

**TRANSIT SERVICE AGREEMENT
BETWEEN THE CITY OF MADISON and
CITY/TOWN/VILLAGE OF _____**

This AGREEMENT, executed by the City of Madison, Wisconsin, a municipal corporation (hereinafter referred to as "MADISON"), and the City/Town/Village of _____, a municipal corporation (hereinafter referred to as "_____"), is effective as of the date by which both parties have signed hereunder.

WITNESSETH:

WHEREAS, MADISON and _____ agree it would be to the mutual benefit of the PARTIES for MADISON to continue to provide transit service to _____;

WHEREAS, pursuant to Section 66.0301 Wis. Stats., MADISON and _____ wish to formalize terms and conditions of the provision of transit services to _____.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, MADISON and _____ do, pursuant to the provisions of Wisconsin Statutes, agree as follows:

I. TERM

- A. Term and Renewals. The PARTIES agree that MADISON will provide transit service to _____ as described in this AGREEMENT from and including January 1, 2014 through December 31, 2014. If neither PARTY gives written notice of non-renewal to the other PARTY on or before August 1, 2014 or August 1 of each succeeding year, this AGREEMENT shall be automatically renewed for an additional one year period under the same terms and conditions, unless otherwise modified according to the procedures provided below. If timely notice of non-renewal is given according to this paragraph, neither PARTY shall incur any costs.

II. TRANSIT AND PARATRANSIT SERVICE OPERATIONS

- A. MADISON will provide the following transit services to _____ (check the one that applies):

- Fixed route and complementary Paratransit
- Commuter Bus Service only
- Contracted Paratransit Service only

B. MADISON will provide the transit services selected above to _____ at the service level set forth in Attachment A. During the term of this AGREEMENT, the PARTIES may administratively modify the service level in Attachment A by executing a Memorandum of Understanding (MOU). The MOU must include the newly agreed upon service level. The METRO TRANSIT General Manager on behalf of MADISON and an individual authorized by _____ on behalf of _____ must execute the MOU. The parties understand that no service level changes can be implemented until there is a duly signed MOU. The PARTIES further understand that any other modification of this AGREEMENT can only be accomplished by the individuals duly authorized to execute this AGREEMENT.

C. The PARTIES agree that specific routes, stops, and schedules for the above transit services may change during the course of this AGREEMENT, and that it is not the intention of this AGREEMENT to memorialize specific routes, stops, or schedules.

D. MADISON will at all times provide and use buses which are clean and in good safe mechanical condition. MADISON shall be solely responsible for ensuring the safety of all passengers of the bus service in the course of transit.

E. _____ will have no control over MADISON'S operations in connection with providing said bus service, and _____ will have no control or supervision over the drivers of the buses used in said service by MADISON. Said drivers do not constitute agents or employees of the City/Town/Village of _____ and will be subject solely to MADISON'S supervision and control.

F. MADISON will provide _____ with additional standard METRO TRANSIT bus stop signs (if necessary), which _____ will install as necessary to ensure that such signs are present at all established stops in _____. _____ must install and maintain its bus stops in a safe condition and in compliance with any applicable provisions of the Americans with Disabilities Act. MADISON reserves the right to decline to stop at any bus stop not properly maintained. _____ must provide notice to MADISON of any road construction, road repair, special events or other like circumstances, which occur along or may impact the commuter bus route as soon as possible, together with a good faith estimate as to the duration of such change.

III. _____'S PAYMENT FOR TRANSIT SERVICE OPERATIONS

A. Payment for Transit Service. In consideration for providing the above transit service, _____ must pay MADISON the actual proportional cost of providing the service to _____ in each calendar year as calculated by MADISON. The actual proportional cost of providing service must be paid as follows:

i. In each calendar year, MADISON will bill _____ quarterly for the estimated proportional cost of providing transit service to _____ for that calendar year. _____'s estimated proportional cost for transit service will be calculated by MADISON according to the Methodology in Attachment B. The PARTIES agree that any service level changes made by MOU to Attachment A may alter _____'s estimated proportional cost of service. In such a case, the quarterly billing will be adjusted to reflect the cost of those changes.

ii. During each calendar year, MADISON will collect authorized fares from passengers using _____'s contractually provided transit service. Fares shall be established and paid according to the Fare Tariff in effect for METRO TRANSIT service, as approved and from time-to-time amended by the Madison Transit and Parking Commission. Fares collected must be credited against _____'s actual proportional cost of providing services.

