## STAFF REPORT

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| **Agenda Item:** | 6 | **Name:** | Leah Krekel-ZoppiPaul Carlson |
| **Proposed No**.: | 2019-0408 | **Date:** | November 5, 2019 |

**SUBJECT**

An ordinance authorizing an agreement between King County and the Central Puget Sound Regional Transit Authority (known as Sound Transit) for operations and maintenance of Sound Transit Express Bus service.

**SUMMARY**

This proposed ordinance would authorize an updated agreement for King County to operate and maintain a portion of Sound Transit’s Express (ST Express) bus service. King County and Sound Transit first entered into an agreement for operating and maintaining the ST Express in 1999. That agreement was updated and extended multiple times, and is set to expire on December 31, 2019.

The proposed agreement would be for a base term of five years with the option of a three-year extension, followed by a two-year extension, and for a projected cost of approximately $52 million in 2020. The proposed agreement maintains the vast majority of the terms from the original agreement, with modifications to include cost containment measures, provide additional data sharing and collaborative planning, provide additional cost information, reduce overhead charges, identify issues for further discussion, and update civil rights provisions.

**BACKGROUND**

Sound Transit is the Central Puget Sound Regional Transit Authority, which plans, builds and operates[[1]](#footnote-1) express buses, Light Rail, and commuter train services for the central Puget Sound Region.

Since September 1999, King County Metro has operated a portion of Sound Transit Regional Express (ST Express) bus services. The agreement between King County and Sound Transit for operating and maintaining ST Express bus service was first approved in 1999, and updated in 2004, 2009, and 2015, with the current term expiring on December 31, 2019.

* The ST Express operating and maintenance agreement covers operation of eight bus routes and 262,000 annual platform hours. A summary of the key terms in the agreement is as follows: King County Metro operates and maintains Sound Transit ST Express buses and invoices Sound Transit for the costs.
* Sound Transit provides the buses, pays for the service, and receives the fare revenue.
* King County and Sound Transit are to consult with each other on policy decisions, service development, and planning affecting ST Express bus service.
* Sound Transit is responsible for planning and oversight of the ST Express bus system.
* King County is responsible for providing and training the staff to operate and maintain ST Express bus service, including complying with labor agreements and monitoring employee conduct and performance.
* The County must comply with federal requirements related to the federal financial assistance Sound Transit receives for ST Express, meet prescribed performance standards, and provide monthly performance reports to Sound Transit.
* The agreement establishes a process for financial authorization and payment for services, which involves establishing a baseline cost to provide the planned level of service. The baseline cost includes both direct and indirect costs shared with other County operations. The County then provides monthly invoices to Sound Transit for 1/12th of the baseline cost and any additional task orders or extra services.
* Either the County or Sound Transit can terminate the agreement with 12 months prior notification. Alternatively, the agreement can be terminated due to default with 30 days written notice and an opportunity for the defaulting party to remedy the default.
* Amendments and revisions to the exhibits of the agreement can be made by the Sound Transit Executive Director of Operations and the General Manager of Metro, however, the agreement states that amendments to policies contained within the agreement are subject to approval of the Sound Transit Board of Directors and the King County Council.

**ANALYSIS**

**Agreement Terms and Key Changes**

A summary of the key changes in the proposed agreement compared to the current agreement is as follows:

