

**SERVICE AGREEMENT
BETWEEN THE CITY OF MADISON
AND
THE UNIVERSITY OF WISCONSIN-MADISON**

THIS AGREEMENT, executed by the City of Madison, Wisconsin, a municipal corporation, hereinafter referred to as “MADISON,” and the Board of Regents of the University of Wisconsin System on behalf of the University of Wisconsin-Madison, hereinafter referred to as “UNIVERSITY,” acting by and through its authorized agents shall become effective upon execution by the Mayor on behalf of MADISON:

W I T N E S S E T H:

WHEREAS, Sec. 66.0301, Wis. Stats., authorizes towns, villages, cities, and other governmental units and regional planning commissions as municipalities to contract for the joint exercise of any power or duty required or authorized by a statute; and

WHEREAS, the governmental units which are parties hereto are authorized by statute to exercise the powers implicit herein; and

WHEREAS, Madison operates Metro Transit (METRO TRANSIT), a division of the City of Madison; and

WHEREAS, MADISON and UNIVERSITY agree it would be to the mutual benefit of the parties for MADISON to provide University of Wisconsin-Madison (UW) employees, UW affiliate groups employees and members, and UW Hospital employees employed at UW Hospital, 600 Highland Avenue, Madison, WI 53792 access to all fixed route transit service and to ADA complementary paratransit service provided by Metro Transit in the transit system’s service area; and

WHEREAS, UNIVERSITY is willing to enter into a payment arrangement with MADISON to reimburse METRO TRANSIT for rides taken by UW and UW Hospital employees and current employees and members of affiliate groups as designated by UNIVERSITY Transportation Services on fixed route transit service and on ADA complementary paratransit service provided by METRO TRANSIT during the term of the agreement;

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

I. TERM

The term of this AGREEMENT shall extend from the 1st day of September 2020 through the 31st day of August 2023 and may be automatically renewed annually for Academic Year (AY) 2023-24 and AY 2024-25 as provided herein, unless amended or cancelled. For the purpose of this agreement, each Academic Year (AY) shall begin on the first day of September of each year
UW Employee Pass Agreement –2020+

during the contract term and end on the 31st day of August of each year of the contract term Pursuant to the MOU entered into between the Parties, the terms and conditions of this AGREEMENT shall apply to the transit services undertaken and provided on and after September 1, 2020 as part of the services for AY 2020 provided hereunder.

This AGREEMENT will automatically renew under the same terms and conditions for two one-year terms after the initial three year period. If timely notice of non-renewal is given according to this paragraph, UNIVERSITY would incur no costs under Article VII Termination below. Neither shall MADISON incur any costs if timely notice of non-renewal is provided hereunder.

II. SERVICES PROVIDED

- A. During the term as provided herein, MADISON agrees to provide unlimited ride bus passes (hereinafter “pass” or “passes”) to UNIVERSITY for distribution to current employees of UNIVERSITY, UW Hospital and employees and members of affiliate groups as designated by UNIVERSITY Transportation Services in accordance with Addendum B, for use on fixed route transit service and on ADA complementary paratransit service offered by MADISON during the term of the AGREEMENT. MADISON shall also provide a supply of extra bus passes to replace any that are verified by UNIVERSITY as lost, stolen or destroyed. The total number of passes, including replacement passes, to be supplied by MADISON shall be determined by the UNIVERSITY. For purposes of this AGREEMENT the terms “current employee of the University” and “University employees” and “UNIVERSITY employees” and “employee(s)” include current University of Wisconsin-Madison employees, current UW Hospital employees and current employees and members of affiliate groups as designated by UNIVERSITY Transportation Services.
- B. It is understood that MADISON retains the right to determine in its sole discretion the type and level of transit service provided within its service area in the interest of the safety and convenience of its passengers and within budgetary limits as may be applicable. MADISON shall make reasonable efforts to notify UNIVERSITY prior to instituting service changes. MADISON shall have the right to make emergency changes, such as, but not limited to, rerouting for construction-affected streets, weather and emergency government situations, without prior notice to UNIVERSITY.
- C. The fixed route transit service and ADA complementary paratransit service provided by MADISON shall be provided in accordance with applicable State and Federal Laws and regulations.
- D. Except as provided in Article II.A and E., the pass will be valid for transportation at no additional charge to the rider, during all revenue hours of service on fixed transit routes and on ADA complementary paratransit services provided by Metro, when shown by the individual to whom issued in conjunction with a current valid UW-Madison or UW Hospital identification card or current valid affiliate group employee identification or membership card.

