

INTERLOCAL AGREEMENT FOR STREETCAR OPERATIONS AND MAINTENANCE

This Interlocal Agreement for Streetcar Operations and Maintenance (“Agreement”) is entered into by and between The City of Seattle (“the City”), a municipal corporation and first-class home rule city with a council-mayor form of government, and King County (“the County”), a home rule charter county and political subdivision of the State of Washington. The City and the County are sometimes referred to individually as a “Party” and, collectively, as the “Parties.”

RECITALS

Whereas, pursuant to Chapters 36.56 RCW and 35.58 RCW and public vote, the County is authorized to perform metropolitan public transportation functions; and

Whereas, the County has operated and maintained the City’s streetcar system since August 2007 under an Amended and Restated Interlocal Agreement (“ILA”) that will expire on December 31, 2019; and

Whereas, the Parties believe it is in their mutual best interests and in the best interest of the public for the County to continue to operate and maintain the City’s streetcar system; and

Whereas, the Parties also believe it is in their mutual best interests and in the best interest of the public for the City and the County to establish a unified framework agreement to govern the operation and maintenance of existing, new, and future elements of the City’s streetcar system;

NOW, THEREFORE, in consideration of the mutual rights, obligations and privileges granted and undertaken, the Parties enter into this Interlocal Agreement for Seattle Streetcar Operations and Maintenance upon the following terms and conditions.

TERMS AND CONDITIONS

1.0 Purpose, Scope and Term of Agreement.

1.1 Purpose and Scope.

A. The purpose of this Agreement is to establish a uniform framework governing the roles and responsibilities of the City and the County regarding the operation and maintenance of the City’s streetcar system.

B. The following Appendices form a part of this Agreement:

Appendix A	Definitions
Appendix B	Operations and Maintenance Responsibilities Matrix
Appendix C	Performance Standards

Appendix D	Report List
Appendix E	Points of Contact
Appendix F	Partnership Decal

If there is any conflict or ambiguity between this Agreement and anything contained within its Appendices as now existing or hereafter amended, then unless the Parties agree otherwise, in writing, the more specific provision shall govern and control the more general provision.

1.2 Definitions. Capitalized words, terms and abbreviations not defined in the body of this Agreement are defined in Appendix A.

1.3 Term. This Agreement shall take effect when fully executed by both Parties, as evidenced by their signatures below (“Effective Date”) and shall expire at 11:59 PM on December 31, 2024 (the “Term”). Provided this Agreement remains in effect and the County is not in default after receipt of notice and expiration of any applicable cure period, the City shall have the option to extend this Agreement for two additional periods of five (5) years, each, upon the same terms and conditions. Such extensions shall be self-executing unless the City notifies the County, in writing, at least twelve (12) months before the expiration of the then-current Term that it does not intend to extend the Agreement.

2.0 Seattle Streetcar System Description. As of the date of this Agreement, the Seattle streetcar system (“Seattle Streetcar”) consists of the track, equipment, and facilities associated with the modern streetcar lines commonly known as the South Lake Union Streetcar and the First Hill Streetcar. In general, the South Lake Union Streetcar includes approximately 1.3 miles of track, 11 station platforms, a fleet of 4 streetcar vehicles, an Overhead Contact System and traction power substations, and an Operations and Maintenance Facility located at 318 Fairview Ave N, Seattle, WA. The First Hill Streetcar generally includes approximately 2.5 miles of track, 14 station platforms, a fleet of 6 streetcar vehicles, an Overhead Contact System and traction power substations, and an Operations and Maintenance Facility located at 848 7th Ave S, Seattle, WA. The Parties anticipate that in the future the Seattle Streetcar may be expanded. Provided that the operation and maintenance of such expanded facilities does not materially alter the operational or financial relationship between the Parties, the Parties intend that when constructed, the expanded facilities shall be included in and subject to all the terms of this Agreement without the need for further legislative action.

3.0 Responsibilities.

3.1 County Obligations – General. The County shall:

A. Operate and maintain the Seattle Streetcar consistent with the allocation of responsibilities contained in this Agreement and in the Operations and Maintenance Responsibilities Matrix, Appendix B, and in accordance with the approved annual Operating Plans with the goal of

achieving the highest standards of performance at the lowest possible cost.

B. Comply with regulatory requirements affecting the operation of the Seattle Streetcar, including reporting to regulatory agencies (local, state, and federal) and providing information necessary to respond to audits.

3.2 City Obligations – General. The City shall:

A. Cooperate with the County in its development of the annual Operating Plan, defined in Section 3.2, and annual Baseline Costs estimates, defined in Section 4.1.

B. Pay all monthly charges for water, sewer and electricity (including traction power).

C. Undertake Capital Improvements to and replacements of streetcars and streetcar-related facilities and equipment as necessary.

D. Cooperate with the County to ensure compliance with the WSDOT Rail Safety Oversight Program Standard and other applicable federal, state, and local requirements.

E. Reimburse the County for its Seattle Streetcar-related costs and expenses as provided in this Agreement.

F. Complete other obligations as required under the Operations and Maintenance Responsibilities Matrix in Appendix B.

G. Develop and provide the County with an annual Service Plan in a timely manner.

3.3 Operating Plan. On or before the Effective Date, the County shall prepare and deliver to the City a plan to operate and maintain the Seattle Streetcar in accordance with the requirements of this Agreement and the City’s Service Plan for the 2020 Operating Year (the “Operating Plan”). Thereafter, on or before March 31 of each year of the Term, the County shall prepare and deliver to the City an updated Operating Plan for the following year that describes any major changes from the previous year’s plan. Each annual Operating Plan shall contain the County’s proposed staffing plan and organizational chart, a description of any major changes from the previous year, and such other information as the City may, from time to time, reasonably request. The Parties shall meet at least annually to review and collaborate on the development of the updated Operating Plan; and each year of the Term, following the final approval of the City and County budgets, the Parties shall review the following year’s Operating Plan for any necessary adjustment.

4.0 Compensation, Budget Process, Invoices, Payment and Cost Reconciliation.

4.1 Compensation, Baseline Costs, Baseline Revenue and Baseline Invoice Amount.

A. The City will reimburse the County for all Baseline Costs in excess of the Baseline Revenue, as defined in Sections 4.1B and 4.1C, respectively.

B. Baseline Costs means the projected annual cost to the County to provide its operating and maintenance responsibilities under this Agreement. Baseline Costs includes three components:

i. **Direct Costs** are the labor and non-labor expenses that are fully contained within the County’s Metro Transit Department, Rail Division, Streetcar Section. These expenses are based on the Seattle Streetcar staffing plan and projected non-labor needs.

ii. **Direct Project Costs** are expenses that are not within the County’s Metro Transit Department, Rail Division, Streetcar Section, but which are charged directly to specifically coded Streetcar projects for tracking.

iii. **Indirect Costs** are the costs of resources that are shared among the Rail Division and other County services, where each service is responsible for its pro rata share of the costs. These expenses are allocated to the Seattle Streetcar through the County’s Cost Allocation Model (“CAM”).

1. Under an extension of the Term of this Agreement as described in Section 1.3, beginning with the expiration of the County Contribution in 2028, the City will be exempt from charges for General Fund General Government expense, except for the Office of Performance Strategy and Budget, (contained in the AD OH P2 KC cost pool) and the King County Metro Transit Department General Manager’s Office expense (AD GM cost pool). In calculating Indirect Costs, the County will also cap the total annual expense charged to the City for the combination of the AD OH P2, AD OH P2 KC, and AD OH FTE cost pools at no more than 6% of fully-allocated streetcar Baseline Costs less charges from AD OH P2, AD OH P2 KC, and AD OH FTE. For illustrative purposes, the calculation shall be as follows:

$$(AD\ OH\ P2 + AD\ OH\ P2\ KC + AD\ OH\ FTE) / (Fully\ Allocated\ streetcar\ Baseline\ Cost - (AD\ OH\ P2 + AD\ OH\ P2\ KC + AD\ OH\ FTE)) \leq 6\%$$

C. Baseline Revenue refers to the revenue, credits or contributions agreed upon by the Parties. Baseline Revenue includes the following components:

- i. Projected fares collected on the Seattle Streetcar using the ORCA system or any replacement system (“ORCA Revenue”). ORCA Revenue will be retained by the County and included in Baseline Revenue. The County shall provide the City copies of the monthly ORCA reports detailing ORCA revenues generated by the Seattle Streetcar.
- ii. The County will contribute a fixed amount toward the operation and maintenance of the South Lake Union line (the “County Contribution”). The County Contribution shall be in the following amounts:

Year	County Contribution amount
2020	\$1,550,000.00
2021	\$1,596,500.00
2022	\$1,644,395.00
2023	\$1,693,726.85
2024	\$1,744,538.66

1. No later than 12 months prior to the expiration of the initial Term of this Agreement, the Parties shall agree in writing to the terms of any extension of the County Contribution beyond the initial five-year Term.

2. If the Parties fail to reach agreement on the extension of the County Contribution beyond the initial Term, and if the Term of this Agreement is extended beyond the initial Term, then the County Contribution shall continue for an additional three years, as follows:

Year	County Contribution amount
2025	\$872,269.33
2026	\$872,269.33
2027	\$872,269.33
2028	\$0.00
2029+	\$0.00

iii. As the reporting agency to the National Transit Database for the Seattle Streetcar, the County collects federal grant funding (“Streetcar Federal Formula Grant Revenue”) associated with and

attributable to the streetcar mode, i.e., the Seattle Streetcar. Streetcar Federal Formula Grant Revenue shall not be included in Baseline Revenue during any year in which the County provides a County Contribution. Should the County Contribution cease, allocated Streetcar Federal Formula Grant Revenue shall be included in Baseline Revenue.

