth in Exhibit A.

### **3. RELATIONSHIP OF GRANTEE TO CITY**

A. Grantee shall be deemed at all times to be a franchisee and shall be wholly responsible for the manner in which Grantee performs the services required of Grantee by the terms of this Agreement. Grantee shall be liable for the acts and omissions of it, its employees and its agents. Nothing contained herein shall be construed as creating an employment or agency relationship between City and Grantee.

- B. Terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Grantee's services only and not to the means by which such a result is obtained.
- C. Nothing in this Agreement shall operate to confer rights or benefits on persons or entities not party to this Agreement.

#### **4. GRANTEE'S RECORDS AND REPORTING**

- A. Grantee shall keep and maintain books of account and other records showing all business transactions conducted by Grantee in connection with the Franchise granted to Grantee. Such records shall be kept at Grantee's place of business shown in Section 15 of this Agreement for receipt of notices.
- B. Grantee shall require its subcontractors, if any, who perform any services in connection with the Franchise granted to Grantee to keep and maintain books of account and other records showing all business transactions conducted by such subcontractors in connection with the Franchise granted to Grantee.
- C. Pursuant to Section 61 of the City Charter, all such books of account and other records shall be subject to inspection and/or audit at Grantee's place of business during normal business hours upon request or demand of the City Manager, City Auditor, City Attorney, or other City officer, employee or consultant authorized by any of these officers. The purpose of such inspection and/or audit shall be for verification of any fees or penalties paid by Grantee, and the accuracy thereof.
- D. Operator shall deliver a report twice annually to the City. The half-year report will be due January 31 for the period covering July 1 through December 31 of the previous calendar year. The annual report will be due July 31 for the previous fiscal year of July 1 through June 30. It shall be submitted in Microsoft Word and PDF and contain information as required by the Public Works Department. The following pieces of information are required to be included by the Grantee in the report: average daily passenger boardings and alightings at the Grantee's bus stop in Berkeley for the period covered by the report, including the average for weekdays and weekend days; frequency and schedule of the grantee's bus service to the Berkeley stop by route, including any schedule changes that occurred during the reporting period; and a list of complaints and positive feedback about the Grantee's buses or bus service received during the reporting period from Berkeley passengers.

#### **5. AUDIT REQUIREMENT**

In the event any audit conducted by City or by City's representative discloses that Grantee has made any intentional misrepresentation with respect to the fees or penalties due to City, or discloses that Grantee has underpaid fees or penalties due to City in an amount greater than One Thousand Dollars (\$1,000), then in addition to

any other remedies available to City, Grantee shall reimburse City for City's costs incurred in the performance of the audit. Such reimbursement shall be paid by Grantee within thirty (30) days of the date City notifies Grantee of the amount of City's costs.

## **6. INDEMNIFICATION**

- A. Grantee shall defend, indemnify, and save harmless City and its respective commissioners, officers, agencies, departments, agents, and employees (each, an "Indemnified Party"; and collectively, "Indemnified Parties") from and against any and all claims, demands, causes of action, proceedings or lawsuits brought by third-parties ("Claims"), and all losses, damages, liabilities, penalties, fines, forfeitures, costs and expenses arising from or incidental to any Claims (including attorneys' fees and other costs of defense) (collectively, with Claims, "Liabilities"), resulting from, or arising out of, the operation of inter-city and inter-state bus services and the provision of services, whether such operation or services is performed or provided by Grantee or by Grantee's subcontractors or any other person acting for or on behalf of Grantee.
- B. Notwithstanding the foregoing, the following shall be excluded from Grantee's indemnification and defense obligations contained in the preceding paragraph:
  1. Any Liabilities to the extent resulting from, or arising out of:
    - a. the gross negligence or willful misconduct of any Indemnified Party; or
    - b. Grantee complying with the written directives or written requirements of City, if Grantee has previously objected to such written directives or requirements in writing, with respect to (A) the location or configuration of a bus stop in relation to the street or sidewalk on which such bus stop is located or to which it adjoins, or (B) a City's standards for alteration or maintenance of sidewalks.
- C. The indemnification obligations set forth in section 6(A) above include any claim against Grantee or City contesting City's authority to issue a permit for a bus stop..
- D. Upon receipt by any Indemnified Party of actual notice of a Claim to which such Indemnified Party is entitled to indemnification in accordance with this Section 6, such Indemnified Party shall give prompt notice of such Claim to Grantee. Grantee shall assume and prosecute the defense of such Claim at the sole cost and expense of Grantee. Grantee may settle any such Claim in its discretion so long as such settlement includes an unconditional release of the Indemnified Party.