* **Term[[2]](#footnote-2):** The proposed agreement is for a base term of five years, with options for two extensions totaling up to five additional years (the first extension would be for three years and the second would be for an additional two years). The current agreement was for a base term of three years, with two one-year optional extensions.
* **Joint Leadership Team[[3]](#footnote-3):** The proposed agreement would establish a Joint Leadership Team[[4]](#footnote-4) charged with monthly review of service performance, and identifying areas of performance and continuous improvement.
* **Information Sharing[[5]](#footnote-5):** The proposed agreement would add language stating that Sound Transit and King County Metro will share disclosable data as it becomes available, including access to reports, databases, data sharing tools and business analytics dashboards for operations, vehicle maintenance, planning, safety, and security data and information. The current agreement only requires monthly performance reports and states that as Metro develops new data collection technology, Metro will make that data available to Sound Transit in a timely manner.
* **Planning[[6]](#footnote-6):** The proposed agreement would clarify the process and timeline for planning bi-annual service changes. The proposed agreement also adds a provision for Metro and Sound Transit to meet annually to review and comment on each agency’s mid- and long-range plans. Additionally, the proposed agreement would add a requirement for either agency to provide four months prior notice of significant route changes.
* **Fleet Costs[[7]](#footnote-7):** The proposed agreement would add two provisions related to fleet costs. First, the annual discussion on the condition of the fleet, as required by the current agreement, would be required to include discussion of strategies for coach standardization and other efficiencies to reduce costs. Second, the proposed agreement would state that the County will provide storage and maintenance facilities for up to 125 Sound Transit buses (the current agreement does not specify the number of buses the County would store), and that above 125 buses, storage and maintenance facilities cost will be negotiated by task order.
* **Costs and Overhead[[8]](#footnote-8):** The proposed agreement would provide additional specificity and transparency about how the County’s indirect costs are determined in the County’s cost allocation model. The cost allocation model would also be modified to exclude general county overhead costs, and the county overhead charge would be capped at 6.3 percent of ST Express operations and maintenance costs.
* **Issues for Further Consideration[[9]](#footnote-9):** The proposed agreement would identify two areas for further conversations between Metro and Sound Transit. The first would be discussions regarding actionable items for the recognition of King County Metro as the operator of ST Express Bus, with the goal of reaching an agreement on public facing recognition in 2020. The second would be conversations exploring planning and operations of Sound Transit’s Bus Rapid Transit service[[10]](#footnote-10).
* **Nondiscrimination[[11]](#footnote-11):** Updates nondiscrimination provisions to include Title VI compliance requirements consistent with the Sound Transit and King County Title VI programs.

Table 2 at the end of this staff report provides a complete list and description of each section and exhibit of the proposed agreement.

**Overhead**

As noted above, the overhead costs charged to Sound Transit are proposed to change in the updated agreement. Under the proposed agreement, Sound Transit would continue to pay overhead costs for King County Human Resources, King County Information Technology, Business Resource Center, Finance and Business Operations Division, and Office of Performance Strategy and Budget. However, the proposed agreement would exempt one category of overhead that Sound Transit has been paying under the current agreement: general government overhead, which includes the King County Council and Council Administration, the King County Executive’s Office, the King County Auditor, Executive Services Administration, the Office of Economic and Financial Analysis, King County Civic Television, the Office of Equity and Social Justice, Real Estate Services, and State Auditor. According to Metro, the rationale for this change is that it reflects that Sound Transit has its own governance and management structure, and it matches the precedent set in the Link Light Rail operating and maintenance agreement adopted earlier this year[[12]](#footnote-12). As in the current agreement, the proposed agreement would continue to exempt Sound Transit from overhead related to the King County General Manager’s Office, Passenger Facilities Maintenance, and Transit Route Facilities Development and Administration. The rationale for these exemptions, according to Metro, are that Sound Transit has its own management and leadership structure, and to reflect the regional “good neighbor” policy.

Table 1 provides a comparison of the overhead charges in the proposed ST Express operating and maintenance agreement, compared to the previous agreement and other Metro operating agreements. One agreement in this comparison, the Seattle Streetcar operating and maintenance agreement, is expiring; a proposed update to the agreement[[13]](#footnote-13) has been transmitted to Council but is still being analyzed.

According to Metro, the proposed change in overhead charges would reduce the contract cost by approximately $600,000 per year.

**Table 1. Metro Operating Agreements Overhead Comparison**

|  |  |
| --- | --- |
| Overhead charge | Agreement |
| Proposed ST Express | Current ST Express | ST Rail (updated in 2019) | Seattle Bus | Seattle Streetcar (expiring in 2019) | Transit Now/ other partnerships |
| Metro General Manager’s Office | Excluded | Excluded | Excluded | Excluded | Included | Included |
| General Government | Excluded | Included | Excluded | Included | Included | Included |
| KCIT | Included | Included | Included | Included | Included | Included |
| FBOD | Included | Included | Included | Included | Included | Included |
| PSB | Included | Included | Included | Included | Included | Included |

Additionally, the proposed agreement would cap total County overhead charges at 6.3 percent. In 2017 through 2019, total overhead charges specified by the contract ranged from 5.2 – 6.1 percent, so Metro does not expect the 6.3 percent cap to have a fiscal impact and states that limiting overhead growth is consistent with County goals.