iii. At the conclusion of each calendar year, following an annual independent audit of transit system revenues and expenses as required by federal law, _____'s actual proportional cost of service will be determined to assure that _____ pays MADISON the actual proportional cost of service to _____. If the actual proportional cost of service differs from the estimated proportional cost, any adjustments will be credited or billed to _____ in a supplemental billing. Within forty-five (45) days after submission of an invoice by Madison, _____ must either pay any adjusted amount or provide written notice to Madison that _____ wishes the difference to be paid from _____'s contingency reserve account. **Checks for invoices for this service shall be made payable to the City of Madison and sent to Metro Transit, 1245 East Washington Avenue, Madison, WI 53703, Attn: Accounts Receivable.** MADISON must furnish a copy of the independent audit report within thirty (30) days of the City's receipt of the report. _____ has the right at its sole cost to select a firm to conduct a separate, additional independent audit.

B. Contingency Reserve Account. The PARTIES agree that MADISON will continue to maintain a "Contingency Reserve Account" in order to fund unanticipated increases in transit service expenses such as fuel costs. As of the signing of this AGREEMENT, _____'s Contingency Reserve Account is at _____% of _____'s current estimated proportional cost of service. The PARTIES agree that throughout the life of this AGREEMENT _____ must maintain a Contingency Reserve Account at or above 15% its estimated proportional cost of service. Therefore, the PARTIES agree that if at any time during the life of this AGREEMENT _____'s contingency reserve account falls below 15%, _____'s payments under III.A.i. above will include a pro-rated contribution to _____ Contingency Reserve Account in an amount necessary to bring its contingency reserve account up to 15% of _____'s estimated proportion cost of service by the end of the calendar year. If at any time _____'s Contingency Reserve Account meets or exceeds 15% of its estimated proportional share, _____'s payment under II.A.i. will not include a contribution to the contingency reserve account. At the end of the calendar year, if _____'s

Contingency Reserve Account is at or above 15% its estimated proportional cost of service, _____ can elect to leave the funds in its Contingency Reserve Account or request the excess be refunded.

IV. PERFORMANCE

The PARTIES agree that MADISON may assign the performance of this AGREEMENT to an independent operating company or other entity of MADISON'S choosing. _____ will be notified prior to any such assignment. It is understood that the service performed and equipment used under any such assignment will be equal to or better than that provided hereunder. However, MADISON will remain primarily responsible for performance of the service provided for herein.

In no event will MADISON be deemed to be in default of any provision of this AGREEMENT for failure to perform where such failure is due to strikes, walkouts, riots, civil insurrections or disorders, acts of God, adverse weather conditions, lawful State budgeting restrictions, or for any other cause or causes beyond the control of MADISON.

Notwithstanding any other provision of this AGREEMENT to the contrary, MADISON'S obligations to perform hereunder must first be conditioned upon its ability to do so in compliance with all applicable laws governing the conduct of MADISON'S business and operations and its budgetary process.

V. AFFIRMATIVE ACTION/MINORITY BUSINESS ENTERPRISE

- A. Policy. It is the policy of the U.S. Department of Transportation that minority business enterprises (including women business enterprises) as defined in 49 CFR, Part 26 must have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds under this AGREEMENT. Consequently, the PARTIES agree to comply with the DBE requirements of 49 CFR Part 26 to the extent they are obligated to do so.
- B. DBE Obligation. MADISON sub-recipients agree to ensure that disadvantaged business enterprises (including women and minority business enterprises) as defined in 49 CFR, Part 26 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under this Contract to the extent they are lawfully required to do so. In this regard, _____, as a sub-recipient, and all of its contractors, on contracts financed in whole or in part with federal funds provided under this AGREEMENT, shall comply with 49 CFR, Part 26 to the extent it is obligated to do so to ensure that disadvantaged business enterprises have the maximum opportunity to compete and perform contracts funded in whole or in part by Federal DOT funds. _____ and its contractors will not unlawfully discriminate on the basis of race, color, national origin, or sex in the award and performance of DOT-assisted contracts.

- C. In the performance of services under this Contract, both PARTIES agree not to discriminate against any employee or applicant for employment because of race, religion, marital status, age, color, sex, handicap, national origin or ancestry, income level or source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, gender identity, political beliefs or student status. Both PARTIES further agree not to discriminate against any subcontractor or person who offers to subcontract on this contract because of race, religion, color, age, disability, sex, sexual orientation, gender identity or national origin.