- E. Nothing in this Agreement shall constitute a waiver or limitation of any rights which City may have under applicable law. All rights and remedies of City, whether under this Agreement or other applicable law, shall be cumulative.

## **7. INSURANCE REQUIREMENTS**

- A. Minimum Coverages. The insurance requirements specified in this section shall cover Grantee's own liability and the liability arising out of work or services performed under this Agreement by any subconsultants, subcontractors, suppliers, temporary workers, independent contractors, leased employees, or any other persons, firms or corporations that Grantee authorizes to work under this Agreement (hereinafter referred to as "Agent"). Grantee shall, at its own expense, obtain and maintain in effect at all times during the life of this Agreement the following types of insurance against claims, damages and losses due to injuries to persons or damage to property or other losses that may arise in connection with the performance of work under this Agreement.
- B. Grantee shall include in every subcontract the requirement that the Agent maintain adequate insurance coverage with appropriate limits and endorsements to cover the risks associated with work to be performed by the Agent. To the extent that an Agent does not procure and maintain such insurance coverage, Grantee shall be responsible for any and all costs and expenses that may be incurred in securing such coverage or in fulfilling Grantee's indemnity obligation under Section 6 as to itself or any of its Agents in the absence of such coverage.
- C. In the event Grantee or its Agents procure excess or umbrella coverage to maintain certain requirements outlined below, these policies shall also satisfy all specified endorsements and stipulations, including provisions that Grantee's or its Agent's insurance, as the case may be, be primary without right of contribution from City.
  - 1. Workers' Compensation Insurance with Statutory limits, and Employer's Liability Insurance with a limit of not less than \$1,000,000 per employee for injury by disease and \$1,000,000 for injury for each accident, and any and all other coverage of Grantee's employees as may be required by applicable law. Such policy shall contain a Waiver of Subrogation in favor of City. Such Workers' Compensation & Employer's Liability may be waived, if and only for as long as Grantee is a sole proprietor or a corporation with stock 100% owned by officers with no employees.
  - 2. Commercial General Liability Insurance for Bodily Injury and Property Damage liability, covering the operations of Grantee and Grantee's officers, agents, and employees and with limits of liability which shall not be less than \$2,000,000 combined single limit per occurrence with a general aggregate liability of not less than \$2,000,000, and Personal & Advertising Injury liability with a limit of not less than \$2,000,000. Such policy shall contain a Waiver of

Subrogation in favor of City. City and its commissioners, directors, officers, representatives, agents and employees are to be named as additional insureds. Such insurance shall be primary and contain a Separation of Insureds Clause as respects any claims, losses or liability arising directly or indirectly from Operator's operations.

3. Business Automobile Insurance for all automobiles owned (if any), used or maintained by Grantee and Grantee's officers, agents and employees, including but not limited to owned (if any), leased (if any), non-owned and hired automobiles, with limits of liability which shall not be less than \$5,000,000 combined single limit per accident.
  4. Umbrella Insurance in the amount of \$3,000,000 providing excess limits over Employer's Liability, Automobile Liability, and Commercial General Liability Insurance. Such umbrella coverage shall be following form to underlying coverage including all endorsements and additional insured requirements.
- D. Acceptable Insurers. All policies will be issued by insurers qualified to do business in California and with a Best's Rating of A-VIII or better.
- E. Self-Insurance. Grantee's obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance, upon evidence of financial capacity satisfactory to City.
- F. Deductibles and Retentions. Grantee shall be responsible for payment of any deductible or retention on Grantee's policies without right of contribution from City. Deductible and retention provisions shall not contain any restrictions as to how or by whom the deductible or retention is paid. Any deductible or retention provision limiting payment to the Named Insured is unacceptable.
- G. In the event that City is entitled to coverage as an additional insured under any Grantee insurance policy that contains a deductible or self-insured retention, Grantee shall satisfy such deductible or self-insured retention to the extent of loss covered by such policy, for any lawsuit arising from or connected with any alleged act of Grantee, subconsultant, subcontractor, or any of their employees, officers or directors, even if Grantee or subconsultant is not a named defendant in the lawsuit.
- H. Insurance shall be primary insurance and no other insurance or self insured retention carried or held by any named or additional insureds other than the Grantee or its contractors shall be called upon to contribute to a loss covered by insurance for the named insured.
- I. Claims Made Coverage. If any insurance specified above is written on a "Claims-Made" (rather than an "occurrence") basis, then in addition to the coverage requirements above, Grantee shall:

