

**TRANSIT SERVICE FUNDING AGREEMENT
BY AND BETWEEN
KING COUNTY
AND
THE CITY OF SEATTLE**

THIS TRANSIT SERVICE FUNDING AGREEMENT ("Agreement") is made by and between King County, a political subdivision of the State of Washington and home rule charter county with broad powers to provide public transportation within the County's geographic boundaries, by and through the King County Metro Transit Department ("County" or "Metro Transit") and the City of Seattle, a Washington municipal corporation, by and through the Seattle Department of Transportation ("City" or "SDOT") both of which entities may be referred to hereinafter individually as "Party" or collectively as the "Parties."

RECITALS

- A. As a result of a voter-approval of the 2020 Proposition 1 transit funding measure, authorizing a 0.15% sales and use tax increase for six (6) years, the City has identified additional funds that can be used to purchase service hours from the County according to the two priorities of centering equity and ensuring transit works for those who need it most; and the City and County have successfully partnered through multiple agreements, including the 2008 Transit Service Speed and Reliability Partnership Agreement and 2014 Transit Service Funding Agreement, to meet the demands of Seattle's rapid growth and increasing demand for frequent, all-day, 7-day per week transit service.
- B. The City has identified specific routes and times where it desires service hours to be retained or increased to attain transit service goals in the Seattle Transit Master Plan ("Transit Master Plan").
- C. Strategies 3.1.1 and 6.3.1 of the King County Metro Transit Strategic Plan for Public Transportation 2011-2021 ("Strategic Plan") identify partnerships with local jurisdictions and businesses as a potential source of the revenue necessary to provide transit service in support of economic recovery and sustainability.
- D. The King County Metro Mobility Framework identifies guiding principles for how Metro Transit and partners can achieve a regional mobility system that is innovative, integrated, equitable, and sustainable, including:
 - 1. Invest where needs are greatest
 - 2. Innovate equitably and sustainably
 - 3. Encourage dense, affordable housing in urban areas near transit
 - 4. Improve access to mobility
 - 5. Provide fast, reliable, integrated mobility services
 - 6. Align investments with equity, sustainability, and financial responsibility; and

- E. The County and City will work together to deliver City-purchased transit service that meets the following goals of the City’s voter-approved transit funding program:
1. Provide safe and efficient transit for all Seattleites, particularly our essential workers fighting against this global pandemic;
 2. Preserve a robust, connected transit system in Seattle that centers equity by ensuring access no matter the time of day or where you live;
 3. Make transit investments in underserved areas and address acute mobility needs in areas like West Seattle;
 4. Invest in ORCA Opportunity for students and Low-Income Access programs; and
 5. Ensure continuity of critical transit services and transportation investments despite financial restrictions caused by I-976 and COVID-19.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES, COVENANTS AND AGREEMENTS SET FORTH HEREIN, AND FOR OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED BY THE PARTIES, THE PARTIES HEREBY AGREE AS FOLLOWS:

1. PURPOSE OF AGREEMENT

The purpose of this Agreement is to set forth the terms and conditions under which the County will operate City-funded transit service. This Agreement incorporates Exhibits A and B, attached hereto, as if fully set forth in this Agreement.

2. COUNTY’S RESPONSIBILITIES

- 2.1 The County will provide transit service in accordance with the service identified in Exhibit A, pursuant to which the City will pay the fully allocated cost of the service hours as defined in Section 5 of this Agreement. During the duration of this Agreement, the County acknowledges that the City may enter into regional partnership agreements with other entities to purchase additional transit service from the County. The Parties agree that transit service to be provided under this Agreement and any regional partnership agreements will be consistent with the King County Metro Transit Service Guidelines ("Service Guidelines") as may be updated from time to time by Metro Transit, and/or the City’s Transit Master Plan as may be updated from time to time by the City. Metro Transit will adhere to KCC Section 28.94.020, which requires Metropolitan King County Council (“County Council”) approval of major service changes.
- 2.2 The County will manage the service in accordance with all applicable laws, labor agreements, administrative rules, and internal procedures including, but not limited to, those related to managing daily operations and workforce to deliver service, and as may be further specified in this Agreement. The Parties understand and agree that the transit service referenced herein will be open to the general public.

- 2.3 The County will include the transit service provided for under this Agreement in its ongoing and annual route performance monitoring, consistent with Metro Transit's Strategic Plan and Service Guidelines.
- 2.4 In addition to Section 2.3, the County will compile the following service data for routes serving Seattle, including routes on which the City is purchasing service:
- a. Revenue hours;
 - b. Platform hours;
 - c. Average boardings by trip;
 - d. Load factors by trip, including minimum of maximum, average of maximum, and maximum of maximum;
 - e. Capacity information, including crowding thresholds and seats by typical coach type
 - f. Annualized platform and revenue hours by trip; and
 - g. Trip start and end times.

This data will be reported to the City at least annually, and in the same format for which it is compiled for the County's service planning needs, or otherwise already reported to the City pursuant to the prior existing transit service funding agreement. Upon request by the City, the County will make a reasonable effort to provide route travel time data for routes on which the City is purchasing service, and service data for routes not directly serving Seattle as defined in items (a.) through (g.) above.

2.5 Service Management

- 2.5.1 While both Parties acknowledge that the County does not have authority to direct City investments, the County retains responsibility for scheduling, managing and operating the service funded by the City under this Agreement. The County will:
- a. For fixed-route, scheduled service, include specific identification of those services that are being funded by the City in printed and electronic schedule information; and
 - b. Notify the City's representative (as listed in Section 19 of this Agreement) in writing of:
 1. Any major changes to City-funded services (notification within ninety (90) days);
 2. Incidents of extended (five (5) days or more) non-operation of City-funded services (notification within forty-eight (48) hours);
 3. Occurrence of major accidents or incidents on City-funded services involving multiple injuries, fatalities or extensive physical damage (notification within twenty-four (24) hours); and
 4. Planned changes in fare policies or levels (notification within ninety (90) days).
- 2.5.2 The service hours for each route specified in Exhibit A are estimates only. The County will use these estimates to invoice the City for City-funded transit service provided, and the City will pay for service hours in accordance with Sections 5 and 6.1 of this

Agreement. Any major changes to the service hours purchased by the City for the routes in Exhibit A shall be subject to the City's consent and approval by the County Council consistent with KCC Section 28.94.020 as now codified or hereafter amended, which requires the County Council approval of major service changes. For purposes of this Agreement, "major changes" are:

- a. any change to a service schedule that affects the established weekly service hours for a route by more than 25%; or
- b. any change in route location that moves the location of any route stop by more than one half mile.

