## STAFF REPORT

|  |  |  |  |
| --- | --- | --- | --- |
| **Agenda Item:** | 6 | **Name:** | Terra Rose |
| **Proposed No**.: | 2019-0409 | **Date:** | November 19, 2019 |

**SUBJECT**

Proposed Ordinance 2019-0409 would authorize an agreement between King County and the City of Seattle for the operation and maintenance of the Seattle streetcar system.

**SUMMARY**

The Committee received an initial briefing on November 5, 2019 on Proposed Ordinance 2019-0409, which would authorize an agreement between King County and the City of Seattle (“City”) to operate and maintain the Seattle streetcar system on behalf of the City. The Seattle streetcar system currently is made up of the South Lake Union line, which opened in 2007, and the First Hill line, which opened in 2016. The County and the City first entered into an operation and maintenance agreement[[1]](#footnote-1) in 2007 and the Council approved the current agreement[[2]](#footnote-2) in 2014, which is set to expire on December 31, 2019.

Under the proposed agreement, the County would continue to serve as the operator of the Seattle streetcar system, but also assume some maintenance responsibilities previously held by the City (e.g., maintenance of the First Hill Streetcar Operations and Maintenance Facility). The proposed agreement would maintain the County’s current annual contribution to the South Lake Union line of $1.55 million (escalating at a rate of three percent annually throughout the initial five-year term) and outline a process for determining a contribution schedule under any subsequent renewal terms. The proposed agreement would be for a base term of five years with the option of two five-year extensions at the discretion of the City. Additional provisions in the proposed agreement relate to allowable County expenses to be reimbursed by the City, reporting requirements, and performance standards, among other items. According to the fiscal note, the agreement is projected to cost approximately $12.3 million in 2020, which is revenue-backed except for the County contribution portion. In the 2021-2022 biennium, the agreement is estimated to cost approximately $26.2 million, which is revenue backed less the scheduled County contribution of approximately $3.24 million.

Metro staff indicate that both the City and County experience has been that the 2014 agreement is cumbersome and that the proposed agreement represents a better, more efficient document.

In order for there to be an agreement in place following the expiration of the current agreement, both the Seattle City Council and King County Council would need to provide legislative approval prior to the end of the year.

**BACKGROUND**

The Seattle streetcar system is owned by the City of Seattle (“City”) and currently is made up of two streetcar lines operating within the City: the South Lake Union line, which opened in 2007, and the First Hill line, which opened in 2016. According to the proposed agreement, the South Lake Union line includes approximately 1.3 miles of track, 11 station platforms, a fleet of four streetcar vehicles, and the Overhead Contact System providing power to the streetcar, traction power substations, and an Operations and Maintenance facility located at 318 Fairview Avenue North in Seattle; the First Hill line includes approximately 2.5 miles of track, 14 station platforms, a fleet of six streetcar vehicles, an Overhead Contact System, traction power substations, and an Operations and Maintenance Facility located at 848 7th Avenue South in Seattle.

King County and the City first entered into an operation and maintenance agreement[[3]](#footnote-3) for the streetcar system in 2007, when at the time the system included only the South Lake Union line. The Council subsequently approved an updated agreement[[4]](#footnote-4) in 2014 that also covered the First Hill line, which was under construction at the time. The current agreement is set to expire on December 31, 2019.

The Committee received an initial briefing on Proposed Ordinance 2019-0409 on November 5, 2019.

**ANALYSIS**

Proposed Ordinance 2019-0409 would provide the legal mechanism allowing the City to contract with the County for the continued operation and maintenance of the streetcar system. The proposed agreement includes provisions related to allowable County expenses to be reimbursed by the City, reporting requirements, and performance standards, among other items.

The analysis in the staff report is organized as follows:

* A summary of the key terms of the proposed agreement;
* Descriptions of the policy changes identified by Council staff in the proposed agreement relative to the existing agreement; and
* A table providing a complete list and description of each section and appendix of the proposed agreement.