D. Baseline Invoice Amount refers to the Baseline Cost offset by the Baseline Revenue. This amount will be invoiced by the County to the City as described in Section 4.3.

4.2 Budget Process.

A. By June 30 of each calendar year, the County shall prepare and deliver to the City a preliminary estimate of the Baseline Cost, Baseline Revenue and Baseline Invoice Amount for the following calendar year. This submittal will reflect preliminary expense and revenue, which are for early planning purposes only. These numbers will not necessarily reflect the final approved County operating budget or final actual costs. This preliminary estimate shall include Direct Costs, Direct Project Costs and Indirect Costs and shall include reasonable detail of the projected expenses, including the annual total presented by expense category or cost pool. The County will provide supporting documentation in a form acceptable to the City.

B. By October 31 of each calendar year, the County shall prepare and deliver to the City an updated estimate of Baseline Cost, Baseline Revenue and Baseline Invoice Amount for the following calendar year based on the proposed County budget. The estimate shall include Direct Costs, Direct Project Costs and Indirect Costs and shall include reasonable detail of the projected expenses, including the annual total presented by expense category or cost pool, as shown in the CAM, supporting documentation, and a staffing plan in a form acceptable to the City.

C. By December 15 of each calendar year, the County shall prepare and deliver to the City the final Baseline Cost, Baseline Revenue, and Baseline Invoice Amount for the following calendar year based on the adopted County budget. The estimate shall include Direct Costs, Direct Project Costs and Indirect Costs and shall include reasonable detail of the projected expenses, as shown in the CAM, including the annual total presented by expense category or cost pool, supporting documentation, and a final staffing plan in a form acceptable to the City.

4.3 Invoices and Payment. The County will submit a monthly invoice to the City for the services provided during that month. Invoices shall be submitted in a form agreeable to the Parties. The amount invoiced should equal one-twelfth of the

final annual Baseline Invoice Amount as submitted to the City by December 15 of the previous year. The City shall remit payment to the County within 30 days of receipt of a monthly invoice.

4.4 Closeout Reconciliation.

A. Preliminary Baseline Reconciliation. By March 31 of each calendar year, the County shall prepare and deliver to the City a preliminary Baseline Reconciliation comparing what the City has paid through monthly invoices versus actual operating expenses and revenue collected by the County for the previous calendar year. The Baseline Reconciliation will include a summary of the County's actual costs to perform its responsibilities under this Agreement for the previous calendar year. The summary shall include actual Direct Costs, Direct Project Costs and Indirect Costs. The County will provide its CAM as detailed support. The Baseline Reconciliation will include ORCA Fare Revenue and other agreed-upon revenue that should be credited against the County's actual costs.

B. Annual Report and Final Baseline Reconciliation. By April 30 of each calendar year, the County shall prepare and deliver to the City an Annual Report describing the previous year's performance against the Performance Standards described in Appendix C. The Annual Report shall also include a final Baseline Reconciliation comparing what the City has paid through monthly invoices versus actual operating expenses incurred by and revenue collected by the County for the previous calendar year operating period. If the amount for providing streetcar service invoiced to and paid by the City exceeds the actual costs, less actual revenue collected by the County, documented in the County's financial records and summarized in this Baseline Reconciliation, the County will compensate the City for the difference. If the amount for providing streetcar service invoiced to and paid by the City is less than the actual costs, less actual revenue collected by the County, documented in the County's financial records and summarized in this Baseline Reconciliation, the City will compensate the County for the difference. The settlement of the annual reconciliation will be made by separate invoice. Any overcharge or underpayment of Seattle Streetcar reconciliation shall be credited or paid by the responsible Party within sixty (60) days of receipt of the reconciliation invoice or if there is a dispute, upon the final resolution of the dispute.

C. Upon request of the City, the County shall provide the City with enough backup information to support its reconciliation of estimated and actual Seattle Streetcar expenses, and the County shall also make appropriate County staff reasonably available to the City to respond to inquiries regarding such information.

D. The City shall have the right to dispute the County’s reconciliation of Seattle Streetcar expenses. Disputes may include but are not limited to the amount of expenses payable to the County and the amount of ORCA revenues collected by the County for the Seattle Streetcar. If the City wishes to dispute any Seattle Streetcar expenses, then the Director of the Seattle Department of Transportation (“SDOT Director”) shall deliver notice to and the General Manager of the King County Metro Transit Department (“General Manager”). The notice shall specify the charges or calculations in dispute. If the City provides such notice, then the County will permit the City to audit the County’s books and records pertaining to expenses for the fiscal year to which such reconciliation pertains. Until the completion of the audit and final resolution of any dispute regarding such audit, the City shall continue to pay the County’s Seattle Streetcar expenses in the amounts estimated by the County. Any overcharge or underpayment of Seattle Streetcar expenses shall be credited or paid by the responsible Party within sixty (60) days of the completion of the audit or, if there is a dispute, upon the final resolution of the dispute.

5.0 Ownership and Use of the Seattle Streetcar.

5.1 General. The City shall own all Seattle Streetcar facilities and streetcars. The County shall operate and maintain the Seattle Streetcar. Other than fare-paying passengers and the City’s security personnel or other first responders, the County will not permit third parties to use the Seattle Streetcar for any purpose except with approval of, or upon receiving written direction from, the City. In an emergency the City may initially provide verbal direction to the County, to be promptly followed by confirmation in writing at the City’s first available opportunity. The City will retain responsibility for necessary improvements to or modifications of streetcars, equipment or facilities required to support service levels agreed to in the Service Plan as the same may be modified from time to time, including track extensions or modifications, additional stations, platforms or stops, drainage, paving, or utility improvements, increased substation capacity, traffic signal modifications, or additional streetcar revenue vehicles or other equipment.

5.2 Sponsorship, Advertising, and Related Signage or Graphics.

A. The City retains the right to enter into sponsorship or advertising agreements regarding the Seattle Streetcar, including streetcars and passenger stations, and to retain all money received as a result of such agreements. The County will provide the City and its designated contractors or agents access to Seattle Streetcar facilities and streetcars for the City or its contractors or agents to apply signage and graphics associated with such sponsorship or advertising.

B. As between the County and the City, the City shall make, implement, and enforce all policies regarding the content of Seattle Streetcar sponsorship, advertising, or other third-party signage or graphics (collectively, “Advertising Graphics”), in the City’s sole discretion. As between the County and the City, the City shall decide whether to accept proposed Advertising Graphics, in the City’s sole discretion. The County expressly negates and disclaims any right, privilege, duty or obligation to participate in decision-making or policy-setting regarding the content of Seattle Streetcar Advertising Graphics.

C. As between the County and the City, the City and its contractors or agents shall be solely responsible to install or remove Seattle Streetcar Advertising Graphics. The City shall reimburse the County for the cost and expense to repaint, refinish, repair or restore streetcar vehicles or equipment damaged during the installation or removal of Advertising Graphics.

D. The County reserves the right to object to proposed Advertising Graphics on the basis of safety or operability (e.g., to object to a proposed vehicle wrap that would dangerously obscure the streetcar operator’s field of vision; to object to proposed station signage that might trip passengers while boarding or de-boarding, or dangerously obscure their view of approaching streetcars). If the County objects and the City disagrees, then the Parties shall enter into the dispute resolution process under Article 21.0 of this Agreement. The County’s reserved rights under this Section 5.2.D do not include the right to object to the content of proposed Advertising Graphics.

5.3 Fares, Fare Collection System, Fare Media Sales.

A. Overall. As between the City and the County, the City shall be responsible to set, collect and enforce fares for the Seattle Streetcar. The City may contract with the County to implement some or all of the City’s fare-related responsibilities.

B. Automated Fare Collection. The Seattle Streetcar will accommodate automated fare collection using the ORCA system (or its replacement system) equipment. To facilitate the regional fare allocation process, any fares collected using the ORCA system will match either the County’s Metro Transit fares or Sound Transit’s Link fares.

C. Fare Collection Equipment. The County shall be responsible for the installation and maintenance of ORCA (or its replacement system) equipment. Costs to operate and maintain ORCA equipment and to extract and record data from the ORCA system will be included in the Baseline Costs.

5.4 Special Events. The City will use its best efforts to inform the County in writing at least thirty (30) days prior to any Special Events that may affect streetcar service. Special Events known to the City when the proposed annual Service Plan is prepared shall be specified in that Service Plan. The County will make every effort to provide personnel and equipment for Special Events not listed in the annual Service Plan at the City’s request. For Special Events that occur outside of regular Seattle Streetcar service hours, the County will bill and the City will pay for Special Event-related operations and maintenance on a time and materials basis.

6.0 Operations.

6.1 Reporting.

A. The County will prepare a daily **Unusual Occurrence Report** covering Seattle Streetcar operations.

B. The County will track service delays and provide a report concerning such delays to the City on a regular basis.

C. The County will promptly notify the City of any streetcar operations- or maintenance-related Accident or incident that may result in notice being given to the public media, or which can reasonably be expected to be reported in the public media. The County will give this notice to the City as soon as practicable after the County has dispatched its response personnel to deal with the incident.