2.6 Investment Data Tracking

The County will provide the following service data for routes on which the City is purchasing service:

- a. Route
- b. Identification of associated, through-routed, or co-scheduled routes
- c. Platform hours funded by STBD, by day & period, with periods defined as: Peak (6 a.m. – 9 a.m.); Midday (9 a.m. – 3 p.m.); PM Peak (3 p.m. – 6 p.m.); Evening (6 p.m. – 12 midnight.); and Night (12 midnight – 6 a.m.)
- d. Service change start (and end, if relevant)
- e. Estimate of trips funded by period
- f. Supplantation eligibility

The City and County will jointly identify and maintain a shared tracking document or system for STBD investments. Following each of Metro Transit's major service changes, this shared tracking document or system will be updated with the service information listed in this section 2.6.

2.7 Changes to Service

- 2.7.1 The City acknowledges that the County routinely implements transit service changes. For 2021 and subsequent years, it is expected that service change dates will be scheduled to occur in March and September. If additional service change dates are implemented by the County, the provisions of this Agreement will also apply to any additional service change(s). The Parties agree to coordinate changes to service in conjunction with the County's scheduled service change dates.
- 2.7.2 Metro Transit also routinely makes small, limited-scope service increases between service changes to respond to emerging conditions. These service increases are not published in route schedules. At its discretion, Metro Transit may implement small City-funded service increases between service changes if deemed operationally feasible and advisable.
- 2.7.3 For fixed-route service changes not requiring County Council approval, the City agrees to initiate a coordinated working process with the County to develop a list of service

investments two hundred (200) days prior to the applicable service change date. Initiation of this work process will include presentation of an initial list of potential investments developed by the City, and joint development of a process timeline and scope of work by the City and County. The County and City will work to refine the City's proposal with the County confirming a final list of investments with final hours estimates and supplementary information provided in the tracking document referenced above no later than one hundred seventy (170) days prior to the applicable scheduled service change date. After one hundred seventy (170) days and before one hundred thirty-five (135) days in advance of the applicable service change date, any already-identified draft investments should be finalized (if needed), and any new investments or substantive changes to the investment package are at Metro Transit's discretion. Neither Party may make any changes to the list of investments within one hundred thirty-five (135) days of the applicable service change date.

- 2.7.4 For fixed-route service changes that require County Council approval, an additional one hundred thirty (130) days should be added to the milestones set forth in Section 2.7.3. If extraordinary circumstances arise after the three hundred (300)-day milestone that results in the need for changes that may require County Council approval, Metro Transit and SDOT will work together to identify a mutually agreeable course of action.
- 2.7.5 If Metro Transit proposes to restructure or make changes to multiple routes along a corridor or within an area so as to reduce or eliminate any existing City-funded transit service in a manner not already captured under paragraphs 2.7.1 through 2.7.4, the Parties will work together to identify replacement investments on the resulting service network. Metro Transit may exercise its discretion to consider a service restructure for a variety of reasons including, but not limited to, Sound Transit or Metro Transit investments, existence of corridors above or below All-Day and Peak network frequency (as reported in the annual Service Guidelines Report), services that compete for the same riders, a mismatch between service and ridership, major transportation network changes, and major development or land use changes. Metro Transit will restructure service in a manner consistent with the service design criteria found in its Service Guidelines.
- 2.7.6 If Metro Transit proposes new or substantially revised Service Guidelines, Metro Transit will consult and collaborate with the City, along with other County jurisdictions through the Regional Transit Committee (RTC) process on the changes. To the extent that new or revised Service Guidelines affect City-funded service, the Parties will meet before those changes go into effect and negotiate resulting changes to this Agreement through an amendment as described in Section 10 of this Agreement.
- 2.7.7 If, in the County's determination, the City proposes a significant change or restructure to a route or corridor, such as (by way of example only) the 2016 City service investment that separated the RapidRide C and D lines, then the City will, if requested by the County, participate in an interagency team to evaluate and/or plan for the proposed change. Prior to committing resources to such an effort, the Parties will negotiate team composition and allocation of additional costs related to planning and implementation of such changes or restructuring. If the Parties agree on the service and capital investment needed to achieve

the service changes or restructuring, then the interagency team will be responsible to analyze and develop an implementation plan to address service pathways, facilities, buses, terminals, equipment, and any other relevant issues and support needs.

2.7.8 The Parties agree that any change to City-funded transit service to be implemented at a subsequent scheduled service change date shall be memorialized in an amendment to this Agreement, which shall be a new subpart of Exhibit A and will set forth the service description and annualized hours for that service change date (for example, modifications to the Service Description and Annualized Hours for the March 2021 service change shall be memorialized in a new Exhibit A). Except as provided in Section 2.5, the Metro Transit's General Manager ("General Manager") and SDOT's Director ("Director") are authorized to execute such amendments without additional approval by the County Council or the City Council.

2.8 Customer Marketing and Communications

For the transit service specified in this Agreement, the County will continue to follow its standard procedures for developing and distributing full service marketing and communications information such as press releases and service change notifications, to the public through its existing tools and activities. The County will provide the City with the opportunity for advance review of marketing and mass communications materials related to services provided under this Agreement. If the City determines there is an additional communication need related to its contracted service, then the City will coordinate that effort with the County through the County's transit communications and marketing staff.