**Summary of Key Terms**

* **Term[[5]](#footnote-5):** The proposed agreement would take effect upon execution for a term of five years. The term would automatically be extended for up to two additional five-year periods at the discretion of the City. Note that under the proposal either party can terminate the agreement for convenience with written notice provided no less than 180 days prior to the intended termination date and provided that there is an opportunity for the parties to consult.[[6]](#footnote-6)
* **Agreement Amendments[[7]](#footnote-7):** The proposed agreement would allow the agreement, exhibits, and attachments to be amended by mutual agreement in the form of an amendment executed by the Director of the Seattle Department of Transportation (“SDOT”) and the General Manager of the King County Metro Transit Department.
* **System Expansion[[8]](#footnote-8):** Under the proposed agreement, the parties acknowledge that the streetcar system may be expanded in the future. It states that the expanded facilities shall be included in and subject to all the terms of the agreement without the need for future legislative action “[p]rovided that the operation and maintenance of such expanded facilities does not materially alter the operational or financial relationship between the Parties.” This change is further discussed in the next subsection of the staff report concerning policy issues for Councilmember consideration.
* **General Roles and Responsibilities[[9]](#footnote-9):** Under the proposed agreement, Metro would continue to serve as the operator of the City-owned streetcar system, as well as assume some maintenance responsibilities previously held by the City (e.g., maintenance of the First Hill Streetcar Operations and Maintenance Facility, streetcar station cleaning, and track drain maintenance). Metro staff indicate that transferring these functions to the County is expected to increase the efficiency and quality of service for these functions. The proposed agreement requires the County to provide to the City an annual Operating Plan,[[10]](#footnote-10) which would describe year-to-year changes in operation and the County’s proposed staffing plan and organizational chart. Additionally, the proposed agreement contains specific provisions concerning the City and County roles related to maintenance,[[11]](#footnote-11) fare collection,[[12]](#footnote-12) advertising,[[13]](#footnote-13) reporting,[[14]](#footnote-14) customer information,[[15]](#footnote-15) as well as security and law enforcement.[[16]](#footnote-16)
* **Budget and Invoicing[[17]](#footnote-17):** The proposed agreement, per Metro, would clarify the budget and invoicing process to reduce the magnitude of year-end reconciliations and would call for increased coordination early in the SDOT and Metro budget cycles. Under the proposed agreement, the City and County would agree on annual projections for operating expenses and ORCA revenues based on historical actuals, rather than a schedule of estimated costs and revenues, which is the process in the current agreement expiring this year. Metro staff indicate that all operating and maintenance costs related to the streetcar are reimbursable, except for the County contribution further described below.
* **County Contribution and Other Revenues[[18]](#footnote-18):** The proposed agreement would maintain the County’s current annual contribution to the South Lake Union streetcar line of $1.55 million, which escalates at a rate of three percent annually throughout the initial five-year term. Under the proposal, if the term of the agreement is extended after the initial five-year term, the City and County may negotiate an extension to the County contribution. If the parties fail to reach an agreement on the extension of the County contribution beyond the initial five-year term, and if the broader agreement is extended, then the County contribution would phase out under the following schedule: $872,269.33 annually for 2025-2027 and $0 for 2028 and beyond. According to Metro staff, the proposed agreement would exempt the City from paying for certain overhead charges, as well as provide a cap on overhead, should the County contribution phase out in 2028.
* **Safety and Security[[19]](#footnote-19):** Under the new agreement, the County would be responsible for developing, maintaining, and implementing the System Safety Program Plan for the streetcar system in a manner compliant with the Washington State Rail Safety Oversight Program (“WSRSOP”) standard and federal requirements. The County would also be responsible for conducting accident investigations and providing any notifications and reports required by the WSRSOP standards.
* **Performance Standards[[20]](#footnote-20):** At request of the City, a series of performance standards is included in the proposed agreement. Under the proposal, there are no penalties associated with not meeting the performance standards.

The proposed agreement also includes provisions related to a dispute resolution process,[[21]](#footnote-21) indemnification[[22]](#footnote-22) and insurance[[23]](#footnote-23) requirements, hazardous substances,[[24]](#footnote-24) among other items.