D. The County shall be responsible for ensuring the timely delivery to WSDOT, the Federal Transit Administration, and any other entities or agencies with jurisdiction, of all Accident notifications and reports required of rail transit agencies under the WSDOT Rail Safety Oversight Program Standard. The County shall also be responsible for conducting Seattle Streetcar Accident investigations on behalf of the City in accordance with the requirements of the Washington State Department of Transportation Rail Safety Oversight Program Standard.

E. Upon the happening of any occurrence or Accident reasonably likely to expose the City or the County to potential claims for damages or other costs, the Party with initial knowledge shall promptly give notice to the other Party as provided under Paragraph C of this Section 6.1. In an emergency each Party shall endeavor to give prompt verbal notice to the other Party, followed by written notice at the notifying Party’s earliest opportunity.

6.2 Bus Bridge. In case of extended streetcar service disruption, upon the City’s request, the County will arrange for substitute bus service, subject to vehicle availability, in accordance with its existing standard procedures governing such

service. The City shall reimburse the County for the fully-allocated cost of the substitute bus service.

7.0 Maintenance.

7.1 Maintenance Services in General. The County shall undertake its maintenance responsibilities as described in this Article 7.0 in accordance with the manufacturer’s recommendations, warranty requirements, industry practices, and information provided by designers, manufacturers, or installers of the equipment or systems. The County will be responsible for maintaining facilities as identified in the Operations and Maintenance Responsibilities Matrix, Appendix B. The Parties shall convene monthly meetings of personnel from Metro Facilities, Metro Streetcar Operations, and SDOT Streetcar Operations to review on-going maintenance activities.

7.2 Tools and Equipment. The City will provide all special tools or test equipment that the County will use to perform its vehicle maintenance duties under this Agreement.

7.3 Documentation. The City shall maintain the master file of all as-built drawings, maintenance manuals and other Seattle Streetcar-related records or documentation, except for drawings, manuals, and other records or documentation necessary for Configuration Management purposes and related to the Overhead Contact System. The County shall maintain all records related to the Overhead Contact System. The City shall provide the County with copies (electronic, if available) of all as-built drawings and maintenance manuals for all streetcar facilities and equipment.

7.4 Configuration Management.

A. The City will be responsible for Seattle Streetcar Configuration Management for all components of the Seattle Streetcar system except the Overhead Contact System. The County shall be responsible for Configuration Management for the Overhead Contact System. Either party may propose changes to Seattle Streetcar capital assets via a change proposal. All change proposals shall be consistent with the Public Transportation Agency Safety Plan or System Safety Program Plan, whichever is applicable.

B. Change proposal procedure. Any change proposal shall include:

- i. Description of the proposed change;
- ii. A markup of as-built drawings or other as-built documentation;
- iii. Estimated cost of the proposed change;
- iv. Justification for the proposed change;
- v. Service and operating and maintenance cost estimates for the proposed change;

- vi. Schedule for completion of the proposed change; and
- vii. Proposed distribution of responsibilities between the City and the County regarding any revision in service, operations, or maintenance as a result of the proposed change.

The City will review the proposed change and determine if the change merits implementation. If the City approves the proposed change then the City will prepare a work order to effect the change. Once the work is completed, the City will inspect the work for adherence to the work order, applicable codes and regulations, and quality of workmanship. The Party with responsibility for Configuration Management of the component or components affected by the change will be responsible for revising as-built drawings, Car History Books, and maintenance manuals to reflect the changes and to ensure that updated drawings and manuals are delivered to the appropriate location.

C. The Parties agree to cooperate to satisfy the Configuration Management component of any audit conducted by a regulatory agency having oversight responsibility for the Seattle Streetcar. The County will assist the City in preparation for the audit. Each Party will provide the other Party with copies of all Configuration Management documents for which it is responsible.

7.5 Track Maintenance. The County will be responsible for maintaining streetcar track, including special track work, in accordance with the County's applicable maintenance procedures.

7.6 Vehicle Maintenance. The County will be responsible for maintaining streetcar revenue and Non-revenue Vehicles.

A. Major Maintenance, Heavy Repair and Overhaul. The County shall analyze options for Major Maintenance, including Heavy Repair and Overhauls of streetcars, and present the options to the City for mutual written agreement concerning scope, cost, and schedule for such work. The City shall pay all costs for Major Maintenance. The SDOT Director and the General Manager or their designees will agree on a streetcar vehicle Overhaul Cycle.

B. Maintenance of Car History. The City will cause the streetcar builder to deliver Car History Books to the County. The County will be the custodian of the Car History Books.

7.7 Systems and Electrical Maintenance.

A. Streetcar Electrical Power Systems Other Than Maintenance Facilities. The County will maintain Seattle Streetcar electrical power systems, including hardware and software elements of traction power substations, Overhead Contact System, and electrical switchgear.

B. Maintenance Facility Systems. The County shall maintain the following electrical power systems relating to Seattle Streetcar maintenance facilities: yard and shop power distribution and lighting, fire alarms, and general electrical facilities. The County shall maintain all streetcar traction power system equipment within Seattle Streetcar maintenance facilities.

C. Traffic and Train Signals. The City will maintain all traffic signals, and aspect displays for train signal control. The County will maintain Train-to-Wayside Communications (“TWC”) equipment, train signal system controls and TWC equipment on the streetcars. The City will provide the County with access to train signal system control cabinets.

D. Radios. The County shall provide, own and maintain all radios or other communications gear used by Seattle Streetcar operators.

E. Real-Time Arrival and Automated Passenger Counting Systems. The City has procured and installed systems providing real-time arrival information and automated passenger counting systems, each of which may include equipment located on the streetcar vehicles and at passenger stations or maintenance facilities. The City shall maintain the electrical power systems supplying power to any real-time arrival information signs. The County will perform routine troubleshooting and will contract with the City’s suppliers for all service and maintenance.

7.8 Joint Use Facilities. The County operates transit service and facilities on multiple streets in the City of Seattle. The County’s transit facilities are permitted by the City and some of these facilities are or will become Joint Use Facilities with the Seattle Streetcar or with other uses of the right- of-way. To provide for efficient transit operations and to efficiently use constrained existing street rights-of-way, the Parties agree that:

A. The Parties will collaborate on the design of Joint Use Facilities to ensure the design meets the requirements of each Party; and

B. The Parties will share proportionally the operations, maintenance and replacement costs of Joint Use Facilities (e.g., if SDOT and the County are the only users of a given Joint Use Facility, then each of them shall pay fifty percent (50%) of the operations, maintenance and replacement cost of that facility). If another entity (such as another City department) also uses a given Joint Use Facility, then the Parties shall endeavor to allocate equal shares (e.g. 33.3%) to each user.

8.0 Customer Service, Information, and Marketing.

8.1 Overview. The County will provide customer information for the Seattle Streetcar, including responding to requests for information received by King County Metro’s Customer Information Office. The County shall also:

- A.** Compile and print schedules for public dissemination and posting on vehicles.
- B.** Provide lost and found services for items left on streetcars.
- C.** Provide subscription services for transit text and email message alerts.
- D.** Provide support for customer comments regarding the operations and maintenance of the streetcars.
- E.** Provide and maintain information about County transit service at any platforms or stations served by both County transit service and Seattle Streetcar.

The City will provide route and service information on streetcar passenger shelters and shall maintain all Seattle Streetcar-related signage at streetcar stations, platforms, and stops. Public materials will be consistent with Seattle Streetcar branding as approved by the City. All streetcars in operation shall display a streetcar partnership decal approved by both the City and the County and provided by the County. The Parties have currently agreed to the partnership decal as provided in Appendix F. The Parties agree to coordinate and work jointly in marketing streetcar service, including Special Events.

8.2 Media Relations. Except as otherwise identified in this Agreement, as between the City and the County, the County shall have sole responsibility and right to communicate about streetcar Accidents, delays, and service changes, including via social media. The City shall be responsible for media communication about any new streetcar construction prior to the start date of such revenue service operations. After the start date of new revenue service operations, the City may provide information about the routes, fares, service hours, scheduled headways, sponsorship opportunities, system planning and collateral information through its branded website and social media platforms.

9.0 Safety.

9.1 System Safety Program Plan (“SSPP”) or Public Transportation Agency Safety Plan (“PTASP”). The County will develop, maintain, and implement a SSPP (expected to expire in July of 2020) or a PTASP, as applicable, that complies with WSDOT Rail Safety Oversight Program Standard and applicable federal requirements.

9.2 Safety Oversight. The Parties anticipate that WSDOT will audit the Seattle Streetcar’s SSPP or PTASP, whichever is applicable. The City and the County will jointly develop corrective action plans to respond to any noted deficiencies.

10.0 Security and Law Enforcement. The City shall provide all security, law enforcement and fare inspection and enforcement on the Seattle Streetcar and all streetcar stations, platforms, and stops. The City may contract with the County to implement some or all the City’s security-related responsibilities. The County will include the Seattle Streetcar in its Metro Transit System Security Plan, All-Hazards Response Plans and associated training and exercise programs.

11.0 Overhead Contact System Work.

11.1 The Parties acknowledge that the Overhead Contact System and the County’s Electric Trolley Bus (“ETB”) system exist and operate in close proximity to one another and, in some cases, occupy Joint Use Facilities. The Parties agree that it is therefore in their mutual best interests to cooperate on the optimization of OCS and ETB systems to allow for reliable and efficient operation of both the Seattle Streetcar and County bus system. Either Party may propose changes to the OCS through the process described in Section 7.4. Should the Parties agree to a change, such work shall be performed exclusively by the County or the County’s contractors. Prior to approval of the change, the Parties shall agree as to funding responsibility for the work related to the change.