VI. INDEMNIFICATION AND HOLD HARMLESS

Each PARTY will be responsible for the consequences of its own acts, errors, or omissions and those of its employees, officers, officials, agents, boards, committees, commissions, agencies, and representatives and shall be responsible for any losses, claims, and liabilities which are attributable to such acts, errors, or omissions including providing its own defense. In situations including joint liability, each PARTY will be responsible for the consequences of its own acts, errors, or omissions and those of its employees, officers, officials, agents, boards, commissions, committees, agencies, and representatives. It is not the intent of the PARTIES to waive any statutory protections or impose liability beyond that imposed by state statutes.

VII. TERMINATION

- A. In the event of default by _____ in its payments for more than forty-five (45) days from the date of the initial billing, service may be suspended or terminated at MADISON'S option. In the event of suspension or termination of this AGREEMENT either initiated by _____ or caused by default in its payments, _____ will pay the prorated _____ Expenses, i.e., _____'s total actual cost of services incurred by MADISON through the early termination date of this AGREEMENT. The obligation to pay _____ Expenses, i.e., total proportional cost of services under this Section shall not apply, if this AGREEMENT is suspended or terminated for cause arising out of the unlawful acts of MADISON.
- B. In the event that _____ experiences the loss of substantial funding for this service, which could materially affect its ability to provide required funding for this service as described in Section II and Attachment A of this AGREEMENT, it will notify MADISON within ten (10) working days of notification of the loss of said funds. In the event of suspension or termination of this AGREEMENT either initiated by _____ or caused by default in its payments due to the loss of said funds, _____ will pay the prorated _____ Expenses, i.e., _____'s actual proportional cost of services, incurred by MADISON through the early termination date of this AGREEMENT. The obligation to pay _____ Expenses, i.e., _____ total actual cost of services under this Section shall not apply, if this AGREEMENT is suspended or terminated for cause arising out of the unlawful acts of MADISON.

C. Notwithstanding the above paragraphs A and B, MADISON may in its sole discretion and without any reason terminate this AGREEMENT at any time by furnishing _____ with sixty (60) days' written notice of termination. In the event of termination under this subsection, MADISON will reimburse _____ for any prepayment of transit costs for services not provided by MADISON due to termination under this paragraph D.

VIII. NOTICES

All notices to be given under the terms of this AGREEMENT must be in writing and signed by the person serving the notice and must be sent registered or certified mail, return receipt requested, postage prepaid, or hand-delivered to the addresses of the PARTIES listed below:

If to the City of Madison:

Charles Kamp
Metro Transit General Manager
1101 East Washington Avenue
Madison, WI 53703

If to _____:

or to such other address that either PARTY will designate by written notice.

IN WITNESS WHEREOF, the PARTIES hereto have caused this AGREEMENT to be executed by their proper officers.

CITY OF MADISON, WISCONSIN
A WI Municipal Corporation

Witness

Paul Soglin, Mayor

Date

Witness

Maribeth Witzel-Behl, City Clerk

Date

APPROVED:

APPROVED AS TO FORM:

Eric T. Veum, Risk Manager

Michael P. May, City Attorney

David Schmiedicke, City Finance Director

A WI Municipal Corporation

Witness

Date

ATTACHMENT A

[Attach agreed upon service levels]

**ATTACHMENT B
PAYMENT METHOD**

I. CALCULATION OF PARTNER ESTIMATED PROPORTIONAL COST

- A. Method. The calculation to determine the PARTNER's estimated proportional cost to METRO TRANSIT service will be as follows:
- 1) The PARTNER's total annual fixed route vehicle hours times total annual system operating expense per fixed route vehicle hour equals the PARTNER's share of total annual operating expenses.
In the case of a PARTNER that receives only fixed route commuter service (i.e. no paratransit service) the calculation will be to multiply the PARTNER's total annual fixed route vehicle hours by the annual fixed route operating expense per fixed route vehicle hour.
In the case of a Partner that receives only paratransit service the calculation will be to multiply the number of annual paratransit trips provided to the PARTNER by the annual paratransit operating expense per trip.
 - 2) The PARTNER's share of total annual operating expenses less the PARTNER's share of annual operating revenue equals the PARTNER's annual gross deficit.
 - 3) The PARTNER's annual gross deficit less the PARTNER's share of annual capital, Federal and State aid equals the PARTNER's annual net deficit. A PARTNER which applies for and receives State aid directly will not receive State aid as part of this contract.
- B. Definitions. The following are definitions of the terms used above and the components of each of the calculation terms.