1. Ensure that the Retroactive Date is shown on the policy, and such date must be before the date of this Agreement or the beginning of any work under this Agreement;
  2. Maintain and provide evidence of similar insurance for at least three (3) years following the expiration or termination of this Agreement, including the requirement of adding all additional insureds; and
  3. If insurance is cancelled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the commencement of any work hereunder, Operator shall purchase “extended reporting” coverage for a minimum of three (3) years after the expiration or termination of this Agreement.
- J. Failure to Maintain Insurance. All insurance specified above shall remain in force until the expiration or termination of this Agreement. Grantee must notify City if any of the above required coverages are non-renewed or cancelled. The failure to procure or maintain required insurance and/or an adequately funded self-insurance program will constitute a material breach of this Agreement.
- K. Certificates of Insurance. Prior to commencement of any work hereunder, Grantee shall deliver to City Certificates of Insurance verifying the aforementioned coverages. Such certificates shall make reference to all provisions and endorsements referred to above and shall be signed on behalf of the insurer by an authorized representative thereof.
- L. Disclaimer. The foregoing requirements as to the types and limits of insurance coverage to be maintained by Grantee are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Grantee.

## **8. EQUIPMENT**

Any and all equipment necessary for establishing bus stops in the City right of way shall be prepared and installed by the Grantee, including surveys to establish underground utility locations, developing site plans, and getting City-issued permits. The City’s Public Works Department is solely authorized to identify suitable bus stop locations and provide approval for establishing bus stops.

## **9. COMPLIANCE WITH LAW**

Grantee shall perform, implement and manage the installation, operation, maintenance and removal of bus stop equipment in accordance with applicable federal, state, and local law, in accordance with all regulations promulgated under such laws, and in accordance with the terms and conditions of this Agreement.

## **10. PERMITS AND LICENSES**

Grantee shall obtain and maintain, at Grantee's sole cost and expense, all permits and licenses applicable to Grantee's operations under this Franchise, which are required of Grantee by any governmental agency.

## **11. TERMINATION OF FRANCHISE**

- A. If at any time City believes Grantee may not be adequately performing its obligations under this Agreement, City may request from Grantee written assurances of performance and a written plan to correct observed deficiencies in Grantee's performance if written notice of the same is provided by City. Failure to provide written assurances constitutes a separate ground to declare a default under this Agreement.
- B. Grantee shall be in default of this Agreement and City may, in addition to any other legal or equitable remedies available to City, terminate the Grantee's right to perform under the Franchise:
1. Should Grantee make a general assignment for the benefit of creditors, admit in writing its inability to pay its debts as they become due, file a voluntary petition in bankruptcy, be adjudged bankrupt or insolvent, file a petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future statute, law, or regulation, filing any answer admitting or not contesting the material allegations of a petition filed against Grantee in any such proceeding, or seek, consent to, or acquiesce in, the appointment of any trustee, receiver, custodian or liquidator of Grantee or of all or any substantial part of the properties of Grantee, or if Grantee, its directors or shareholders, take action to dissolve or liquidate Grantee; or
  2. Should Grantee commit a material breach of this Agreement and not cure such breach within ten (10) calendar days of the date of notice from City to Grantee demanding such cure; or, if such failure is curable but not curable within such ten (10) day period, within such period of time as is reasonably necessary to accomplish such cure. (In order for Grantee to avail itself of this time period in excess of 10 calendar days, Grantee must provide City within the 10 day period a written plan acceptable to City to cure said breach, and then diligently commence and continue such cure according to the written plan); or
  3. Should Grantee violate or allow a violation of any valid law, statute, regulation, rule, ordinance, permit, license or order of any governmental agency applicable to the Franchise and does not cure such violation within ten (10) days of the date of the notice from City to Grantee demanding such cure; or, if such failure is curable but not curable within such ten (10) day

period, within such period of time as is reasonably necessary to accomplish such cure. (In order for Grantee to avail itself of this time period in excess of 10 calendar days, Grantee must provide City within the 10 day period a written plan to cure said violation acceptable to City, and then diligently commence and continue performance of such cure according to the written plan.).