11.2 The County will follow its operating rules for ETB coaches through OCS crossings at intersections.

12.0 Administration.

12.1 Personnel.

A. The County will be solely responsible for managing its Seattle Streetcar-related personnel. In managing its Seattle Streetcar-related personnel, the County will apply its policies and procedures regarding recruitment, discipline, appearance, drug use and drug testing.

B. The City will be solely responsible for managing its Seattle Streetcar-related personnel. In managing its Seattle Streetcar-related personnel, the City will apply its policies and procedures regarding recruitment, discipline, appearance, drug use and drug testing.

12.2 Benefits and Records.

A. The County will handle all payroll, benefits, and employee records for its Seattle Streetcar-related personnel.

B. The City will handle all payroll, benefits, and employee records for its Seattle Streetcar-related personnel.

12.3 City Taxes, Fees, Permits, and Charges Relating to the Seattle Streetcar. If, as a result of a City ordinance, rule, policy, or practice, the County incurs a tax, fee, land use or other permit, or charge (collectively, “City Charge”) for the operation or maintenance of the Seattle Streetcar, then the County shall include such City Charge as a line item on the invoice to the City.

13.0 Audits, Records, and Reports. The Parties shall each maintain books and records regarding Seattle Streetcar expenses to allow accurate audits. In addition to the audit rights contained in Section 4.4, each Party may audit the other Party's Seattle Streetcar-related books and records at the offices where such books and records are kept. Such audit shall be during ordinary business hours and shall occur not later than thirty (30) days after a Party receives notice of intent to audit from the other Party. Audits shall be conducted by a firm not paid on a contingency basis. The auditing Party shall pay the costs of the audit firm, unless the audit reveals that the audited Party overcharged or underpaid by five percent (5%) or more, in which case the audited Party shall pay the costs of the audit firm

13.1 Outside Audits. In addition to the foregoing, the County Auditor, the State Auditor, federal auditors, and their representatives may audit either Party's records related to the Seattle Streetcar.

13.2 Record Retention. The Parties shall retain Seattle Streetcar-related records consistent with their respective record retention schedules and the Washington State Public Records Act, chapter 42.56 RCW as now codified or hereafter amended.

13.3 Reports. The County shall provide reports to the City as required under this Agreement in a timely manner. A summary of required reports (“**Report List**”) is attached hereto as **Appendix D**.

14.0 Performance Requirements and Reporting.

14.1 Ridership Reporting. The County will compile ridership, and performance data, including data from the Automated Passenger Counter (“APC”) system installed on the Seattle Streetcar. The County will perform National Transit Database (“NTD”) reporting for the Seattle Streetcar and will provide data for the Seattle Streetcar in NTD format. The County shall report monthly to the City on the ridership numbers reported to the NTD for Seattle Streetcar.

14.2 Performance Standards. The County shall report annually to the City on its progress in achieving the Performance Standards delineated in Appendix C.

14.3 Transit Asset Management Plan (“TAMP”): The City certified the first edition of SDOT’s TAMP, which complies with FTA MAP-21 requirements, and establishes a State of Good Repair Policy (“SGR”).

The City defines SGR as the condition in which a capital asset is able to operate at or above an acceptable performance service level. Specifically, the asset can perform its defined function, does not pose a known unacceptable safety risk, and life-cycle investment needs are met or recovered. The Parties agree to work together in good faith to further the goals of the City’s TAMP.

15.0 Material and Warranty Management.

15.1 Warranty Administration. The County will process warranty claims for Seattle Streetcar vehicles, systems, and equipment through its existing warranty claims process, to the full extent of warranty coverage. Warranty claims will be submitted directly to the responsible manufacturer or vendor. If a vendor or manufacturer contests a warranty claim made by the County, the County will immediately notify the City of the dispute and will provide all information about the claim to the City.

15.2 Material Management. The County will establish and maintain inventory levels and other supplies and consumables to maintain Seattle Streetcar vehicles and equipment in good working order. On a monthly basis, the County shall deliver to the City an Inventory Cost Report describing the quantity and value of all parts held by the County in inventory. The County shall notify the City and obtain prior City approval for any parts or materials purchases in excess of \$50,000. The County shall invoice the City for the cost of all approved inventory items, supplies, and consumables consistent with Article 15.0. If this Agreement is terminated, all material purchased by the City or the County for the maintenance of the Seattle Streetcar will be turned over to the City, consistent with the provisions of Section 22.3.

16.0 Federal Funding Requirements. The City anticipates use of federal funds, grants, or other federal financial assistance to pay for some County work under this Agreement. The County is also a recipient of federal funds for transit purposes and shall continue to comply with applicable federal requirements, including but not limited to Title VI of the Civil Rights Act of 1964. Federal funding shall not relieve the City of its independent contractual obligation to compensate the County under this Agreement.

17.0 Designated Representatives. The Parties shall designate representatives for notice, reporting, and other communications, and for coordinating the Parties’ staff work regarding the Seattle Streetcar. The Parties’ designated representatives shall also coordinate the periodic reporting and review of documents required under this Agreement,

prepare amendments to this Agreement and its attachments, and identify, elevate, and resolve issues as they may arise. The Parties' designated representatives are listed in **Appendix E** attached hereto.

18.0 Indemnification.

18.1. Indemnity for Design. To the maximum extent permitted by law, the City shall protect, defend, indemnify and save harmless the County, its officers, officials, employees and agents, from any and all claims, demands, suits, penalties, losses, damages, judgments or costs of any kind ("Claims") arising out of or resulting from the design of the Seattle Streetcar system and caused by or arising out of the acts or omissions of the City, its officers, employees, agents, consultants and/or sub consultants of all tiers, including any Claims, demand, and/or cause of action brought against the County by or on behalf of any of the City's employees, or agents. The foregoing duty is specifically and expressly intended to constitute a waiver of the City's immunity under Washington's Industrial Insurance act, RCW Title 51, as respects the County only, and only to the extent necessary to provide the County with a full and complete indemnity and defense of Claims made by the City's employees. The Parties acknowledge these provisions were mutually negotiated and agreed upon by them.

In the event it is determined that RCW 4.24.115 applies to this indemnity obligation, or applies to any of the indemnity obligations of this Section 18.1, the indemnifying party agrees to protect, defend, indemnify and save the indemnified party, its officers, officials, employees and agents from any and all claims, demands, suits, penalties, losses damages judgments, or costs of any kind whatsoever arising out of or in any way resulting from the acts or omissions, performance of, or failure to perform the rights and privileges granted under this Agreement of the indemnifying party, its employees, agents, contractors, consultants and/or sub-contractors or sub-consultants to the maximum extent permitted by law or as defined by RCW 4.24.115, as now enacted or hereafter amended.

18.2. Indemnity for Construction. To the maximum extent permitted by law, the City shall protect, defend, indemnify and save harmless the County, its officers, officials, employees and agents, from any and all claims, demands, suits, penalties, losses, damages, judgments or costs of any kind, ("Claims"), arising out of or resulting from the construction of the Seattle Streetcar system and caused by or arising out of the acts or omissions of the City, its officers, employees, agents, vendors, suppliers, contractors and/or subcontractors of all tiers, including any Claims, demand, and/or cause of action brought against the County by or on behalf of any of the City's employees, or agents. The foregoing duty is specifically and expressly intended to constitute a waiver of the City's immunity under Washington's Industrial Insurance act, RCW Title 51, as respects the County only, and only to the extent necessary to provide the County with a full and complete indemnity and defense of Claims made by the City's employees. The Parties

acknowledge that these provisions were mutually negotiated and agreed upon by them.

In the event it is determined that RCW 4.24.115 applies to this indemnity obligation, or applies to any of the indemnity obligations of this Section 18.2, the indemnifying party agrees to protect, defend, indemnify and save the indemnified party, its officers, officials, employees and agents from any and all claims, demands, suits, penalties, losses damages judgments, or costs of any kind whatsoever arising out of or in any way resulting from the acts or omissions, performance of, or failure to perform the rights and privileges granted under this Agreement of the indemnifying party, its employees, agents, contractors, consultants and/or sub-contractors or sub-consultants to the maximum extent permitted by law or as defined by RCW 4.24.115, as now enacted or hereafter amended.

18.3. Indemnity for Streetcar Vehicle Manufacture Liability. To the maximum extent permitted by law, the City shall protect, defend, indemnify and save harmless the County, its officers, officials, employees and agents, from any and all claims, demands, suits, penalties, losses, damages, judgments or costs of any kind whatsoever, (hereinafter "Claims"), arising out of or resulting from the design, construction, manufacturer or modification of Seattle Streetcar vehicles and caused by or arising out the acts or omissions of the City, its officers, employees, agents, vendors, suppliers, contractors and/or subcontractors of all tiers. The City's duty under this Section 18.3 does not extend to Claims to the extent arising out of or resulting from the County's streetcar maintenance activities or from any modifications that the County makes to any Seattle Streetcar vehicle. The City agrees this obligation to indemnify and defend the County from any Claims, demand, and/or cause of action extends to Claims brought by or on behalf of any of the City's employees, or agents. The foregoing duty is specifically and expressly intended to constitute a waiver of the City's immunity under Washington's Industrial Insurance act, RCW Title 51, as respects the County only, and only to the extent necessary to provide the County with a full and complete indemnity and defense of Claims made by the City's employees. The Parties acknowledge these provisions were mutually negotiated and agreed upon by them.