- E. For purposes of calculating ridership billable under this Agreement, no employee pass trips taken on routes for which all passenger fares are subsidized by UNIVERSITY under a separate agreement shall be included in billable trips.
- F. UNIVERSITY and MADISON agree that passes shall be distributed according to the methodology contained in Addendum B to this AGREEMENT.
- G. Individuals covered under this AGREEMENT are entitled to participate in only one UNIVERSITY pre-paid unlimited ride pass program. UW employees (and affiliates) and UW Hospital employees are not also eligible for a UW student pass and vice versa.
- H. The passes issued for the academic year will be valid beginning September 1 through August 31st of that Academic Year.
- I. The pass is not transferable and shall be forfeited and confiscated if misused or presented for transportation by any person other than the person to whom issued. If the person's UW-Madison or UW Hospital employee identification card and/or pass is forfeited, it will be returned promptly to UNIVERSITY.
- J. MADISON shall provide UNIVERSITY with a monthly statement of total UNIVERSITY employee ridership, including monthly employee ridership by route for fixed route service and total ridership for ADA complementary paratransit service. For reporting purposes for fixed route service, University and UW Hospital employees shall all be identified as "employees" in one combined number, as it will not be possible to distinguish University from UW Hospital employees who will be using the same boarding pass.

This monthly statement shall not include routes subsidized by UNIVERSITY under separate agreements. In the event that this report will not be available within forty-five (45) days after the end of a month, MADISON shall notify UNIVERSITY of the delay and the reasons therefore.

MADISON shall maintain a true and accurate record of daily ridership, revenues, operating expenses, passengers, capital expenditures, and other necessary transit operating data relating to the fixed route service and ADA complementary paratransit service provided by MADISON, which may from time to time be required in writing by UNIVERSITY, the State of Wisconsin, and/or the federal government. Any other record requests made by UNIVERSITY shall be responded to by MADISON in accordance with the Wisconsin Public Records Law.

III. UNIVERSITY'S PAYMENT FOR SERVICE

- A. UNIVERSITY shall, in its sole determination, collect and retain fees, including fees for reissued passes, from employees. Failure by UNIVERSITY to collect fees from employees shall not relieve UNIVERSITY of the obligation to pay for the fare free rides and service provided by MADISON hereunder. UNIVERSITY may opt to restrict the use of unlimited ride passes to its employees, provided that any restrictions the implementation of which

requires administrative or technical action by MADISON must encompass all passes subject to this Agreement.

- B. In consideration for providing the aforesaid service, UNIVERSITY shall pay MADISON the cost of providing such employee unlimited ride pass trips and service to UNIVERSITY as calculated by Parties in accordance with Addendum A of this AGREEMENT.

The financial cost to UNIVERSITY for the fixed route service provided hereunder shall be limited to the total amounts payable as determined by MADISON on the basis of a “rolling average” of the most recent four years of actual ridership, calculated by MADISON on an annual basis, at the per ride rate(s) and in accordance with the methodology specified in Addendum A. The financial cost to University for ADA Paratransit Service shall be based on actual rides at the per ride rate in effect at the time the ride is taken and determined in accordance with the methodology in Addendum A. MADISON shall bill UNIVERSITY as outlined in Addendum A for the cost of providing employee unlimited ride pass trips. UNIVERSITY shall pay the amounts specified within thirty (30) days of a properly submitted invoice. In the event an improperly submitted invoice is received, UNIVERSITY shall notify MADISON within ten (10) business days of the reason it is improperly completed. A properly submitted invoice means an invoice with adequate and correct information for reasonable and standard business processing purposes.

In addition, MADISON shall provide to UNIVERSITY a yearly credit of \$40,000 for each of the first three years of this agreement, payable in 12 equal installments over the year.

IV. TRANSIT SERVICE PROVIDED

- A. MADISON will at all times provide and use equipment which is clean and in good safe mechanical condition.
- B. UNIVERSITY shall have no control over MADISON’S operations in connection with providing said transit service, and UNIVERSITY shall have no control or supervision whatsoever over the drivers of MADISON directly-operated buses or the subcontractors used in said service by MADISON. Said drivers or subcontractors shall not constitute agents or employees of UNIVERSITY and shall be subject solely to MADISON’S supervision and control. UNIVERSITY shall be notified in writing at least thirty (30) days in advance when practicable of service changes and/or assignment of performance responsibility.