3. CITY'S RESPONSIBILITIES

- 3.1 **Service Funding.** The City will pay, based on invoices from the County, the fully allocated cost of the service and fleet costs as defined in Section 5 and consistent with Exhibits A and B as may be amended from time to time as provided in this Agreement.
- 3.2 **Operating Enhancements.** The City agrees to pay for any operating enhancements that support more efficient operations of City-funded transit service beyond that which the County normally provides, such as enhanced fare enforcement or transit lane enforcement. The addition of such operating enhancements shall be addressed in accordance with Section 10.
- 3.3 **City Transit Reserves.** The maintenance and use of any reserve funds created or maintained by the City shall be solely within the City's control and are not subject to the County's reserve policies. However, pursuant to Section 11.5, the City will endeavor to maintain reserves adequate to avoid cutting more than 100,000 service hours per service change period as the County ramps down City-funded service for early termination or expiration of this Agreement.
- 3.4 **Terminal Facilities.** The City will make every effort to ensure adequate terminal facilities are available within the City limits to support City-funded transit service. The City acknowledges Metro Transit's ability to operate or to provide additional service frequency may be dependent on availability of adequate terminal facilities. Any dispute regarding the adequacy of any particular

terminal facilities shall be resolved using the dispute resolution process set forth in Section 13 of this Agreement.

4. AGREEMENT DURATION

The term of this Agreement shall commence upon full execution of this Agreement by the Parties. Services will begin as specified in Exhibits A-1 and A-2. This Agreement shall remain in effect until December 31, 2027, unless extended or earlier terminated pursuant to the terms of this Agreement. If the City desires to continue the Agreement beyond the initial term, the City will provide the County with written notice one hundred eighty (180) days prior to the expiration date of the Agreement. The General Manager and the Director are authorized to extend this Agreement for up to an additional twelve (12) months without additional approval by the County Council or the City Council.

5. SERVICE COSTS/REVENUES

5.1 Compensation

5.1.1 This Section describes how the City will compensate the County for operating the City-funded transit service. The City will reimburse the County for all Operating Expenses and Fleet Costs in excess of the Farebox Revenue, as these terms are defined in Sections 5.2, 5.3 and 5.4, respectively.

5.1.2 The County will annually update Exhibit B to reflect the rates resulting from the Budget Process, as defined in Section 5.5, which will be used for invoicing throughout the operating year. The Closeout Reconciliation, as defined in Section 5.6, will then determine the final compensation resulting from actual operating expenses and revenue.

5.2 Operating Expense & Cost Allocation Model

5.2.1 The City will compensate the County for the fully allocated operating expense for the City-funded transit service provided by the County pursuant to this Agreement. Fully allocated operating expenses include, but are not limited to, the cost of fuel, maintenance, driver wages, service supervision, infrastructure maintenance, revenue collection, scheduling, rider information, data analysis, administrative costs and management costs, unless otherwise noted in this section.

5.2.2 For the Budget Process described in Section 5.5, the County will provide a Budget Cost Allocation Model (CAM). The CAM aggregates operating expenses into groupings of similar types, called Cost Pools, and then allocates these expenses to the modes of transportation operated by the County using Allocation Variables, which can be based on service, maintenance data, personnel counts or other methods. The Budget CAM is based on Metro Transit's adopted budget. Consistent with the rest of King County, Metro Transit is on a biennial budget cycle. Any annual budget amounts calculated pursuant to this Agreement represent an annual allotment of the adopted biennial budget for the period

under consideration. The budgeted operating cost for the planned City-funded service will be updated annually in Exhibit B.

- 5.2.3 For the Closeout Reconciliation described in Section 5.6, the County will provide an Actual CAM. Actual CAM is used to provide operating expense for National Transit Database (NTD) reporting and follows federal guidelines for reporting operating expense. Actual CAM uses actual operating data to allocate actual operating expense from the County’s financial system to the modes of transportation operated by the County. The Actual CAM determines the Operating Expense for which the City is required to reimburse the County for the actual service operated.
- 5.2.4 For purposes of this Agreement, the fully allocated operating expense does not include the AD GM GM: Metro Transit General Manager’s Office expenses Cost Pool.:

5.3 Fleet Costs

- 5.3.1 The City will compensate the County for fleet costs based on the number of buses required to operate AM and PM peak hours for the service identified in the subpart of Exhibit A in effect at the time. For purposes of this Agreement the AM peak hours are defined as 6 a.m. – 9 a.m. and the PM peak hours are defined as 3 p.m. – 6 p.m.
- 5.3.2 The County will determine the number of buses required for the City-funded transit service and the fleet cost based on the following:

AM & PM Peak Annual Hours = one (1) bus per	1,000	Annual Hours
Financing Period (Diesel/Hybrid buses)	12 Years	FTA minimum
Financing Period (Trolley buses)	15 Years	FTA minimum

- 5.3.3 Exhibit B will be updated annually to reflect the annual fleet cost per bus by type of bus. This annual cost will be based on the assumed full price of a bus for the period from the County’s budget process divided by the financing period as shown in the table above.

5.4 Farebox Revenue

- 5.4.1 The City will receive a credit towards the County's operating costs of providing the City-funded transit service based on the system-wide farebox recovery ratio (farebox revenue divided by operating cost).
- 5.4.2 For the Budget Process described in Section 5.5, the farebox recovery ratio will be based on the County’s adopted budget. The Closeout Reconciliation described in Section 5.6 will use actual system-wide farebox revenue and operating cost for the year of operation.

5.5 Budget Process

- 5.5.1 By October 31 of each calendar year, the County shall prepare and deliver to the City an estimate of Operating Expense, Fleet Costs, and Farebox Revenue for the planned City-funded transit service for the upcoming year based on the proposed County budget. The County will provide a preliminary Budget CAM representing the annual allocation of the County's proposed biennial budget using estimations of inputs. The City will review and provide comments to the County on the financial estimates and the CAM within ten (10) business days.
- 5.5.2 By December 15 of each calendar year, the County shall prepare and deliver to the City the Operating Expense, Fleet Costs, and Farebox Revenue for the planned City-funded transit service for the upcoming year based on the adopted County budget. The County will provide a final Budget CAM representing the annual allocation of the County's adopted biennial budget using estimations of inputs. Exhibit B will be updated annually in January, based on this Budget Process to reflect Operating Expense, Fleet Costs, and Farebox Revenue for the Invoicing and Payment Procedures detailed in Section 6.