18.4. Indemnity for City of Seattle Maintenance Responsibilities. To the maximum extent permitted by law, the City shall protect, defend, indemnify and save harmless the County, its officers, officials, employees and agents, from any and all claims, demands, suits, penalties, losses, damages, judgments or costs of any kind whatsoever, (hereinafter "Claims"), arising out of or in any way resulting from the City's Seattle Streetcar maintenance responsibilities and caused by or arising out of the acts or omissions of the City, its officers, employees, agents, vendors, suppliers, contractors and/or subcontractors of all tiers, The City agrees this obligation to indemnify and defend the County from any Claims, demand, and/or cause of action extends to claims brought by or on behalf of any of the City's employees, or agents. The foregoing duty is specifically and expressly intended to constitute a waiver of the City's immunity under Washington's Industrial Insurance

act, RCW Title 51, as respects the County only, and only to the extent necessary to provide the County with a full and complete indemnity and defense of Claims made by the City's employees. The Parties acknowledge these provisions were mutually negotiated and agreed upon by them.

18.5. Indemnity for King County Maintenance and Operations Responsibilities. To the maximum extent permissible by law, the County shall protect, defend, indemnify and save harmless the City, its officers, officials, employees and agents, from any and all claims, demands, suits, penalties, losses, damages, judgments or costs of any kind whatsoever, (hereinafter "Claims"), arising out of or in any way resulting from the County's Seattle Streetcar maintenance and operations responsibilities and caused by or arising out of the acts or omissions of the County, its officers, employees, agents, vendors, suppliers, contractors and/or subcontractors of all tiers. The County agrees to indemnify and defend the City from any Claims, demand, and/or cause of action brought by or on behalf of any of the County's employees, or agents. The foregoing duty is specifically and expressly intended to constitute a waiver of the County's immunity under Washington's Industrial Insurance act, RCW Title 51, as respects the City only, and only to the extent necessary to provide the City with a full and complete indemnity and defense of Claims made by the County's employees. The Parties acknowledge these provisions were mutually negotiated and agreed upon by them.

18.6. Indemnity for Violation of Ordinance or Regulation. In executing this Agreement, the County does not assume liability or responsibility for or in any way release the City from any liability or responsibility which arises in whole or in part from the existence or effect of City ordinances, rules or regulation, policies or procedures. If any cause, claim, suit, action or administrative proceeding is commenced in which the enforceability and/or validity of any City ordinance, rule or regulation is at issue, the City shall defend the same at its sole expense and if judgment is entered or damages are awarded against the City, the County, or both, the City shall satisfy same, including all chargeable costs and attorney's fees.

18.7. Release and Waiver. Except as otherwise provided in Sections 18.1 through 18.6 above, each Party releases, waives and forever discharges any and all causes of action against the other arising out of the design, construction, operation, or maintenance of the Seattle Streetcar or any of its component parts.

19.0 Insurance.

19.1 Property Damage Insurance.

A. The City shall insure the Seattle Streetcar system vehicles, spares, equipment, platforms and streetcar maintenance facilities under its property damage insurance coverage. Such coverage shall cover all direct physical loss or damage including vehicle or collision and or overturns, except for equipment breakdown. If a streetcar vehicle is so damaged that the City

determines to replace it rather than have it repaired, then the City shall procure such replacement vehicle at the City's sole cost and expense. The City shall be solely responsible for its deductible and the prosecution and handling of all first-party claims with its insurer(s). Notwithstanding Article 18.0 the City may elect to self-insure this Property Damage exposure but shall bear the full cost of repairs regardless of fault.

B. Notwithstanding Article 18.0, to the extent a loss is covered by City property damage insurance in force, including any extended coverage endorsements, the City shall cause its insurer(s) to waive its rights of subrogation and the City's rights of recovery against the County; provided this Section 19.1.B shall be inapplicable if it would have the effect of invalidating any City property damage insurance coverage of the City.

19.2 Risk Management Program.

A. The County maintains a Risk Management Program under Chapter 2.21 of the King County Code and other authorities. The City understands and agrees that the County is self-funded for all its liability exposures. The County agrees to maintain, through its self-funded program or an alternative risk of loss financing program, coverage for all its liability exposures for the duration of this Agreement. The County agrees to provide the City with at least thirty (30) days prior written notice of any material change or alternative risk of loss financing program. The County agrees that nothing in this Article 19.0 or in the County's Risk Management Program shall limit or modify the County's indemnity obligations under this Agreement. The cost of including the County's activities under this Agreement in its self-funded program or alternative risk of loss finance program shall be included in the calculation of the Seattle Streetcar Baseline Cost and shall be subject to reconciliation adjustment as part of the annual review.

B. The City of Seattle maintains a Risk Management Program of self-insurance in accordance with Washington law. The County understands and agrees that the City of Seattle is self-funded for all its liability exposures. The City of Seattle agrees to maintain, through its self-funded program or an alternative risk of loss financing program, coverage for all of the City's liability exposures for the duration of this Agreement. The City agrees to provide the County with at least thirty (30) days' prior written notice of any material change or alternative risk of loss financing program. The City agrees that nothing in this Article 19.0 or in the City Risk Management Program shall limit or modify the City's indemnity obligations under this Agreement.

19.3 Workers' Compensation. The County maintains a Safety and Workers' Compensation Program under RCW Chapter 51. The City understands and agrees

that the County is self-funded for its Workers' Compensation liability exposures. The County agrees to maintain, through its self-funded program or an alternative risk of loss financing program, coverage for all its Workers' Compensation liability exposures for the duration of this Agreement. The County agrees to provide the City with at least thirty (30) days' prior written notice of any material change or alternative risk of loss financing program. The cost of including the County's activities under this Agreement in its self-funded program or alternative risk of loss finance program shall be included in the calculation of the Seattle Streetcar Baseline Cost and shall be subject to reconciliation adjustment as part of the Annual Review.

19.4 Claims Management.

A. City Responsible for System Claims and Security or Police Worker's Compensation.

- i. The Parties agree that the City shall be responsible to administer, handle, defend and dispose of all claims, causes of action, suits, matters, or administrative proceedings arising out of or relating to the design, construction, or manufacture of the Seattle Streetcar system, or any element or component of it, or any or all of them (collectively, "System Claims"). Upon the receipt of a Seattle Streetcar-related claim or other allegation from the County, the City shall accept tender of any portion of the claim that may be fairly characterized as a System Claim. System Claims shall be paid and handled, including defense of litigation, under the City's established claims handling process.
- ii. The City shall not call upon the County to assume charge of the settlement or defense of any System Claims, but the County shall have the right and shall be given the opportunity, at its own expense, to associate with the City in the defense and control of any claim, suit or proceeding relative to an occurrence that involves or appears reasonable likely to involve an O&M Claim as defined in Paragraph B of this Section 19.4.
- iii. Workers compensation claims filed by City employees acting within the scope of their employment for the Seattle Streetcar shall be handled by the City's workers' compensation system.

B. County Responsible for O&M Claims and Worker's Compensation for County Employees Serving as Streetcar Personnel.

- i. The Parties agree that the County shall administer, handle, defend and dispose of all claims, causes of action, suits, matters, or administrative proceedings arising out of or relating to the County's

operation or maintenance of the Seattle Streetcar, or both of them (collectively, “O&M Claims”). Upon the receipt by either Party of a claim or other allegation, the County shall accept tender of any portion of the claim that may be fairly characterized as an O&M Claim. O&M Claims will be paid and handled, including defense of litigation, by the King County Risk Management Program under the County’s established claims handling practices.

ii. The County shall not call upon the City to assume charge of the settlement or defense of any O&M Claim, but the City shall have the right and shall be given the opportunity, at its own expense, to associate with the County in the defense and control of any claim, suit or proceeding relative to an occurrence where the claim or suit involves or appears reasonable likely to involve a System Claim as defined in paragraph A of this Section 19.4.

iii. Workers’ Compensation claims filed by County employees serving as Seattle Streetcar personnel will be handled by the County’s self-insured Workers’ Compensation program.

C. Joint Defense and Cooperation. The County and the City agree to associate in the defense and control of any claim, suit or proceeding that involves or appears to involve both System Claims and O&M Claims, and the Parties shall cooperate in the defense of such claim, suit, or proceeding. The City and County further agree to fully cooperate in the enforcement of any right against any third person or entity which may be wholly or partly responsible for any Systems Claim or O&M Claim or for any damage or impairment to any Seattle Streetcar asset.

19.5 Confidentiality.

A. The Parties acknowledge that materials and information, both written and verbal, may be generated by the claims management process and, under applicable law, may be kept confidential and privileged (“Confidential Materials”). Such Confidential Materials are presumed to include, but are not limited to:

- i. Statements of potential witnesses;
- ii. Legal advice, notes, or memoranda of legal counsel;
- iii. Information assembled and reports prepared by consulting and potentially testifying experts; and
- iv. Statements, documents, and information regarding preparation, strategy, and tactics for litigation or other dispute resolution process; or any of the foregoing.