Metro staff indicate that both the City and County experience has been that the 2014 agreement is cumbersome and that the proposed agreement represents a better, more efficient document. Specifically, Metro staff have highlighted the following three significant improvements: (1) more proactive prediction and planning for costs; (2) addition of an annual Operation Plan developed by both parties that will allow greater coordination and oversight of operations; and (3) gained efficiencies by having the County take over major maintenance activities.

*Fiscal Impact.* According to the fiscal note, the agreement is projected to cost approximately $12.3 million for year 2020 in the 2019-2020 biennium,[[25]](#footnote-25) which is revenue-backed except for the $1.55 million County contribution portion. In the 2021-2022 biennium, the agreement is estimated to cost approximately $26.2 million, which is revenue backed less the scheduled County contribution of approximately $3.24 million. The proposed County contribution schedule under the initial term of the agreement is provided in Table 1 below.

**Table 1. Proposed County Contribution Schedule Under Initial Contract Term**

| **Year** | **Proposed County Contribution Amount** |
| --- | --- |
| 2020 | $1,550,000.00 |
| 2021 | $1,596,500.00 |
| 2022 | $1,644,395.00 |
| 2023 | $1,693,726.85 |
| 2024 | $1,744,538.66 |

As noted in the summary of key terms, the proposed agreement provides that if the term of the agreement is extended after the initial five-year term, the City and County may negotiate an extension to the County contribution. If the parties fail to reach an agreement on the extension of the County contribution beyond the initial five-year term, and if the broader agreement is extended, then the County contribution would phase out under the following schedule: $872,269.33 annually for 2025-2027 and $0 for 2028 and beyond.

*Legal Review.* The Council’s Legal Counsel reviewed the proposed agreement and worked with Metro and the City staff to develop Amendment 1.

**Potential Policy Issues Identified by Council Staff**

Council staff have identified three potential policy issues for Councilmember consideration.

*Council Authorization Requirements.* The current agreement expiring at the end of this year includes provisions requiring the City and County Councils to authorize by ordinance any renewal or extension of the agreement, as well as approve of any new or extended streetcar line before it is placed in revenue passenger service. The proposed agreement, however, does not require action by either Council for agreement renewal or system extension/expansion. As previously described, the agreement would automatically be extended for up to two additional five-year periods at the discretion of the City and expansion of the streetcar would be included in and subject to all the terms of the agreement without the need for future legislative action “[p]rovided that the operation and maintenance of such expanded facilities does not materially alter the operational or financial relationship between the Parties.”[[26]](#footnote-26)

When asked about the rationale for these changes, Metro staff indicated that the proposed agreement was designed to allow for easy incorporation of new and expanded streetcar service and facilities contingent upon there being no major changes to the duties or responsibilities of either party.

Additionally, as described above, the proposed agreement provides that if the term of the agreement is extended after the initial five-year term, the City and County may negotiate an extension to the County contribution amount. The proposed agreement does not specify that a negotiated contribution schedule would come before the Council for approval.

*Service Reductions.* The current agreement includes the following language related to periods of major service reduction: “The County may reduce its annual contribution in the event of a major service reduction in order to be consistent with the Strategic Plan for Public Transportation 2011-2021 and the King County Metro Service Guidelines…”[[27]](#footnote-27) This language allowing reductions in the scheduled County contribution is not included in the proposed agreement[[28]](#footnote-28).

Metro staff indicate that the origins of the County contribution date back to the opening of the initial Central Link light rail line and at that time, the City requested that the value of a portion of Metro’s bus service hours redeployed as a result of the Central Link opening be shifted to support operations of the South Lake Union streetcar line (16,800 service hours from the pool of 84,450 hours generated from the proposed service changes for the Seattle, Shoreline and Lake Forest Park, according to Metro staff at the time). Metro staff further state that the current agreement approved in 2014 provided for annual County financial contributions to the South Lake Union Streetcar not tied to service hours.