5.6 Closeout Reconciliation

- 5.6.1 On an annual basis, based on the information developed annually by Metro Transit required for reporting to the NTD, the Parties will reconcile the actual City-funded hours delivered and fully allocated costs of the City-funded transit service against the invoiced amounts paid by the City.
- 5.6.2 For purposes of this Agreement the method of reconciliation will use Operating Expense as allocated for the actual City-funded transit service through the Actual CAM defined in Section 5.2.
- 5.6.3 Farebox recovery will use actual farebox revenue and operating cost for the year of operation.
- 5.6.4 Fleet costs will be based on the type of buses scheduled to provide the City-funded transit service.
- 5.6.5 By March 31 of each calendar year, the County shall prepare and deliver to the City a preliminary Closeout Reconciliation comparing what the City has paid through monthly invoices versus actual expenses and revenue collected by the County for the previous calendar year. The County will provide its CAM as detailed support.
- 5.6.7 By April 30 of each calendar year, the County shall prepare and deliver to the City a final Closeout Reconciliation comparing what the City has paid through monthly invoices versus actual expenses and revenue collected by the County for the previous calendar year. The County will provide its CAM as detailed support.

- 5.6.8 If the amount invoiced to and paid by the City for the City-funded transit service exceeds the actual costs documented in the County's financial records, the County will compensate the City for the difference pursuant to Section 5.6.10.
- 5.6.9 If the amount invoiced to and paid by the City for the City-funded transit service is less than the actual costs documented in the County's financial records, the City will compensate the County for the difference pursuant to Section 5.6.10.
- 5.6.10 The settlement of the annual reconciliation will be made by separate invoice issued prior to the end of the same year as the reconciliation. Any overcharge or underpayment of City-funded transit reconciliation for this Agreement shall be credited or paid by the responsible Party within sixty (60) days of receipt of the reconciliation invoice.
- 5.6.11 The final reconciliation after the expiration or termination of the Agreement shall take place at the next scheduled NTD report cycle described in this Section 5 and if any adjustment is necessary it shall be remitted to the appropriate Party within sixty (60) days of the reconciliation.
- 5.6.12 The provisions of this Subsection 5.6 will survive the expiration or earlier termination of the Agreement.

5.7 **Periodic Review of Financial Performance**

- 5.7.1 The County recognizes that operational and policy decisions can have an impact on the required reimbursement from the City for service funded through this Agreement. In committing to communicate with the City, the County's intent is to ensure that the City has sufficient information and opportunity to inform decisions on service investments.
- 5.7.2 The Parties will meet annually to review the cost and performance of the City-funded service in the previous year. The purpose of this meeting is to identify cost drivers, issues, and trends that may impact future planning. This review will take place sometime after May 1 of each year in order to allow for the Closeout Reconciliation described in Section 5.6, unless the Parties mutually agree to cancel the meeting.
- 5.7.3 Throughout the operating year, the County will provide quarterly briefings via email (or meetings if requested by the City) focused on analysis of actual vs. budgeted cost and performance for Metro Transit's enterprise operating expense, including the performance of major operating divisions supporting City-funded service, such as Bus Operations and Vehicle Maintenance.
- 5.7.4 The County will inform the City of any major changes to fare policy impacting projected revenue, including temporary suspension of fares due to public emergencies, as soon as possible in order to allow the City the opportunity to make changes in service levels to adjust for a potential reduction in farebox recovery revenue credited.

- 5.7.5 If the City determines that changes in Metro Transit’s enterprise expense or projected revenues would lead the City to reduce City-funded service then the Parties shall meet and discuss potential actions they could jointly agree to take to maintain such service or to reduce the impacts of the service reductions. Those actions could, by mutual agreement, include: service suspensions; temporary suspension or revision of the cap on total number of hours that can be reduced in one service change; or other actions that Metro Transit could take to mitigate a potential loss in service.
- 5.7.6 In the event of the need for unplanned service reductions in response to a public health or other emergency pursuant to KCC 28.94.020(B)(2)(a)¹ as now codified or hereafter amended, excluding snow emergencies, Metro Transit commits to include City staff in the process of identifying those cuts.
- 5.7.7 If, after the date the City begins to fund service under this Agreement, Metro Transit is allocated federal grant funds to support bus operations as a result of COVID-19, as with 2020 CARES Act funding, then the County will engage with the City, based on the circumstances, amount, and purpose of funds provided, to develop and implement a credit for an applicable portion of these grant funds towards the cost of bus service purchased by the City. For purposes of this Section 5, “an applicable portion of these grant funds” means the percentage of Metro Transit bus service eligible for these federal grant funds which is funded by the City under this Agreement on the date Metro Transit is allocated the funds.

5.8 Flexible Services Reimbursement

- 5.8.1 The City may choose to invest in Flexible Services, which are defined as transportation services operated by a 3rd party in contract with the County (DART, Via, Ride2, etc...). These services could include pilot programs, as well as service that has transitioned into permanent programs. The County’s budget process and adopted service plans will determine when pilot service has transitioned into permanent service. If the Parties wish to implement a pilot project operated by Metro Transit, an amendment to this Agreement shall be required. Flexible Services expense and revenue projections for invoicing will be included in Exhibit B. Flexible Services investments will be subject to the Closeout Reconciliation language in Section 5.6 and Invoice/Payment Procedures in Section 6.
- 5.8.2 Pilot Program Reimbursement: The City will reimburse the County for the direct costs of service from the contractor for the agreed upon level of service, as well as any direct costs related to service implementation and support. Incremental overhead costs will not be allocated to these direct service and support costs for pilot program reimbursement. The

¹ https://aqua.kingcounty.gov/council/clerk/code/38_Title_28.htm#_Toc468864549 “...if, in the opinion of the director, an emergency exists that requires any change to established routes, schedules or classes of service, the director may implement such a change for such a period as may be necessary in the director's judgment or until such a time as the council shall establish by ordinance otherwise. Such changes that the director intends to be permanent shall be reported in writing to the chair of the council.”