V. PERFORMANCE

- A. Each party certifies it possesses legal authority to enter into this AGREEMENT. A resolution, motion or similar action has been duly adopted or passed as an official act of the party’s governing body or otherwise duly authorized according to the party’s established governance processes, authorizing the execution of this AGREEMENT, and directing and authorizing the person identified in Article X as its agent to act in connection with this AGREEMENT and to provide all required reports and such additional information as may be required.

- B. It is understood and agreed that MADISON may assign the performance of this AGREEMENT to an independent operating company or other entity of MADISON'S choosing. However, MADISON shall remain primarily responsible for performance of the service provided for herein.

MADISON shall not be in breach of any provisions of this AGREEMENT for failure to perform where such failure is due to strikes, walk-outs, civil insurrections or disorders, orders of civil authorities, shortages of motor fuel or equipment, acts of God, severe weather conditions, or for any other cause or causes beyond the control of MADISON. In the event that service is substantially disrupted by strikes and/or walk outs, weather or other factors uncontrollable by MADISON (civil disorders, etc.) such that MADISON is unable to provide any transit service within the MADISON service area for a continuous period in excess of fourteen (14) calendar days, the agreement shall be suspended until service is restored and the total amount due to MADISON under this AGREEMENT for the applicable period shall be adjusted accordingly. However, in such case, the following year's totals used in Addendum A to calculate the payment by UNIVERSITY will be based on mutually agreed upon estimates of ridership. The basis of the estimated ridership will be data for the same period during the previous year as if the disruption had not occurred.

UNIVERSITY shall not be in breach of any provisions of this AGREEMENT for failure to perform where such failure is due to strikes, walk-outs, civil insurrections or disorders, orders of civil authorities, shortages of motor fuel or equipment, acts of God, severe weather conditions, or for any other cause or causes beyond the control of UNIVERSITY. In the event that the UNIVERSITY is substantially disrupted by strikes and/or walk outs, weather or other factors uncontrollable by UNIVERSITY (civil disorders, etc.) such that UNIVERSITY is unable to use any transit service within the MADISON service area for a continuous period in excess of fourteen (14) calendar days, the agreement shall be suspended until UNIVERSITY is capable of using transit service and the total amount due to MADISON under this AGREEMENT for the applicable period shall be adjusted accordingly. However, in such case, the following year's totals used in Addendum A to calculate the payment by UNIVERSITY will be based on mutually agreed upon estimates of ridership. The basis of the estimated ridership will be data for the same period during the previous year as if the disruption had not occurred.

- C. Notwithstanding any other provision of this AGREEMENT to the contrary, MADISON'S obligations to perform hereunder shall be first conditioned upon its ability to do so in compliance with all applicable laws governing the conduct of MADISON'S business and operations, including applicable federal, state and city budgetary restrictions.

VI. AFFIRMATIVE ACTION/DISADVANTAGED BUSINESS ENTERPRISE

- A. Policy. It is the policy of the U.S. Department of Transportation that disadvantaged business enterprises (DBE) including women and minority business enterprises as defined in 49 CFR Part 26 shall 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 DBE requirements of 49 CFR Part 26 and the MADISON DBE program apply to this AGREEMENT.

- B. DBE Obligation. MADISON subrecipients 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 AGREEMENT. In this regard, UNIVERSITY is a subrecipient, and all of its contractors, on contracts financed in whole or in part with federal funds provided under this AGREEMENT, shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 and the MADISON DBE program to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts funded in whole or in part by Federal DOT funds. UNIVERSITY and its contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of DOT-assisted contracts.
- C. During the term of this AGREEMENT, MADISON and UNIVERSITY 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. The Parties further agree not to discriminate against any subcontractor or person who offers to subcontract on this AGREEMENT because of race, religion, color, age, disability, sex, sexual orientation, gender identity or national origin.