Total system fixed route vehicle hours: Actual vehicle hours (includes revenue service hours, scheduled time and recovery time at transfer points and deadhead hours) for all of METRO TRANSIT's fixed routes.

PARTNER's total fixed route vehicle hours: Actual vehicle hours (includes revenue service hours, scheduled time and recovery time at transfer points and deadhead hours) attributed to fixed route service provided to the PARTNER on the applicable routes.

Total system operating expense: All costs, including depreciation and interest expense, incurred by METRO TRANSIT for all transit services. Fixed asset purchases and principal debt repayment are not included.

Total system operating expense per fixed route vehicle hour: Total system operating expense divided by total system fixed route vehicle hours.

PARTNER's share of operating revenue: The sum of the PARTNER's share of fixed route passenger revenue, the PARTNER's share of paratransit service revenue and the PARTNER's share of other revenue. A PARTNER that does not receive paratransit service will not receive any paratransit service revenue and a PARTNER that is only charged for paratransit service will not receive any fixed route passenger revenue or other revenue.

PARTNER's share of fixed route passenger revenue: For each applicable fixed route the percentage of vehicle hours attributable to the PARTNER is multiplied by the passenger revenue associated with that route to arrive at the PARTNER's share of each route's revenue. The sum of these determines the PARTNER's share of fixed route passenger revenue.

Fixed route passenger revenue: Fares as recorded by fare collection equipment on fixed routes at the time of passenger boarding.

PARTNER's share of paratransit revenue: The percentage of total annual system fixed route vehicle hours attributable to the PARTNER multiplied by total paratransit revenue.

Total paratransit revenue: All passenger revenue associated with providing paratransit service plus Dane County paratransit subsidies including DDS Medicaid waiver.

PARTNER's share of other revenue: The percentage of total annual system fixed route vehicle hours attributable to the PARTNER multiplied by total other revenue.

Total other revenue: All non-service related revenue including sales of advertising, scrap metal, etc.

PARTNER's share of capital aid: The percentage of total operating expense attributable to the PARTNER multiplied by total capital aid.

Total capital aid: As noted above, depreciation expense on the full purchase price of all capital assets is included in the calculation of total system operating expense per vehicle hour. However, a portion of the purchase price of most capital assets is funded by Federal Capital Grants and so the benefit of that funding needs to be allocated to each PARTNER. Depreciation expense for each capital asset is multiplied by the percentage of the original purchase price funded by a Federal Capital Grant to arrive at the capital aid by asset and the sum of this figure for all assets yields total capital aid.

PARTNER's share of Federal aid: The percentage of total gross deficit attributable to the PARTNER multiplied by total Federal aid.

Total Federal aid: Federal government grant funding used for operating budget costs (i.e. grants for capital asset purchases are not included).

PARTNER's share of State aid: The percentage of total operating expense attributable to the PARTNER multiplied by total State aid.

Total State aid: Funding from any State of Wisconsin transportation assistance program.

II. **CALCULATION OF PARTNER CONTINGENCY RESERVE ACCOUNT CONTRIBUTION AND OFFSET**

- A. **Contribution.** The total amount due from the PARTNER to METRO TRANSIT in any given year will equal the PARTNER's annual estimated proportional share (calculation shown in part I of attachment A) plus a contribution to the PARTNER's contingency reserve fund (described in Section II D of this agreement). The annual contribution to the contingency reserve fund will equal 4% of the PARTNER's annual net deficit. The balance in the PARTNER's fund will be capped at 15% of the PARTNER's annual net deficit.
- B. **Offset.** In years where the PARTNER's final calculated annual net deficit exceeds the total of the quarterly payments made by the PARTNER during the year, METRO TRANSIT shall apply the PARTNER's accumulated contingency reserve to the difference. If the difference exceeds the available reserve balance, then the remainder will be billed by METRO TRANSIT to the PARTNER. The ability to offset will only be allowed when, prior to the offset, the PARTNER's contingency reserve balance is at least 12% of the PARTNER's net deficit for the current year.
- C. **Interest.** Interest will be accrued to each PARTNER's contingency balance once per year at the prevailing rate. The prevailing rate will be defined as the average rate of return earned by the City of Madison on its investments during the preceding year.
- D. **Termination.** If PARTNER terminates its transit service agreement with MADISON, PARTNER shall be reimbursed the balance of its Contingency Reserve Account on hand at the time of termination.