City will receive a credit towards the costs of this service based on the farebox recovery ratio of the specific funded service (not the system-wide ratio for fixed route bus service), as well as any external funding sources, such as federal, state or local grants specifically designated for this service.

- 5.8.3 Permanent Program Reimbursement: The City will reimburse the County for the fully-allocated cost of the agreed upon level of Flexible Services provided. This includes direct costs for service from the contractor, as well as any direct costs related to service implementation and support, as well as overhead costs as allocated through the CAM as described in Section 5.2. The City will receive a credit towards the costs of this service based on the farebox recovery ratio of the specific funded service (not the system-wide ratio for fixed route bus service), as well as any external funding sources, such as federal, state or local grants specifically designated for this service.

6. INVOICES/PAYMENT PROCEDURES

- 6.1 The County will submit an invoice to the City quarterly, no later than March 31, June 30, September 30, and December 31, for Metro Transit's costs to provide City-funded transit service in accordance with Exhibits A and B for each 3-month period leading up to each invoice date. These quarterly invoices will be based on the Service Description and Annualized Hours, the fully allocated operating expense, fleet costs, and farebox recovery ratios developed in the King County budget process. Quarterly invoice amounts will each reflect one-fourth of the total annual budgeted operating expense and fleet expense, less the farebox recovery.
- 6.2 The estimated fully allocated Operating Expense, Fleet Costs and Farebox Recovery ratios are provided in Exhibit B and will be updated by the County in January of each year in the form of a new subpart to Exhibit B sent to the City. The Budget Process defined in Section 5.5 will determine the updates to Exhibit B that will be used for invoicing.
- 6.3 The City shall make payment within forty-five (45) days after receipt of an invoice. Should the City fail to pay the County the amount due within forty-five (45) days of receipt of a billing invoice from the County, a late payment assessment in the form of interest shall be applied to any outstanding balance due for that invoice. The late payment assessment shall be fixed at the maximum interest rate allowable under Washington state law on the date the payment was initially due.

7. NO SUPPLANTING OF TRANSIT SERVICE

- 7.1 The Parties agree that the transit service funded by the City under this Agreement shall not supplant other service on routes partially or completely operating within the City that the County would otherwise provide in accordance with the Service Guidelines.
- 7.2 The transit service funded by the City under this Agreement will be included in Metro Transit's annual System Evaluation Report as part of its route service level and performance assessments.

The entirety of any route in which the City purchases service hours will be evaluated as a whole without separating out or otherwise distinguishing between “Seattle hours” or “King County hours.”

- 7.3 Metro Transit’s service investments, reductions, reinvestments, and restructures of bus routes will be based on Metro Transit’s policies including the annual System Evaluation Report and the Service Guidelines in effect in each year the system is evaluated. Metro Transit will be guided by the Report and its priorities, which apply systemwide. The City acknowledges that Metro Transit has the sole authority to interpret the Service Guidelines and make changes to the transit network based on implementation of the Service Guidelines.
- 7.4 At the initiation of any City-funded transit service and through at least the next evaluation period, Metro Transit will continue its current number of bus trips, not including service funded by others, on any route and in any period for which the City has purchased service hours, subject to the service change process set forth in Section 2.7 and subject also to Section 7.5. If, in accordance with Sections 2.7 and 7.3, a Service Guidelines-based evaluation identifies any of these such routes as an investment or reduction priority, Metro Transit may increase or reduce service hours on a route(s) based on that evaluation and shall notify the City of its determination. Based on that determination, or based on implementation of the City’s Transit Master Plan, the City may reduce or increase its purchase of additional service in a route(s) at any time, consistent with the service change notification provided under Section 2.7 of this Agreement. The County acknowledges that the City has the sole authority to interpret the City's Transit Master Plan and to make changes in the allocation of its City-funded transit service based on implementation of its Transit Master Plan.
- 7.5 Before any service restructure, as defined in the Service Guidelines, is implemented on routes on which the City has purchased service hours, Metro Transit will identify as a baseline the Seattle hours and King County hours invested in the affected routes prior to the implementation of the restructure. Except as provided in Section 7.4, after such a restructure, Metro Transit's net investment of King County hours will remain the same as identified in the baseline. Provided however, if a future Metro Transit budget establishes the need for system reductions, then a service restructure may result in Metro Transit’s net investment being reduced from the baseline.
- 7.6 If during the duration of this Agreement, growth in current revenues or new revenue sources enable the Metro Transit system to grow, then the City will be credited for service investments made after Metro Transit’s March 2021 service change. The City will be credited for new investments consistent with Metro Transit’s top three investment priorities (1. crowding, 2. reliability, 3. system growth) in the following manner:
- 7.6.1 Based on the annual System Evaluation, current service hours investment needs for priorities 1 to 3 will be calculated and Metro Transit will identify the percentage of total system service hours need that applies to “Seattle routes.” Seattle routes are defined as those with 65% of their stops within the city of Seattle and/or current and future RapidRide routes that serve Seattle.
- 7.6.2 Metro Transit will replace current City-funded transit service in this Agreement that is identified and prioritized as an investment need by Metro Transit’s System Evaluation, up

to the percentage of new service hours growth equal to the percentage of service hours investment need identified in 7.6.1 above that applies to Seattle routes.

7.6.3 The replacement investment that Metro Transit would make under Section 7.6.2 of this Agreement will be capped at the total number of hours the City has purchased via this Agreement that also fall within Metro Transit's top three investment priority categories. Subject to that cap, Metro Transit will replace eligible City investments in Service Guidelines priority order: 1. crowding, 2. reliability, and 3. system growth in the corridor priority identified in the most current System Evaluation. Any other Metro Transit investments would be consistent with the Service Guidelines prioritization and order of investment that the County would otherwise apply.