B. The Parties intend by this Agreement to protect the privileged and confidential nature of any Confidential Materials to the extent permitted

under the Public Records Act, RCW Ch. 42.56. Each Party agrees that all verbal and/or written Confidential Materials received by or from a Party shall be held in strictest confidence and shall not be given, shown, provided, communicated or otherwise disclosed to anyone outside of the City and the County without the express written consent of the Party from whom the Confidential Materials were received, except under a judicial order to disclose the materials. If either the City or the County receives a public disclosure request from a third party for Confidential Materials, the recipient of the request shall immediately notify the other Party to this Agreement, who shall be entitled to bring a motion in court to oppose the request. The recipient of the request may also move to oppose the request but is not obligated to do so.

20.0 Hazardous Substances Indemnification.

20.1 City Indemnification. To the maximum extent permitted by law, the City shall indemnify, defend and hold harmless the County, its appointed and elected officials, officials, agents, and employees, against any and all claims, liabilities, damages, and expenses, including reasonable attorney's fees, asserted against the County by a third-party, including without limitation, any agency or instrumentality of the federal government or state or local government, for bodily injury, including death of a person, physical damage to or loss of use of property, or clean-up activities (including but not limited to investigation, study, response, remedial action, or removal), fines, penalties, or administrative proceedings arising out of or relating to the presence, release, or threat of release of a Hazardous Substance arising out of the design, construction, repair, modification, or demolition of the Seattle Streetcar system or its elements, or any of them, except to the extent caused by the act or omission of the County. The City's obligations under this Article 20.0 shall survive the expiration or other termination of this Agreement.

20.2 County Indemnification. To the maximum extent permitted by law, the County shall indemnify, defend and hold harmless the City, its appointed and elected officials, and employees, against any and all claims, liabilities, damages, and expenses, including reasonable attorney's fees, asserted against the City by a third-party, including without limitation, any agency or instrumentality of the federal government or state or local government, for bodily injury, including death of a person, physical damage to or loss of use of property, or clean-up activities (including but not limited to investigation, study, response, remedial action, or removal), fines, penalties, or administrative proceedings arising out of or relating to the presence, release, or threat of release of a Hazardous Substance arising out of the County's operation or maintenance of the Seattle Streetcar system or its elements, or any of them, except to the extent caused by the act or omission of the City. The County's obligations under this Article 20.0 shall survive the expiration or other termination of this Agreement.

21.0 Dispute Resolution. The City and the County agree to negotiate in good faith to resolve any disputes arising under this Agreement so that the purposes of this Agreement

are not frustrated. The Parties' Designated Representatives shall communicate regularly to discuss the status of the tasks and services to be performed and to prevent disputes from arising. Except as otherwise provided in this Agreement, the Parties shall use the following dispute resolution process.

21.1 Step One. The Parties' Designated Representatives shall confer and attempt to resolve the dispute within ten (10) business days of written notification by either Party.

21.2 Step Two. If the Parties' Designated Representatives are unable to resolve the dispute within ten (10) business days, either Party may refer the dispute to the SDOT Director and the General Manager. The SDOT Director and the General Manager shall confer and attempt to resolve the dispute within ten (10) business days of receiving the referral. The conference may be in person or by other means, such as telephone conference, videoconference, etc.

21.3 Prerequisite to Litigation. Neither Party may seek relief in a court of law until and unless the steps in Sections 21.1 and 21.2 are exhausted.

21.4 Mediation. If the Parties cannot resolve the dispute utilizing the process in Sections 21.1 and 21.2, the Parties may, by agreement, submit the matter to non-binding mediation. The Parties shall share equally in the cost of the mediation. If additional parties participate in the mediation then each participant shall pay a share of the cost of the mediation, such share to be calculated by dividing the total cost of the mediation by the number of parties participating. Mediation shall not be a prerequisite to litigation.

21.5 Continued Performance. During the conflict or dispute resolution efforts, the Parties agree to continue to diligently perform their respective responsibilities under this Agreement.

21.6 Tolling.

A. The Parties agree that any statute of limitations or statute of repose shall be tolled during any dispute resolution process between them. The time that the statutes are so tolled shall be added to the time for bringing an action for each Party's claims under any federal or state law (whether statute or case law), including any state or federal code(s) of civil procedure or statute of limitations that are or may apply.

B. If either Party sues including, without limitation, to toll the statute of limitations as to a third party, the tolling agreement in Paragraph A of this Section 21.6 shall remain in effect for the duration of any conflict or dispute resolution process between the Parties.

C. The Parties agree that, notwithstanding the tolling agreement in Paragraph A of this Section 21.6, the Parties do not waive or release any

statute of limitations or statute of repose defense that could be asserted.

22.0 Termination.

22.1 Default. If a Party defaults on any material obligation under this Agreement through no fault of the other Party, that other Party may terminate this Agreement by providing written notice to the defaulting Party, provided that, where practicable, the terminating Party will give:

- A.** Written notice of intent to terminate no less than 180 days prior to termination, stating how the defaulting Party has failed to perform the obligations under this Agreement; and
- B.** An opportunity for the defaulting Party to cure the default within a specified time, not to exceed thirty (30) days, from notice of the intent to terminate. The notice of intent to terminate shall state the time within which cure is permitted and any other appropriate conditions.
- C.** If more than thirty (30) days is reasonably needed to cure a default then the defaulting Party may have more than 30 days to cure, so long as the defaulting Party shall have initiated a reasonable cure and diligently pursued it within the 30-day period following that Party's receipt of notice of intent to terminate.
- D.** If the defaulting Party fails to remedy the default or the breach to the reasonable satisfaction of the terminating Party within the time established in the notice of termination or any extension granted by the terminating Party, the Agreement shall be deemed terminated.

22.2 For Convenience. Either Party may terminate this Agreement, in writing, for its convenience, provided that the other Party will be given:

- A.** Written notice of intent to terminate no less than one hundred eighty (180) days prior to the intended termination date; and
- B.** Opportunity to consult with the Party initiating the termination prior to the termination date.

22.3 Activities upon Termination and Expiration.

- A.** The City and the County agree that upon expiration of the Term of this Agreement or upon earlier termination of this Agreement under this Article 22.0, the City and the County shall cooperate to develop a coordinated plan for terminating the services rendered until the time of termination, determining reasonable contract close-out costs for termination by the County, and accounting for and transfer of equipment provided by

the City in the manner the City directs.

B. If the City terminates this Agreement based on a County default, the City shall compensate the County only for the services satisfactorily rendered to the date of termination at the rates and amounts and in the manner provided in this Agreement, with no payment for contract closeout costs under Section 22.3.C.

C. If the County terminates this Agreement based on City nonpayment of operations or maintenance costs or expenses due and owing, the City shall compensate the County for the services satisfactorily rendered to the date of termination at the rates and amounts and in the manner provided in this Agreement, together with the County's reasonable contract closeout costs. The County will add a late fee of five percent (5%) to its final invoice if not paid within sixty (60) days after the County delivers its final invoice. If the County's final invoice remains outstanding ninety (90) days after receipt, then the County will send it to collections.

23.0 General Provisions.

23.1 Rights and Remedies. The rights and remedies of the Parties to this Agreement are in addition to any other rights and remedies provided by law or equity, except if this Agreement specifies that the rights and remedies provided herein shall supersede or replace the Parties' rights or remedies at law or equity. If either Party prevails in litigation regarding enforcement of the provisions of this Agreement against the other Party, then the prevailing party shall recover all fees, costs and expenses (including but not limited to attorney's fees and other legal costs) from the other Party.

23.2 No Joint Venture or Partnership. No joint venture or partnership is formed because of this Agreement.

23.3 No Third-Party Rights. This Agreement is solely for the benefit of the Parties hereto. It creates no right, privilege, duty, obligation, or cause of action or other remedy in any person or entity not a party to it.

23.4 Compliance with Laws.

A. In General. Each Party shall comply, and shall take reasonable steps to ensure that its employees, agents, consultants, contractors and representatives comply, with all federal, state, and local law, regulations, and ordinances applicable to the work or services for which that Party is responsible under this Agreement, including, but not limited to, applicable public works and procurements laws and regulations, bonding, prevailing wage, nondiscrimination, retainage, insurance, and workers' compensation requirements.

B. Licensing and Certification of Employees. Each Party shall comply, and shall take reasonable steps to ensure that its employees, agents, consultants, contractors and representatives comply, with all federal, state and local licensing, registration, filing and/or certification standards applicable to the work or services for which that Party is responsible under this Agreement, including but not limited to applicable accrediting standards and any other standards or criteria established by any state or federal agency with jurisdiction over the Streetcar System or its component parts, equipment, or other elements.

23.5 Venue; Choice of Law. Any litigation between the Parties regarding this Agreement shall be brought in the Superior Court of King County in Seattle, Washington. This Agreement shall be governed by the law of the State of Washington, without reference to its choice of law rules or conflicts of law provisions.

23.6 No Employee Relationship. The Parties are independent contractors to each other. Neither Party is an employee or agent of the other. Employees, agents, consultants and representatives of one Party shall not be deemed or construed to be employees or agents of the other Party. No employee, agent, consultant or representative of either Party shall make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of the other Party. Each Party shall be solely responsible for any claims for wages or compensation by its employees, agents, and representatives, including consultants, and shall release, indemnify, and hold the other Party harmless from any such claims.