VII. TERMINATION

- A. Either party may terminate this AGREEMENT upon ninety (90) days written notice. In the event of termination, UNIVERSITY will pay MADISON for all satisfactorily completed service prior to termination of this AGREEMENT. The total amount due to MADISON under this AGREEMENT for the applicable period of completed service shall be adjusted using the methodology in Addendum A to calculate the payment by UNIVERSITY based on data of what ridership would have been if the contract had been terminated at the same time during the previous year. In the event of default by UNIVERSITY in its payment for more than ninety (90) days from the date of billing, service may be suspended or terminated at MADISON'S option.
- B. In the event UNIVERSITY shall materially breach any of the covenants, agreements, commitments or conditions herein contained and such breach shall continue unremedied for a period of thirty (30) days after written notice thereof to UNIVERSITY, MADISON may at its option and in addition to all other rights and remedies which it may have at law or in equity against UNIVERSITY forthwith have the cumulative right to immediately terminate this AGREEMENT.
- C. Similarly, in the event MADISON shall materially breach any of the covenants, agreements, commitments or conditions herein contained and such breach shall continue unremedied for a period of thirty (30) days after written notice thereof to MADISON, UNIVERSITY may at its option and in addition to all other rights and remedies which it may have at law or in equity against MADISON forthwith have the cumulative right to immediately terminate this AGREEMENT.

D. All passes issued pursuant to this AGREEMENT shall become void as of the date of termination of this AGREEMENT hereunder and will no longer be valid for unlimited ride pass rides.

VIII. INDEMNIFICATION AND HOLD HARMLESS

It is mutually agreed UNIVERSITY and MADISON will be prepared to answer and defend only that responsibility and resultant legal liability, involving bodily injury or property damage, which is based upon or arises from their respective, or their employees' or agents' respective acts, errors or omissions which may occur in connection with this AGREEMENT while acting within the scope of their employment.

IX. THIRD PARTY RIGHTS

This AGREEMENT is intended to be solely between the parties hereto, i.e., "MADISON" and "UNIVERSITY." No part of this contract shall be construed to add, supplement, amend, abridge or repeal existing rights, benefits or privileges of any third party or parties, including but not limited to, employees of either of the parties.

X. NOTICES

All notices hereunder and communications with respect to this AGREEMENT shall be directed by United States mail, postage prepaid and addressed as follows:

If to MADISON: Transit General Manager
 1245 East Washington Avenue
 Suite 201
 Madison, WI 53703

If to UNIVERSITY: Director of Transportation Service
 Room 120, 610 Walnut Street
 Madison, WI 53705

Electronic mail may be used in lieu of United States mail. If electronic mail is used, it is the responsibility of the sending party to insure that the electronic mail message is received by the other parties.

XI. BINDING ON PARTIES

This AGREEMENT shall be binding on the parties hereto, their respective heirs, devisees, and successors and cannot be varied or waived by any oral representations or promise of any agent or other person of the parties hereto unto unless the same be in writing signed by the duly authorized agent or agents who executed this AGREEMENT.

XII. COUNTERPARTS, ELECTRONIC SIGNATURE AND DELIVERY

This contract may be signed in counterparts, each of which shall be taken together as a whole to comprise a single document. Signatures on this Contract may be exchanged between the parties by facsimile, electronic scanned copy (.pdf) or similar technology and shall be as valid as original; and this Contract may be converted into electronic format and signed or given effect with one or more electronic signature(s) if the electronic signature(s) meets all requirements of Wis. Stat. ch. 137 or other applicable Wisconsin or Federal law. Executed copies or counterparts of this Contract may be delivered by facsimile or email and upon receipt will be deemed original and binding upon the parties hereto, whether or not a hard copy is also delivered. Copies of this Contract, fully executed, shall be as valid as an original.

XIII. SEVERABILITY

It is mutually agreed that, in case any provision of this AGREEMENT is determined by any court of law to be unconstitutional, illegal, or unenforceable, it is the intention of the parties that all other provisions of this AGREEMENT remain in full force and effect.

XIV. NO WAIVER

No failure to exercise, and no delay in exercising, any right, power, or remedy hereunder on the part of MADISON or UNIVERSITY shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power, or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. No express waiver shall affect any event or default other than the event of default specified in such waiver. Any such waiver, to be effective, must be in writing and shall be operative only for the time and to the extent expressly provided by MADISON or UNIVERSITY therein. A waiver of any covenant, term, or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term, or condition.

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

Satya Rhodes-Conway, Mayor

Date

Maribeth Witzel-Behl, City Clerk

Date

APPROVED:

APPROVED AS TO FORM:

Eric T. Veum, Risk Manager

City Attorney

David Schmiedicke, Director of Finance

UNIVERSITY OF WISCONSIN-MADISON

Martin Rostermundt, Procurement Specialist
University of Wisconsin-Madison

Date

ADDENDUM A: PAYMENT FOR SERVICES/PASS PRODUCTION

I. PAYMENT FOR SERVICES:

MADISON shall bill UNIVERSITY monthly for fixed route transit and ADA paratransit rides taken by University employees as provided below. MADISON shall bill UNIVERSITY within thirty (30) days of the end of each month during the term of the contract.