7.7 If during the duration of this Agreement, reduction in revenues or loss of revenue sources require the Metro Transit system to shrink, the City will be given the opportunity to fund service that would otherwise be subject to reduction according to the Service Guidelines. The City acknowledges that City of Seattle investment in a route does not protect or otherwise insulate routes from being considered for reduction in the event that Metro Transit must reduce service.

8. RECORDS AND AUDITS

8.1 Maintenance of Records. The Parties shall maintain books, records, and documents directly pertinent to performance of the work under this Agreement for a period of at least six (6) years after the expiration or earlier termination of the Agreement.

8.2 Access for Audit Purposes. For the purpose of audit and examination, to verify the County's work and invoices, to assist in negotiations for additional work, and to resolve claims and disputes, the City shall have reasonable access to and be permitted to inspect such books, records and documents that are not privileged or otherwise exempt from disclosure under applicable law in order to monitor and evaluate the service provided pursuant to this Agreement. If an audit is performed, the County will be afforded the opportunity for an audit exit conference and an opportunity to comment and submit any supporting documentation on the pertinent portions of any draft audit report and any final audit report will include written comments of reasonable length, if any, of the County.

8.3 Disclosure of Public Records. The Parties acknowledge that all non-privileged, non-exempt records arising out of or relating to this Agreement are subject to public disclosure, including but not limited to records that may result from access to records under Section 2.6.

9. INDEMNIFICATION AND LEGAL RELATIONS

9.1 No Third Parties. It is understood and agreed that this Agreement is solely for the benefit of the Parties hereto and gives no right to any other person or entity. No joint venture or partnership is formed as a result of this Agreement. No employees or agents of one Party or its contractors or subcontractors shall be deemed, or represent themselves to be, employees, agents, contractors or subcontractors of the other Party.

- 9.2 Compliance with Law. Each Party shall comply, and shall ensure that its contractors and subcontractors, if any, comply with all federal, state and local laws, regulations, and ordinances applicable to the work and services to be performed under this Agreement.
- 9.3 Indemnity.
- 9.3.1 Each Party shall protect, defend, indemnify and save harmless the other Party, its elected officials, officers, officials, employees and agents while acting within the scope of their employment or agency, from any and all costs, claims, judgments, expenses, and/or awards of damages, arising out of or in any way resulting from each Party's own negligent acts or omissions. Each Party agrees that it is fully responsible for the negligent acts and omissions of its own subcontractors, their employees and agents while acting within the scope of their employment or agency as it is for the negligent acts and omissions of its own employees and agents. Each Party agrees that its obligations under this provision extend to any claim, demand, and/or cause of action brought by or on behalf of any of its employees or agents while acting within the scope of their employment or agency. In the event any such liability arises from the concurrent negligence of the indemnifying Party and the other Party, the indemnity obligation of this section shall apply to the extent of the negligence of the indemnifying Party and its actors.
- 9.3.2 The foregoing indemnity is specifically and expressly intended to constitute a waiver of each Party's immunity under Washington's Industrial Insurance Act, RCW Title 51, as respects the other Party only, and only to the extent necessary to provide the indemnified Party with a full and complete indemnity of claims made by the indemnitor's employees. The Parties acknowledge that these provisions were specifically negotiated and agreed upon by them.
- 9.4 Remedies Cumulative. Each Party's rights and remedies in this Agreement are in addition to any other rights and remedies provided by law.
- 9.5 Choice of Law; Venue. This Agreement shall be interpreted in accordance with the laws of the State of Washington without giving effect to its conflicts of law rules or choice of law provisions. The Superior Court of King County, Washington, located in Seattle, Washington, shall have exclusive jurisdiction and venue over any legal action arising under this Agreement between the Parties.
- 9.6 The provisions of this Section 9 shall survive the expiration or earlier termination of this Agreement.
- 10. CHANGES AND MODIFICATIONS**
- 10.1 This Agreement may be amended or modified only by a prior written amendment signed by the Parties hereto. Except as otherwise provided in this Agreement, the General Manager and the Director are authorized to execute amendments that are consistent with the intent and purpose of this Agreement without additional approval by the County Council or the City Council.

- 10.2 In particular, the City may request the County to provide transit service or operating enhancements beyond the scope specifically provided for herein. Consistent with its appropriation authority, the County may provide such additional transit service or operational enhancements at its sole discretion. The cost of such additional transit service or operating enhancement will be determined by the County and memorialized in an amendment signed by the Parties as soon as practicable when any such additional transit service or operating enhancement is identified. The General Manager and the Director may also agree to reductions in City-funded service consistent with the terms of this Agreement.

11. TERMINATION OF AGREEMENT

- 11.1 Either Party may terminate this Agreement in writing if the other Party substantially fails to fulfill any or all of its obligations under this Agreement through no fault of the other; provided, however, that, insofar as practicable, the Party terminating the Agreement will give notice of intent to terminate not less than one hundred eighty (180) calendar days prior to the County's next scheduled service change date.
- 11.2 In addition to termination under Subsection 11.1 of this Agreement, either Party may terminate this Agreement for its convenience, provided that the other Party will be given notice of intent to terminate not less than one hundred eighty (180) calendar days prior to the County's next scheduled service change date.
- 11.3 Performance of any responsibilities undertaken by either Party pursuant to this Agreement is conditional upon the appropriation by their respective legislative bodies of sufficient funds. If such an appropriation is not approved by a Party's legislative body, then this Agreement shall terminate at the close of that Party's then-current appropriation period and that Party's costs associated with such termination, if any, shall not exceed the appropriation for the appropriation period in which termination occurs; provided, however that, notwithstanding any provisions herein to the contrary, a proposed termination by the City pursuant to this Section 11.3 will not become effective until the date of the next scheduled service change upon which City-funded service can be discontinued in accordance with Metro Transit's ordinary service change process. The Parties acknowledge that King County is on a biennial budgeting cycle and appropriations end on December 31st of the last year of the biennium (even-numbered calendar years), whereas the City is on an annual budgeting cycle and appropriations end on December 31st of each calendar year.
- 11.4 If either Party terminates, the City will pay the County a pro-rated amount for services performed in accordance with the Agreement to the date of termination.
- 11.5 If the City gives notice to terminate this Agreement consistent with this Section 11 or due to expiration of this Agreement, then in addition to any other applicable requirements of this Section 11, including but not limited to the one hundred eighty (180)-day notice periods in Sections 11.1 and 11.2, the City will endeavor to maintain sufficient funding and reserves available to fund service through a ramp-down period. This ramp-down period is intended to allow Metro Transit to adjust its workforce, facilities, and resources to reflect loss of City funding; and to engage with and prepare transit customers for negative impacts of reductions. Regardless of the availability of

reserves, the City may reduce direct service funding by not more than 100,000 hours per service change, for as many service changes as it would take to fully remove the City's investments. For any reductions that would require County Council approval, the ramp-down must be phased to allow this process to take place before service is removed.