23.7 Notice. Any notice permitted or required to be given by either Party to this Agreement shall be in writing and may be effected by certified or registered United States mail, with return receipt requested, properly addressed, postage prepaid, or by reputable overnight delivery service, or by personal delivery, to the Parties' Designated Representatives identified in **Appendix E**. The Parties may update their Designated Representatives or other points of contact by providing notice as required in this Section 23.7.

23.8 Waiver or Default. Waiver of any default under any provision of this Agreement shall not be deemed a waiver of any subsequent default and shall not be construed to be a modification of this Agreement.

23.9 Force Majeure.

A. Neither Party shall be considered in breach of this Agreement or liable for any delay or failure to comply with this Agreement, if and to the extent that such delay or failure is attributable to the occurrence of a Force Majeure Event.

B. A Party claiming relief based on a Force Majeure Event shall:

- i. Promptly notify the other Party in writing of the existence and nature of the Force Majeure Event;
- ii. Exercise all reasonable efforts to minimize delay caused by such Force Majeure Event;
- iii. Notify the other Party in writing of the cessation of such Force Majeure Event; and
- iv. Resume performance of its obligations under this Agreement as soon as practicable thereafter.

C. Obligations to pay for services already provided shall not be excused by a Force Majeure Event.

D. If a Force Majeure Event destroys all or a substantial portion of the Seattle Streetcar, the City shall decide, in its sole discretion, whether to restore the damaged portions of the Seattle Streetcar, which restoration shall be at the City's sole expense. If the City elects not to restore the damaged portion of the Seattle Streetcar, then this Agreement shall terminate as to the damaged portion of the Seattle Streetcar. If the City elects to restore the damaged portion of the Seattle Streetcar, then the City shall provide notice to the County, and the County shall resume operations and maintenance of the restored Seattle Streetcar once restoration is complete. If this Agreement is terminated due to Force Majeure Event damage to a portion of the Streetcar System, the Parties shall not be released from any payment or other obligations arising under this Agreement as to any other portion of the Seattle Streetcar, and all terms and conditions that expressly survive the expiration or termination of this Agreement shall continue to apply as to the damaged portion of the Seattle Streetcar.

E. Notwithstanding anything to the contrary in this Section 23.9, if nonperformance due to a Force Majeure Event (or multiple Force Majeure Events) continues beyond two (2) consecutive calendar years, then either Party may terminate this Agreement as to all or a portion of the Seattle Streetcar upon thirty (30) days' notice to the other Party. Upon such termination the Parties shall close out this Agreement consistent with Section 22.3.

F. If this Agreement is terminated pursuant to Sections 23.9.D or E, then the Parties shall not be released from any payment or other obligations arising under this Agreement prior to the Force Majeure Event or Events, and all terms and conditions that expressly survive the expiration or termination of this Agreement shall continue to apply as to the portion of the Seattle Streetcar subject to termination.

23.10 Assignment/subcontracting. Neither Party may assign or subcontract any interest, obligation, or benefit in this Agreement or transfer any interest in the same

without prior written consent by the other Party.

23.11 Binding on Successors and Assigns. This Agreement, together with all appendices, exhibits and attachments now or hereafter made a part, shall be binding on the Parties hereto and their respective successors and assigns.

23.12 Severability. If any of the terms and conditions of this Agreement is determined to be invalid or unenforceable by a court of competent jurisdiction, the remaining terms and conditions shall remain in full force and effect. The Parties agree to negotiate in good faith to reform the Agreement to replace any invalid or unenforceable term and/or condition with a valid and enforceable term and/or condition that comes as close as possible to the intention of the stricken term and/or condition.

23.13 Warranty of Right to Enter into Agreement. The Parties each warrant they have the authority to enter into this Agreement and that the persons signing this Agreement for each Party have the authority to bind that Party.

23.14 Appendices Exhibits and Attachments. All appendices, exhibits and attachments referenced in and attached to this Agreement are incorporated by this reference.

23.15 Amendments and Modifications. This Agreement, and its appendices, exhibits and attachments may be amended by mutual agreement in the form of an amendment executed by the SDOT Director and the General Manager or such other officers as may succeed to the duties and powers of those offices.

23.16 Survival of Certain Provisions

The Parties' rights and duties under the following sections shall survive any termination or expiration of this Agreement:

Article 13.0 Audits
Article 18.0 Indemnification
Article 19.0 Insurance
Article 20.0 Hazardous Substances
Article 21.0 Dispute Resolution

23.17 Meetings. The Parties' Designated Representatives will meet at least semi-annually (once every six months) to discuss necessary changes or adjustments to this Agreement. Such discussions will include opportunities to improve the efficiency of the operation and maintenance of the Seattle Streetcar. Meetings may be in person or by telephone or other means.

23.18 Execution of Agreement. This Agreement may be executed in two counterparts, either one of which shall be regarded for all purposes as one original,

but both of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties hereby execute this Agreement as of the day and year set forth below their signatures.

King County

City of Seattle

Rob Gannon
General Manager
King County Metro Transit Department

Sam Zimbabwe
Director
Seattle Department of Transportation

Date: _____

Date: _____

Approved as to form:

Approved as to form:

Deputy Prosecuting Attorney

Date: _____

Date: _____

Appendix A

Definitions

Accident: An unexpected loss-causing event that results in a fatality, bodily injury, or property damage.

Capital Improvements: Non-routine repairs and replacement of Seattle Streetcar permanent structures.

Car History Book: A record maintained by the streetcar builder that shows all modifications to a streetcar during its construction, including quality control exceptions and their corrections.

Configuration Management: The control and documentation of changes that are made to the hardware, software, firmware, and documentation throughout the life of a system.

Electrification System: The overhead electrical wires and related infrastructure improvements (including but not limited to poles, trusses, brackets, crossovers, guy or tension wires, DC substations, utility cabinets or vaults, switches, transformers, capacitors, computerized monitoring equipment, turnbuckles and other hardware, etc.) used to provide or support power to ETB and/or streetcar services. Sometimes referred to as the Overhead Contact System (“OCS”).

Electric Trolley Bus or ETB: King County’s electric trolley bus system and all its component parts and related infrastructure, including but not limited to the ETB OCS, all as now existing or hereafter modified.

Force Majeure Event: Any delay resulting from any cause beyond a Party’s reasonable control resulting in the Party’s inability to perform its obligations under this Agreement. Force Majeure Events may include, but are not limited to: Acts of nature; accident, fire or explosions arising from causes unrelated to the acts or omissions of the Party seeking to be excused from performance; acts of war, civil unrest, public disorder, sabotage, or terrorism; epidemic; strikes; delays resulting from legal or administrative challenge by persons or entities other than the Parties to this Agreement, and so forth. Force Majeure Events shall include extraordinary equipment failures (such as traction power substation failures) or acts or omissions of agents, suppliers, contractors or subcontractors of any tier, including but not limited to acts or omissions arising out of or relating to a Force Majeure Event as defined herein.

Hazardous Substances: Hazardous Substances means:

A. Any toxic substances or waste, sewage, petroleum products, radioactive substances, medicinal, bacteriological, or disease-producing substances; or

B. Any dangerous waste, hazardous waste, or hazardous substance as defined in the following statutes as now codified or later amended:

- i. Comprehensive Environmental Response, Compensation and Liability Act of 1980, (42 U.S.C. §9601 et seq.);
- ii. Resource Conservation and Recovery Act, as now or hereafter amended (42 U.S.C. §6901 et seq.);
- iii. Hazardous Waste Management Act and Washington Model Toxics Control Act, (R.C.W. Chs. 70.105, and 70.105D);
- iv. Federal Water Pollution Control Act, also known as the Clean Water Act, (33 U.S.C. §1251 et seq.);
- v. Clean Air Act, (42 U.S.C. §7401 et seq.);
- vi. Oil Pollution Act of 1990, (33 U.S.C. §2701 et seq.); or
- vii. Hazardous Materials Transportation Act, (49 U.S.C. 5901 et seq.).

C. Any other pollutant, contaminants, or substances, posing a danger or threat to public health or welfare, or to the environment, which are regulated or controlled by any federal, state and local laws, and regulation, as now codified or later amended.

Heavy Repair: A repair that is relatively so material in cost, repair time, or physical damages that management's involvement in the determination of the repair is necessary. Heavy Repair includes Overhaul and can be scheduled or can be unscheduled in cases such as an accident repair.

Joint Use Facility: Joint Use Facilities are structures or improvements integral to the operation of the Seattle Streetcar or the County's transit system and used by the Seattle Streetcar and by the County for its transit service, and potentially by other agencies or services. By way of example only, Joint Use Facilities may include utility and traffic signal poles, support wires, shelters or waiting areas and their amenities, and pedestrian improvements, but only to the extent the same are integral to the operation of the Seattle Streetcar and the County's transit system and used by the Seattle Streetcar and also by the County transit system and, potentially, other agencies or services. Joint Use Facilities do not include other municipal improvements not integral to the operation of the Seattle Streetcar and the County's transit system, such as sidewalks, curbs and gutters, street panels, catch basins and storm sewers, street pavement markings and finishes, etc.

Major Maintenance: Major Maintenance is work beyond the regular, routine upkeep of equipment to replace or repair the equipment in order to return a system to its intended use, prevent further damage, or make it compliant with new or existing laws or regulations. Major Maintenance includes Heavy Repairs and Overhauls.

Overhaul: Scheduled maintenance of larger systems to recondition the equipment in order to restore it to its original condition and extend its operating life. For example, rebuilding an air conditioner every five years or 250,000 miles would be an Overhaul.