- C. Convenience Termination: If at any time the City or the Grantee would like to terminate the Franchise, 90 days' notice shall be required. The City will return unused Franchise fees to the Grantee and the Grantee will remove all of their installations in the public right of way, including but not limited to street furniture, pavement markings, and poles and ensure that the public right of way is returned to its original condition prior to Grantee's installations.

## **12. COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT**

Grantee acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Grantee shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights laws. Grantee will not be responsible for ADA matters which are in the control of City. Grantee agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Grantee, its employees, agents or assigns shall constitute a material breach of this Agreement.

## **13. NON- DISCRIMINATION**

In order to minimize the probability of a claim being filed against the City, in the performance of this Agreement, Grantee shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, age (over 40), sex, pregnancy, marital status, disability, sexual orientation or AIDS.

## **14. CITY BUSINESS LICENSE, PAYMENT OF TAXES, TAX I.D. NUMBER**

Grantee has obtained a City business license as required by B.M.C. Chapter 9.04, and its license number is written below; or, Grantee is exempt from the provisions of B.M.C. Chapter 9.04 and has written below the specific B.M.C. section under which it is exempt. Contractor shall pay all state and federal income taxes and any other taxes due. Grantee certifies under penalty of perjury that the taxpayer identification number written below is correct.

**15. RECEIPT OF NOTICES**

A written notice is deemed served when a party sends the notice in an envelope addressed to the other party to this Agreement and deposits it with the U.S. Postal Service, first class mail, postage prepaid. For purposes of this Agreement, all notices to City shall be addressed as follows:

City Manager  
City of Berkeley  
2180 Milvia Street, 5th Floor  
Berkeley, CA 94704

For purposes of this Agreement, all notices to Grantee shall be addressed as follows:

Pierre Gourdain  
FLIXBUS, INC.  
12575 Beatrice Street  
Los Angeles, CA 90066

**16. GOVERNING LAW/VENUE**

This Agreement shall be deemed to have been executed in Alameda County. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California, excluding its conflict of laws rules. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in Alameda County, California.

**17. CONFIDENTIALITY**

A. Grantee acknowledges and agrees that City is a public entity subject to the provisions of the Public Records Act (Cal. Gov. C. 6250 et seq.) Except as otherwise required by law, including the Charter of the City of Berkeley and the Berkeley Municipal Code, City will not disclose trade secrets or proprietary financial information received from Grantee. Any such trade secrets or proprietary financial information which Grantee believes should be exempted from disclosure shall be specifically identified and marked as such. Blanket-type identification by designating whole pages or sections shall not be permitted and shall be invalid. The specific information must be clearly identified as such.

B. Duty to Defend:

Upon a request for records regarding this Agreement, City will immediately notify Grantee and specify a time when the records will be made available for inspection. If the Grantee, in a timely manner, identifies any proprietary, trade secret, or confidential commercial or financial information which Grantee determines is not subject to public disclosure, the Grantee will be required to fully

defend (including all attorney's fees and costs), in all forums, the City's refusal to produce such information; otherwise, City will make such information available to the extent required by law. To the maximum extent permitted by law, Grantee shall release and hold harmless City from any and all judgments, liabilities, fines or penalties imposed as a result of City's refusal to disclose records regarding this Agreement.

**18. AMENDMENTS**

The terms and conditions of this Agreement shall not be altered or otherwise modified except by a written amendment to this Agreement executed by City and Grantee.

**19. ENTIRE CONTRACT**

The terms and conditions of this Agreement, all exhibits attached and any documents expressly incorporated by reference represent the entire agreement between the parties with respect to the subject matter of this Agreement. This Agreement shall supersede any and all prior contracts, oral or written, regarding the subject matter between City and Grantee. No other contract, statement, or promise relating to the subject matter of this Agreement shall be valid or binding except by a written amendment to this Agreement.

**20. SEVERABILITY**

If any part of this Agreement or the application thereof is declared invalid for any reason, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision or application, and to this end the provisions of this Agreement are declared to be severable.

**21. WAIVER**

Failure of City to insist on strict performance shall not constitute a waiver of any of the provisions of this Agreement or a waiver of any other default of Grantee.

**22. ASSIGNMENT**

Grantee may not assign this Agreement without the prior written consent of the City, except that Grantee may assign its right to any money due or to become due hereunder.

**23. SECTION HEADINGS**

The sections and other headings of this Agreement are for convenience of reference only and shall be disregarded in the interpretation of this Agreement.