12. FORCE MAJEURE

Either Party shall be excused from performing its obligations under this Agreement during the time and to the extent that it is prevented from performing by a cause beyond its control, including, but not limited to: Any incidence of fire, flood, earthquake or other acts of nature, including adverse winter weather; epidemic or pandemic infectious disease; civil unrest, riots, strikes, or labor actions; commandeering material, products, or facilities by the federal, state or local government; and/or national fuel shortage; and disruption of public utilities; provided that satisfactory evidence of such cause shall be timely presented to the other Party, and provided further that such non-performance is beyond the control and is not due to the fault or negligence of the Party not performing. In no event, however, shall this provision eliminate the City's obligation to make payment to the County for services performed in accordance with this Agreement.

13. DISPUTE RESOLUTION

- 13.1 In the event of any dispute concerning this Agreement, the designated Contact Persons for City of Seattle and King County, as defined in Section 19 Designated Representatives, will confer to resolve the dispute. The designated representatives will use their best efforts and exercise good faith to resolve disputes and issues arising out of or related to this Agreement.
- 13.2 In the event the designated representatives are unable to resolve the dispute, the Deputy Director or designee for SDOT and the Mobility Division Director for Metro Transit will confer and exercise good faith to resolve the dispute.
- 13.3 In the event the SDOT Deputy Director or designee and the Mobility Division Director for Metro Transit are unable to resolve the dispute, the SDOT Director and the Metro Transit General Manager will engage in good faith negotiations to resolve the dispute.
- 13.4 In the event the SDOT Director and the Metro Transit General Manager are unable to resolve the dispute, the Parties may, but are not required to, submit the matter to a mutually agreed upon non-binding mediator. The Parties will share equally in the cost of the mediator.
- 13.5 SDOT and Metro Transit may not seek relief in a court of law until and unless each of the required procedural steps is exhausted.

14. WAIVER OF DEFAULT

Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach and

shall not be construed to be a modification of the terms of this Agreement unless stated to be such in writing, signed by authorized Parties and attached to the Agreement as an exhibit.

15. ASSIGNMENT

This Agreement shall be binding upon the Parties, their successors, and assigns; provided, however, that neither Party shall assign nor transfer in any manner any interest, obligation or benefit of this Agreement without the other's prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed.

16. HEADINGS FOR CONVENIENCE ONLY

Section titles or other headings contained in this Agreement are for convenience only and shall not be deemed part of this Agreement or be taken into consideration in the interpretation or construction of this Agreement.

17. MUTUAL NEGOTIATION AND CONSTRUCTION

This Agreement and each of the terms and provisions hereof shall be deemed to have been explicitly negotiated between, and mutually drafted by, the Parties, and the language in all parts of this Agreement shall, in all cases, be construed according to its fair meaning and not strictly for or against either Party.

18. ALL TERMS AND CONDITIONS

This Agreement merges and supersedes all prior negotiations, representations and agreements between the Parties related to the subject matter hereof, contains all the terms and conditions agreed upon by the Parties, and constitutes the entire agreement between the Parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the Parties hereto.

19. CONTACT PERSONS; NOTICE

19.1 The County and the City shall designate a contact person for purposes of sending inquiries and notices regarding the execution and fulfillment of this Agreement. Each Party agrees to advise the other Party in writing with updates to its contact information as needed. The initial contact persons for each Party are as follows:

	City of Seattle
Contact Name	Candida Lorenzana
Department	Seattle Department of Transportation –
Title	Transit & Mobility Division Director
Address	PO Box 34996 Seattle WA 98124-4996
Telephone	206-755-4033
E-Mail	Candida Lorenzana@Seattle.gov

	King County
Contact Name	Bill Bryant
Department	Metro Transit
Title	Manager, Service Development,
Address	201 S. Jackson St. KSC-TR-0426, Seattle, WA 98104
Telephone	206-477-6456
E-Mail	Bill.Bryant@KingCounty.gov

- 19.1 Notice. All notices, demands, approvals, and other communications provided for in this Agreement shall be in writing and shall be effective (1) upon receipt when personally delivered to the recipient at the recipient’s address set forth above; (2) when received by United States mail, postage prepaid, by registered or certified mail, return receipt requested, addressed to the recipient as set forth above, or when such receipt is rejected; (3) one (1) business day after deposit with a recognized overnight courier or delivery service; or (4) when electronically transmitted (including email or facsimile). If the date on which any notice to be given hereunder falls on a Saturday, Sunday or federal or state legal holiday, then such date shall automatically be extended to the next business day immediately following such Saturday, Sunday or legal holiday.

20. EXECUTION OF AGREEMENT – COUNTERPARTS

This Agreement may be executed in two (2) counterparts, either of which shall be regarded for all purposes as an original. This Agreement may also be executed and delivered in counterparts as a PDF file delivered by email, or as a facsimile copy, and each counterpart so executed and delivered is original, and such counterparts together shall constitute but one and the same instrument. It shall not be necessary that the signature of, or on behalf of, each Party, or that the signature of all persons required to bind any Party, appear on each counterpart. It shall not be necessary in making proof of this Agreement to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, each Party hereto. Any executed signature page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures thereon and thereafter may be attached to another counterpart identical thereto except having attached to it such additional executed signature pages.