**Fiscal Impact**

According to the Executive, the agreement is projected to cost $52,363,834 in 2020, and $107,513,005 in the 2021-2022 biennium. These costs would be fully revenue-backed.

**Amendment**

Amendment 1 would replace Attachment A to Proposed Ordinance 2019-0410 with an updated agreement that includes non-substantive clarifications and updates. The amendment would also incorporate the exhibits to the agreement.

The proposed amendment has undergone legal review and was developed in cooperation with Metro and Sound Transit staff.

**Table 2. Agreement Sections**

|  |  |  |
| --- | --- | --- |
| **Section** | **Description** | **Page** |
| Preamble | Describes Sound Transit and County authority to operate public transportation services and enter into the agreement | 7 |
| 1. Definitions
 | Definitions are contained in Attachment A. | 7 |
| 1. Federal Requirements
 | Provides that King County, as a contractor, will adhere to federal requirements that Sound Transit must comply with in order to receive federal funds. Lists requirements relating to: (1) National Transit Database (NTD) data reporting, (2) Americans with Disabilities Act (ADA) related matters, (3) security and (4) safety.Exhibit I lists additional federal requirements: As a transit operator and federal funding recipient, Metro must comply with these requirements anyway.2.3 states that security is not limited to federal requirements and data collection: This section states that Metro will provide security services on Sound Transit buses operated by Metro in accordance with Metro’s current standard security procedures.  | 7 |
| 1. General Requirements
 | Addresses coordination, records and audits, subcontracting, prioritization of applicable operating policies, specialized training, and Environmental Sustainability. See Exhibits J and K. | 12 |
| 1. Cooperation
 | States that the Parties will engage in cooperative planning for long range needs, fares, security and other issues. | 14 |
| 1. Role of Sound Transit
 | Describes Sound Transit’s role in coordinating ST Express bus policy with Metro, service planning, and oversight of Metro implementation of this Agreement. | 15 |
| 1. Personnel and Performance Standards
 | Provides that Metro will provide personnel, address unsatisfactory employee conduct, meet performance standards provided in Exhibit D, and report on performance using the formats provided in Exhibits E and F.  | 16 |
| 1. Route Planning/Scheduling
 | Defines the service planning process including timelines for service change planning. | 19 |
| 1. Vehicle Maintenance
 | Defines vehicle maintenance standards, including compliance with local, state, and federal laws and regulations, responsibilities for maintenance, warranty and recall, fuel, parts, cleaning and recordkeeping. | 23 |
| 1. Operations
 | Provides that Metro will manage all aspects of the street operation of bus service and provide needed personnel and resources. Service to be consistent with Metro procedures except as provided in this Agreement or Exhibit J (Sound Transit Express Bus policies).Provides for cross use of fleets, response to service disruptions, extra service, and revenue processing (King County processes fare revenue, which is credited to Sound Transit.) | 27 |
| 10. Customer Services, Marketing and Media Relations | Defines Parties’ responsibilities for customer services, customer communication, and marketing including advertising on Sound Transit vehicles and media relations. | 31 |
| 11. Maintenance and Operations of Facilities | Addresses passenger facility use and maintenance. States that Parties will adhere to the “Good Neighbor Policy” (Exhibit L) unless separate agreement is addressed. | 35 |
| 12. Financial Authorization, Compensation and Payment | Establishes the process for Metro to invoice Sound Transit monthly for services, including extra service, recordkeeping, and year-end reconciliation. Exhibit G includes financial forms.  | 37 |
| 13.Dispute Resolution | Establishes a multi-step process for resolving disputes, including mediation, that must be exhausted before legal action is initiated. | 44 |
| 14. Insurance and Risk Management Program | States that King County will provide insurance coverage as set forth in Exhibit M: Insurance and Risk Management Program. | 45 |
| 15. Indemnification and Defense | Addresses General Indemnity, Labor Indemnity, and Labor Compliance. | 45 |
| 16. Excuse from Performance | Defines conditions that would excuse the Parties from providing service, including natural disaster, labor disputes, war, or other conflicts beyond the Parties’ control. | 46 |
| 17. Termination of Agreement | Provides for termination for default and for convenience; states that the Parties will develop a coordinated plan to terminate services; defines close-out cost payments; in case of termination for default, Sound Transit would not be responsible for contract close-out costs. | 46 |
| 18. Legal Compliance | Addresses multiple issues including Amendments and Modifications. | 47 |
| 19. Additional Issues for Further Consideration | Identifies Recognition of King County Metro as ST Express bus operator and Sound Transit Bus Rapid Transit service as issues for further discussions. | 50 |
| 20. Statutory Requirements | Identifies statutory requirements include compliance with Civil Rights statutes. | 50 |
| 21. Notice | Lists Sound Transit and Metro contacts. | 54 |
| 22. Exhibits | States that Exhibits A through P are incorporated into the Agreement by reference. | 54 |
| 23. Effective Date and Term | Agreement effective when executed by both Parties. First year of term ends 12/31/2020; expires 12/31/2024, with option to extend for an additional three-year period, followed by an option to extend for an additional two-year period. | 54 |
| 24. Execution of Agreement | Signing of the agreement. | 55 |
| Exhibits |
| 1. Definitions
 | Provides definitions of terms used in the agreement |  |
| 1. ADA Complaint Summary
 | Provides form to use for ADA complaints |  |
| 1. Designated Representatives
 | Lists designated representatives |  |
| 1. Performance Standards
 | Form: performance standards; Section 6.4 requires Metro to meet or exceed these standards and report on them monthly. |  |
| 1. National Transit Database Reports
 | Forms used to report on route statistics and other information that is reported to the National Transit Database (NTD). |  |
| 1. Management Reports
 | List of reports required for NTD and additional forms besides those in Exhibit E. |  |
| 1. Compensation
 | Forms for rate setting, monthly invoices, and timing of financial data submission. |  |
| 1. Bus Cleaning Matrix
 | List of bus cleaning tasks and frequency. |  |
| 1. FTA Provisions
 | Defines federal requirements that Metro, as a contractor to Sound Transit, must meet. (Section 2.0) |  |
| 1. ST Express Policies and Procedures
 | ST Express Policies for Operations, Customer Service, and Fares. Metro operates ST bus service according to Metro standard procedures unless this Agreement or Exhibit J provide otherwise. |  |
| 1. Multiple-Agency Signage Responsibilities
 | Draft matrix of transit facilities identifying each agency’s responsibility for signage. |  |
| L. Good Neighbor Policy | Multi-agency policy on joint facility use and cost-sharing. |  |
| M. Insurance and Risk Management Program | Defines County’s Liability and Property insurance obligation and provides that Sound Transit will be billed.  |  |
| N. ST Environmental Sustainability Information | Sound Transit “Environmental and Sustainability Management System” and related Executive Order (Section 3 provides that Metro must certify that responsible Metro staff have read these documents and will make reasonable efforts to perform work in a manner consistent with these documents. |  |
| O. ST Express Bus Operations Task Order | Form |  |
| P. Federal Transit Administration Provisions | Incorporates required provisions related to receiving federal funding. |  |