Overhaul Cycle: The interval at which streetcars will be given an Overhaul.

Overhead Contact System or OCS: See definition of Electrification System.

Non-Revenue Vehicles: Vehicles other than streetcars used to support Seattle Streetcar operations and that do not carry passengers for fare, including but not limited to maintenance vehicles, wreckers or tow vehicles, staff transport vans, supervisor vehicles, etc.

Service Plan: A document developed by the City describing the streetcar service to be provided detailing the hours of operation, holidays, headways, special operations, and other details of the service.

Special Event: An event that requires a deviation from the normal operating routine of the Seattle Streetcar. These may include extended hours of service for holidays, anticipated delays due to parades or construction work, and the opening of new streetcar Lines.

System Safety Program Plan or SSPP or Public Transportation Agency Safety Plan or PTASP: A document developed by Metro Transit Division of the King County Department of Transportation describing its safety policies, objectives, responsibilities, and procedures.

Train-to-Wayside Communications or TWC: A system of digital communication between trains (streetcars) and equipment located along the wayside to route trains automatically to their destination and other uses.

Unusual Occurrence Report (“UOR”): A daily report prepared and sent by County personnel operating the Streetcar System to the City. The UOR typically includes entries regarding delays to service, incidents, mechanical failures, and other unusual events.

Appendix B

Operations and Maintenance Responsibilities Matrix

	Item	City	KCM	Section of Agreement	Schedule
1	Service Plan	D	S, C	3.2.G	
2	Arrange for required utility connections and service to Streetcar Facilities	D		5.1	
3	Intentionally Left Blank				
4	Provide all special tools and equipment needed by King County to perform duties under the Streetcar Agreement	D		7.2	
5	Provide and maintain equipment maintenance requirements and drawings to King County (Configuration Management)	D		7.4.A	
6	Provide configuration management of the OCS (only) in compliance with SDOT Configuration Management system		D	7.4.A	
7	Operating Plan	R, C	D, C	3	Annual
8	Incorporate Seattle Streetcar in Metro Transit System Security Plan		D	10.0	
9	Comply with regulatory requirements	D	D	3.1.B, 16.0, 23.4	
10	Hire and train staff		D	12.1.A	
11	Report on Achievement of Performance Standards		D	14.2	
12	Develop and implement operating and maintenance procedures		D	3.3, 7.0	
13	Maintain System Security and Emergency Preparedness Plan (SSEPP)	R	D	10.0	Annual
14	Maintain the All Hazard Response Plan (AHRP)		D	10.0	Annual
15	Maintain the Public Transportation Agency Safety Plan (PTASP)	R, A	D, A	9.1	Annual

Legend R = Review C = Collaborate S = Support D = Responsible for deliverable A = Approve

Att A – Interlocal Agreement for Streetcar Operations and Maintenance
V2, 11.4.19

	Item	City	KCM	Section of Agreement	Schedule
16	Conduct emergency preparedness drills	S	D		
17	Prepare train schedules, operator runs and car assignments		D	8.1	
18	Prepare “Bus Bridge” plan		D	6.2	
19	Provide Non-revenue Vehicles		D		
20	Arrange lost and Found handling		D	8.1.B	
21	Develop media relations procedures		D	8.2	
22	Collect and report ridership and performance data		D	14.1	
23	Provide customer information, excluding platform signage	A	D	8.1	
24	Provide and maintain customer signage at platforms	D		8.1	
25	Media Relations regarding accidents, delays, and service changes		D	8.2	
26	Media Relations regarding construction, after RSD – routes, fares, headways, etc., through its branded websites and social media platforms	D		8.2	
27	Pavement and pavement markings	D			
28	Traffic and train signs, signals, aspects displays	D		7.7.C	
29	Track Maintenance		D	7.5	
30	Advertising	D		5.2	
31	New Poles – joint use with traffic signals	D		7.8.B	
32	Joint Use Facilities	C	C	7.8.	
33	Track Drains		D		
34	Passenger Platforms and Furnishings (Not Platform Landscaping)		D		
35	Trash Can servicing at Platforms (First Hill only – 9 cans)		D		
36	Graffiti removal at all locations including TPSS’s		D		
37	Rail Vehicle Maintenance		D	7.6	
38	Train-to-Wayside (TWC) equipment, train signal system controls and TWC equipment on streetcars		D	7.7.C	
39	Radios		D	7.7.D	
40	Cranes		D		

Legend R = Review C = Collaborate S = Support D = Responsible for deliverable A = Approve

Att A – Interlocal Agreement for Streetcar Operations and Maintenance
V2, 11.4.19

	Item	City	KCM	Section of Agreement	Schedule
41	Phones and Networks		D		
42	Overhead Contact System (OCS)		D	7.7.A	
43	Poles – strain poles (including joint use ETB/OCS)		D	7.7.A	
44	Span wires		D	7.7.A	
45	Power Distribution (Substations) including Maintenance Facilities substations		D	7.7.A, 7.7.B	
46	Automatic Passenger Counting (Vendor Service Contract)		D	7.7.E	
47	Real-Time Arrival/Vehicle Tracking System (Vendor Service Contract)		D	7.7.E	
48	OMF Maintenance at First Hill and South Lake Union including custodial, general electrical, mechanical, fire alarms, lighting, HVAC, and landscaping		D	7.7.B	
49	Non-revenue Vehicle Maintenance		D	7.6	
50	Set, collect and enforce fares (The City may contract with the County to implement some or all of these responsibilities)	D		5.3.A	
51	CCTV South Lake Union		D		
52	CCTV First Hill	D			
53	Platform Ticket Machines	D			
54	ORCA equipment installation and maintenance		D	5.3.C	

Legend R = Review C = Collaborate S = Support D = Responsible for deliverable A = Approve

Appendix C

Performance Standards

The County shall demonstrate that it is achieving the specified requirements in the Agreement by achieving the following performance standards in a calendar month period unless otherwise noted.

Performance Area	Performance Standard	Goal
Preventive Maintenance Completed on Time	Percent of scheduled preventive maintenance performed on time.	$\geq 80\%$
On-Time Performance	Percent of scheduled stops less than 5 minutes early and no more than 7 minutes late.	$\geq 85\%$
Reliability	Service interruptions due to vehicle maintenance issues.	≤ 3
System Cleanliness	Completed streetcar interior cleanings daily (%) for streetcars in service.	100%
	Completed streetcar exterior cleaning 1 time per month per streetcar in service.	100%
	Completed interior detail 1 time per month for cars in service.	100%
Employee Injury/Illness on the job	Number of Employee On-the-Job Injuries per month (by incident)	≤ 1.00
Train Accidents	Number of accidents per 1,000 revenue hours	≤ 0.8
Operator Availability	Service interruptions due to Operator shortage.	≤ 2.0
Incidents/Accidents	All events not related to train accidents per 1,000 revenue hours (passengers and employees).	≤ 0.8
Platform Cleanliness	Completed regular platform cleaning as described in Metro Facilities Maintenance Plan.	100%

Appendix D

Seattle Streetcar Report List

	Item	Section of Agreement	Schedule
1	First Hill Base Activity Report		Monthly
2	South Lake Union Base Activity Report		Monthly
3	H-2 Maintenance Completed On-time Report - First Hill		Monthly
4	H-2 Maintenance Completed On-time Report - South Lake Union		Monthly
5	First Hill Insp./PM's Last Done and Next Due		Monthly
6	South Lake Union Insp./PM's Last Done and Next Due		Monthly
7	Streetcar Inspections Performed for Month		Monthly
8	Inventory Cost Report	15.2	Monthly
9	Service Delay Log	6.1.B	Monthly
10	Unusual Occurrence Report	6.1.A	Daily
11	Daily Operations Report		Daily
12	Accident/Incident Reports	6.1.C, D & E	Promptly
13	Preliminary Estimate of Baseline Cost, Revenue and Invoice amount	4.2.A	June 30 for following year
14	Estimate of Baseline Cost, Revenue and Invoice amount	4.2.B	Oct. 31 for following year
15	Final estimate of Baseline Cost, Revenue and Invoice amount	4.2.C	December 15 for following year
16	General Ledger Report		Monthly
17	Preliminary Baseline Reconciliation	4.4.A	March 31, Annual
18	Annual Report describing performance against the Performance Standards in Appendix C, and including final Baseline Reconciliation	4.4.B, 14.2	April 30, Annual
19	Ridership	14.1	Monthly
20	Operating Plan	3.3	Effective Date for initial version, then March 31, Annually

Appendix E

Points of Contact

Designated Representatives

City:	County:
Streetcar and Transit Corridors Manager Seattle Department of Transportation P.O. Box 34996 Seattle, WA 981240-4996 (206) 386-4012	Rail Division Director King County Metro Transit Department MS 901-MT-0450 901 5 th Ave Seattle, WA 98164-3856 (206) 477-6065

Contact Information for SDOT Director, General Manager, and Service of Notice

SDOT Director:	General Manager:
Director Seattle Department of Transportation P.O. Box 34996 Seattle, WA 98124-4996 (206) 684-5000	General Manager King County, Metro Transit Department MS KSC-TR-0415 201 South Jackson Street Seattle, WA 98104-3856 (206) 477-5911

Invoices.

County shall submit invoices to:

Seattle Department of Transportation
Accounts Payable
ATTN: Seattle Streetcar
PO Box 34996
Seattle, WA 98124-4996

Appendix F

Partnership Decal