21. EFFECTIVE DATE

This Agreement shall take effect on the date it is executed by the later of the two Parties to sign.

KING COUNTY

CITY OF SEATTLE

By:

By:

Title:

Title:

Date:

Date:

Exhibit A-1 Service Description and Annualized Hours for September 2020 Service Change

Route	Service Description	Peak Hours	Off Peak Hours	Annual Hours	Fleet Type
TOTAL STBD SERVICE INVESTMENT					
1	Reduction	2,249	5,807	8,056	40' Trolley
2	Reduction	0	2,152	2,152	40' Trolley
3	Reduction	0	1,434	1,434	40' Trolley
4	Reduction	0	0	0	40' Trolley
5	Reduction	0	1,505	1,505	60' Hybrid
7	Reduction	1,259	4,353	5,612	60' Trolley
8	Reduction	0	1,312	1,312	60' Hybrid
10	Reduction	0	8,073	8,073	40' Trolley
11	Reduction	1,642	3,213	4,855	60' Hybrid
12	Reduction	260	1,556	1,816	40' Trolley
13	Reduction	0	0	0	40' Trolley
14	Reduction	1,461	2,143	3,604	40' Trolley
17	Reduction	0	0	0	60' Hybrid
18	Reduction	0	0	0	60' Hybrid
19	Reduction	0	0	0	60' Hybrid
21	Reduction	0	0	0	60' Hybrid
24	Reduction	107	609	716	60' Hybrid
26	Reduction	0	0	0	60' Hybrid
27	Reduction	0	0	0	60' Hybrid
28	Reduction	0	0	0	60' Hybrid
31	Reduction	0	0	0	60' Hybrid
32	Reduction	0	0	0	60' Hybrid
33	Reduction	46	1,387	1,433	60' Hybrid
36	Reduction	0	742	742	40' Trolley
40	Reduction	231	16,552	16,783	60' Hybrid
41	Reduction	0	13,606	13,606	60' Hybrid
43	Reduction	0	2,595	2,595	60' Trolley
44	Reduction	1,212	2,866	4,078	60' Trolley
45	Reduction	0	0	0	60' Hybrid
47	Reduction	0	0	0	40' Trolley
48	Reduction	0	4,023	4,023	60' Hybrid

49	Reduction	1,234	157	1,391	60' Hybrid
50	Reduction	0	7,084	7,084	40' Hybrid
55	Reduction	0	0	0	60' Hybrid
56	Reduction	395	484	879	60' Hybrid
57	Reduction	0	0	0	60' Hybrid
60	Reduction	240	4,717	4,957	40' Hybrid
62	Reduction	0	160	160	60' Hybrid
65	Reduction	0	320	320	60' Hybrid
67	Reduction	0	0	0	60' Hybrid
70	Reduction	0	1,412	1,412	60' Trolley
73	Reduction	0	0	0	40' Hybrid
76	Reduction	0	0	0	60' Hybrid
106	Reduction	47	4,358	4,405	40' Hybrid
107	Reduction	0	485	485	60' Hybrid
120	Reduction	4,186	15,444	19,631	60' Hybrid
124	Reduction	0	61	61	60' Hybrid
125	Reduction	103	0	103	40' Hybrid
345	Reduction	0	375	375	40' Hybrid
372	Reduction	0	0	0	60' Hybrid
373	Reduction	102	317	419	60' Hybrid
673	Reduction	18,888	24,190	43,078	60' Hybrid
674	Reduction	0	0	0	60' Hybrid
675	Reduction	2,635	7,660	10,295	60' Hybrid
RUW	Reduction	2,042	4,422	6,464	Various
<i>TOTAL</i>		<i>38,340</i>	<i>145,574</i>	<i>183,914</i>	

Exhibit A-2 Service Description and Annualized Hours for Pilot Service 2020

Route	Regional Partnership	Service Description	Peak Hours	Off Peak Hours	Annual Hours	Fleet Type	Supplantation
ADDED SERVICE							
n/a	Special funding arrangement with City	Via to Transit (Pilot)	-	-	70,325	Via to Transit Vehicle	Ineligible

Exhibit B-1 Service Costs & Revenue

This appendix will be updated annually to reflect the rates resulting from the Budget Process, as defined in Section 5.5, which will be used for invoicing throughout the operating year.

2021 Fixed Route Bus Service:

<u>2021 Operating Expense</u>	Jan-March 2021 (Old Contract)	April to December 2021 (New Contract)	Total 2021
Estimated Number of Service Hours	52,500	127,500	180,000
Total Operating Expense	\$9,709,071	\$23,579,172	\$33,288,243
Budget CAM Operating Cost per Hour	\$184.93	\$184.93	\$184.93
<u>2021 Farebox Revenue</u>	Jan-March 2021 (Old Contract)	April to December 2021 (New Contract)	Total 2021
Budget Farebox Recovery %	11.8%	11.8%	11.8%
Farebox Revenue Credit	(\$1,145,670)	(\$2,782,342)	(\$3,928,013)

2021 Fleet Costs	Full Cost of Bus	Financing Period (Years)	Annual Cost per Bus	Peak Service Est.	# of Buses Required	Total 2021 Fleet Cost
40' Hybrid	\$983,557	12	\$81,963	1,837	1.8	\$150,534
40' Trolley	\$1,429,058	15	\$95,271	3,647	3.6	\$347,416
60' Hybrid	\$1,267,259	12	\$105,605	32,975	33.0	\$3,482,351
60' Trolley	\$1,841,262	15	\$122,751	6,136	6.1	\$753,139
Total				44,594	44.6	\$4,733,439

2021 Total Fixed Route Service	Jan-March 2021 (Old Contract)	April to December 2021 (New Contract)	Total 2021
Operating Expense	\$9,709,071	\$23,579,172	\$33,288,243
Farebox Revenue Credit	(\$1,145,670)	(\$2,782,342)	(\$3,928,013)
Fleet Costs	\$1,380,587	\$3,352,853	\$4,733,439
Total Reimbursement	\$9,943,987	\$24,149,683	\$34,093,670

2021 Flexible Services & Other Service:

TBD