**INVITED**

* Bill Bryant, Managing Director, Metro Service Development
* David Eldred, Metro General Counsel

**ATTACHMENTS**

1. Proposed Ordinance 2019-0408 (and its attachments)
2. Amendment 1 (and its attachment)
3. Redline of Amendment 1 Agreement
4. Transmittal Letter
5. Fiscal Note
1. Through contract with service providers. [↑](#footnote-ref-1)
2. Section 23.2 [↑](#footnote-ref-2)
3. Section 6.4 [↑](#footnote-ref-3)
4. This Joint Leadership Team is separate from the Joint Leadership Team established in the 2019 Link Light Rail Operations and Maintenance Agreement, approved by Ordinance 18914. [↑](#footnote-ref-4)
5. Section 6.5.1 [↑](#footnote-ref-5)
6. Section 7.2 [↑](#footnote-ref-6)
7. Sections 8.3, 8.4 [↑](#footnote-ref-7)
8. Section 12 [↑](#footnote-ref-8)
9. Section 19 [↑](#footnote-ref-9)
10. As part of the voter-approved ST3 plan, Sound Transit will implement bus rapid transit service in the I-405 and SR 522 corridors. [↑](#footnote-ref-10)
11. Section 20.3 [↑](#footnote-ref-11)
12. Ordinance 18914 [↑](#footnote-ref-12)
13. Proposed Ordinance 2019-0409 [↑](#footnote-ref-13)