**WITNESS** THE EXECUTION OF this agreement ON THE DATE WRITTEN BELOW EACH SIGNATURE:

CITY OF BERKELEY

By: \_\_\_\_\_  
City Manager

Countersigned by:

\_\_\_\_\_  
CITY AUDITOR

Attest:

\_\_\_\_\_  
City CLERK

Approved as to Form:

\_\_\_\_\_  
Deputy City Attorney

GRANTEE

\_\_\_\_\_  
Grantee Representative Name (printed or typed)

By:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed name and title of signatory, if different from Grantee Representative name

Tax Identification No. \_\_\_\_\_

Berkeley Business License No \_\_\_\_\_

Incorporated: Yes \_\_\_\_\_ No \_\_\_\_\_

Certified Woman Business Enterprise: Yes \_\_\_\_\_ No \_\_\_\_\_

Certified Minority Business Enterprise: Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, state ethnicity: \_\_\_\_\_

Certified Disadvantaged Business Enterprise: Yes \_\_\_\_\_ No \_\_\_\_\_

Franchise Fees – Initial Launch and Future Adjustments

Description of Fees			Deposit Account
Roadway usage fee	Calculated by the number of trips scheduled using City of Berkeley streets, annual true up based on actual service.		General Fund 011
Bus stop base fee	Calculated as a per bus stop base fee for establishing and maintaining a bus stop in the City's right-of-way.		General Fund 011
Bus stop usage fee	Calculated as a per bus stop usage fee for having a stop in a metered area, based on dwell time and meter rates. Annual true-up based on average dwell time and meter rates.		Parking Meters Fund 631
Roadway Usage Fee			
Fee Type	Cost	Unit	Explanation
Roadway usage fee	\$ 0.10	per trip	Assumes 28 trips per week for 39 weeks a year, 46 trips per for for 13 weeks a year for a total of 1690 trips. True-up for actual number of trips.
Estimated annual roadway usage fee	\$ 169.00		
Bus Stop Base Fee (Only if bus stop in City's right of way)			
Fee Type	Cost	Unit	Explanation
Bus stop base fee	\$ 400.00	per stop	Covers maintenance and staff time for each stop in the City's right of way. The Department of Public Works is solely responsible for establishing a bus stop, including curb painting. Franchise fees do not include encroachment permits fees or Berkeley business license. Applicant is responsible for obtaining an encroachment permit for installing infrastructure such as poles, flags, or other street furniture. Applicant is responsible for coordinating with an underground utility location company before installing infrastructure that requires any drilling.
Bus Stop Usage Fee (Only if bus stop in City's right of way in a metered area)			
Fee Type	Cost	Unit	Explanation
Estimated average vehicle dwell time	0.17	Hour	Provided by Flixbus, true up for calculated average dwell time
Estimated annual usage of stop	1690	Times	Provided by Flixbus, true up for actual usage
Estimated meter rate	\$ 3.50	Hour	Example - based on City rates in the metered area where the bus stop is located
Estimated annual bus stop usage fee	\$ 985.83		Actual fee depends on meter rates in the area where bus stop located
Examples of Possible Annual Fees			
			<i>Bus stop not in City's right of way</i> \$ 169.00
			<i>One bus stop in City's right of way in non-metered area</i> \$ 569.00
			<i>One bus stop in City's right of way in Downtown Berkeley Premium Zone at \$3.50 per hour</i> \$ 1,554.83

Franchise fees subject to change annually based on analysis of staff time, required resources, stop locations, service levels, and meter rates.

### FLIXBUS ROUTE MAPS

#### Route 2001



Berkeley is part of our main 2001 line. It connects Sacramento, the Bay Area, and Los Angeles.

FlixBus has implemented a multi-stop strategy in the Bay Area and Los Angeles, allowing customers to enjoy more convenient pick-up and drop-off locations for their intercity journeys.