A. Billing for Fixed Route Transit Service:

MADISON shall be reimbursed \$1.35 per ride during the first three years of the agreement (September 1, 2020 – August 31, 2023) based on a “rolling average” of the most recent four years of actual ridership, which average will be calculated annually by MADISON. The monthly invoice for fixed route transit service shall be 1/12 of the average annual amount; provided that in the event ridership data for the latest year is unavailable the monthly amount billed will be an estimate and adjusted invoice(s) will be sent once the data is available to make an exact calculation.

In addition, METRO TRANSIT will credit UNIVERSITY with \$40,000 per year for the first three (3) years of the AGREEMENT as described in Section III. B. of this AGREEMENT.

During the two option years of the agreement (September 1, 2023 – August 31, 2024 and September 1, 2024 – August 31, 2025) MADISON shall be reimbursed \$1.40 per ride or the rate in the then current METRO TRANSIT fare tariff, whichever is lower. Invoicing will be based on a “rolling average” of the most recent four years of actual ridership, which average will be calculated annually by MADISON. The monthly invoice for fixed route transit service shall be 1/12 of the average annual amount; provided that in the event ridership data for the latest year is unavailable the monthly amount billed will be an estimate and adjusted invoice(s) will be sent once the data is available to make an exact calculation.

B. Billing for ADA Paratransit Service

Billing for ADA complementary paratransit rides during the entire agreement shall be submitted on the same invoice as fixed route transit rides on the billing schedule shown above. Those rides will be billed at the rate of the applicable ADA paratransit fare in effect on METRO TRANSIT fare tariff on the date the ride is taken.

C. UNIVERSITY shall pay the foregoing amounts in accordance with Article III of the body of this Agreement.

II. RIDERSHIP COUNTING

In accordance with Article II. J. of this AGREEMENT, MADISON agrees that it will provide an accurate count of ridership for UNIVERSITY employee rides using standard ridership counting procedures. The counts shall be recorded on both fixed route and paratransit services.

UNIVERSITY may conduct an independent evaluation of ridership counts solely related to this program at its discretion and its sole expense and risk. UNIVERSITY shall provide notice of such evaluation to MADISON and shall consult MADISON regarding procedures and policies MADISON uses in counting ridership. Said evaluation shall not interfere with the operation of transit service or cause any unsafe operational conditions.

III. PASS PRODUCTION

UNIVERSITY shall design the passes and MADISON shall set the general template and print the passes used in this program.

ADDENDUM B: PASS DISTRIBUTION/ PASS SECURITY

I. ACCEPTABLE PASS DISTRIBUTION FORMATS

- A. MADISON is responsible for printing the passes. MADISON agrees to provide passes that will be made in a format and of materials that do not lend themselves to counterfeiting or copying. MADISON shall have passes available for pickup at METRO TRANSIT by UNIVERSITY for the Academic Year no later August 1st of that year.
- B. UNIVERSITY agrees to establish appropriate procedures to assure that one and only one pass per pass period is distributed to each employee and that the individual is a current eligible UNIVERSITY employee.

II. PASS SECURITY

- A. Each pass shall be numbered. Each pass shall have a place for the employee to sign. Employees will be required to sign the passes distributed to them. Drivers may at their discretion require employees to present a current valid UNIVERSITY or affiliate group employee or member ID card along with a current valid pass in order to board fixed route buses and/or paratransit vehicles free of charge.
- B. Passes that are misused are subject to confiscation. Passes that are confiscated may not be reissued. Passes that are lost or stolen may be reissued. Passes may not be resold or transferred. MADISON will take reasonable steps to invalidate passes that are lost, stolen or otherwise no longer valid pass numbers sent to it by UNIVERSITY on a monthly basis.
- C. UNIVERSITY shall advise UW employees (and employees and members of affiliates) and UW Hospital employees respectively of the restriction in Section II.G (in the body of the AGREEMENT) at the time of pass request, and shall further advise requestors that any violation of this restriction will result in confiscation of both passes.
- D. UNIVERSITY shall take reasonable steps to monitor employee and affiliate group member pass distribution to verify and insure appropriate use of the pass program.