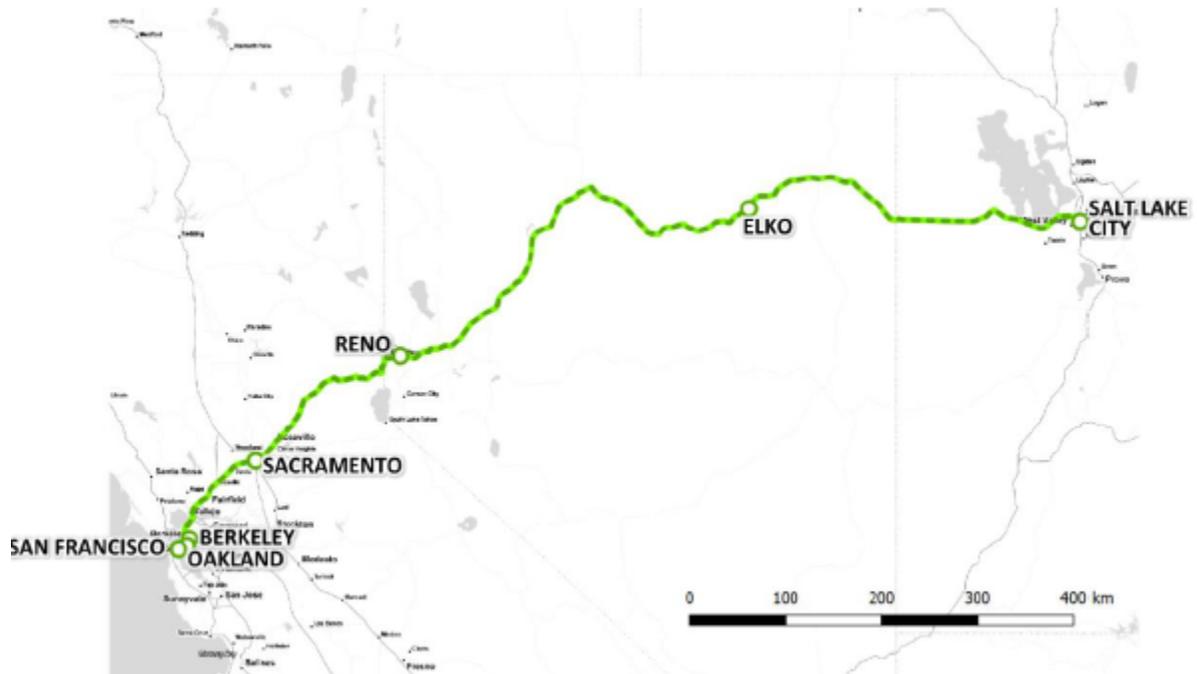
### Route N2007



The N2007 is an overnight bus, connecting wine country with the east Bay Area, Los Angeles and San Diego.

FlixBus will employ a multistop strategy in LA and San Diego, allowing for more direct and convenient trips for passengers. This line passes through Anaheim, creating a connection to the Disneyland parks and resorts.

Route N2301



The N2301 is an overnight bus, connecting the Bay Area with Nevada and Salt Lake City.

## NOTICE OF PUBLIC HEARING BERKELEY CITY COUNCIL

### FLIXBUS, INC. FRANCHISE HEARING

The Department of Public Works is proposing long-distance bus service within City limits with fees to cover capital work, operations, and maintenance, to be launched in Berkeley in 2019. FlixBus' initial proposed routes connect Berkeley to Southern California and Salt Lake City, Utah with points in between. FlixBus has coordinated with University of California, Berkeley staff to locate their initial stop on campus at Crescent Lawn, located between University Avenue and Center Street east of Oxford Street. The franchise agreement allows for the future possibility of bus stops in other locations as well as service changes.

The City is holding a public hearing regarding whether to grant a franchise of no less than 10 years to FlixBus, Inc. as an operator of long-distance bus service within city limits. A franchise is needed for FlixBus, Inc. to provide this service in Berkeley. Revenue from the franchise will be used to cover staff time and materials.

The hearing will be held on **April 30, 2019** at 6:00 p.m. in the Berkeley Unified School District Board Room, 1231 Addison Street, Berkeley.

A copy of the agenda material for this hearing will be available on the City's website at [www.CityofBerkeley.info](http://www.CityofBerkeley.info) as of **April 18, 2019**.

For further information, please contact Beth Thomas, Principal Planner, Department of Public Works at 510-981-7068.

Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

Communications to the Berkeley City Council are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the City Clerk. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk at 981-6900 or [clerk@cityofberkeley.info](mailto:clerk@cityofberkeley.info) for further information.

**Published:** April 5, 2019

Published pursuant to Berkeley Municipal Code Section 9.60.050

~~~~~  
I hereby certify that the Notice for this Public Hearing of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on April 18, 2019.

\_\_\_\_\_  
Mark Numainville, City Clerk