*Allowable Overhead.* According to Metro staff, the existing agreement allows reimbursement of the following overhead charges: Metro General Manager’s Office, General Government, King County Information Technology, Finance and Business Operations Division, and Performance, Strategy and Budget. Under the proposal, the City would continue to reimburse the County for these charges for years in which there is a County contribution in place. Metro staff further indicate that the proposed agreement would exempt the City from paying for the General Government and Metro General Manager’s Office charges should the County contribution phase out in 2028, as well as provide a cap on overhead of six percent.

**Complete List and Description of Agreement Sections**

Table 2 provides a complete list and description of each section and attachment of the proposed agreement.

**Table 2. List and Description of Sections in the Proposed Agreement**

| **Section Number** | **Section Name** | **Agreement Page** | **Description** |
| --- | --- | --- | --- |
| **1.0** | Purpose, Scope and Term of Agreement | 1 | Describes the purpose of the agreement, base and renewal terms |
| **2.0** | Seattle Streetcar System Description  | 2 | Describes streetcar system and provides for the terms under which system expansion would be subject to the agreement |
| **3.0** | Responsibilities | 2 | Outlines the County obligation to operate and maintain the streetcar consistent with the agreement and plans required under the agreement, and the City obligation to reimburse the County for streetcar-related costs, provide County with an annual Service Plan which covers hours of operation, etc., and undertake necessary capital improvements  |
|  **4.0**  | Compensation, Budget Process, Invoices, Payment and Cost Reconciliation | 4 | Describes allowable County costs to be reimbursed by the City, the County contribution schedule and terms, and the process for budgeting, invoicing, and reconciliation |
| **5.0** | Ownership and Use of the Seattle Streetcar | 8 | Provides that the City owns the streetcar facilities and streetcars which the County operates/maintains, as well as the terms related to advertising, fare collection, and special events |
| **6.0** | Operations | 10 | Outlines the County reporting requirements and responsibilities in the event of an accident or extended streetcar service disruption |
| **7.0** | Maintenance | 11 | Describes the City and County maintenance responsibilities and standards |
| **8.0** | Customer Service, Information, and Marketing | 14 | Outlines roles and responsibilities related to customer information and media relations |
| **9.0** | Safety | 14 | Describes roles and responsibilities related to safety planning and oversight |
| **10.0** | Security and Law Enforcement | 15 | Outlines roles and responsibilities with regard to system security and security planning |
| **11.0** | Overhead Contact System | 15 | Acknowledges close proximity of the streetcar’s Overhead Contact System and the County’s Electric Trolley Bus system and provides a process for cooperation in maintenance work |
| **12.0** | Administration | 15 | Describes roles and responsibilities related to personnel |
| **13.0** | Audits, Records, and Reports | 16 | Provides for audit rights on the part of either party, as well as agreement to maintain records in the case of outside audit |
| **14.0** | Performance Requirements and Reporting | 16 | Describes ridership reporting and performance reporting responsibilities |
| **15.0** | Material and Warranty Management | 17 | Outlines requirements related to warranty claims and inventory management |
| **16.0** | Federal Funding Requirements | 17 | Provides that the County will comply with federal funding requirements and that federal funding shall not relieve the City of its obligation to compensate the County under this agreement |
| **17.0** | Designated Representatives | 17 | Provides for designated representatives for notice, reporting, and for coordinating staff work |
| **18.0** | Indemnification | 17 | Outlines the terms under which the City and County will hold each other harmless  |
| **19.0** | Insurance | 20 | Describes insurance and workers’ compensation standards and requirements, as well as a process for claims’ management |
| **20.0** | Hazardous Substances Indemnification | 23 | Provides for City and County indemnification terms related to hazardous substances |
| **21.0** | Dispute Resolution | 24 | Outlines a process and terms for dispute resolution |
| **22.0** | Termination | 25 | Provides terms for termination in either default or for convenience |
| **23.0** | General Provisions | 27 | Provides miscellaneous provisions including agreement to comply with applicable laws, that the agreement does not create any third-party rights, description of what constitutes proper notice, a force majeure clause, etc. |
| **Appendix A** | Definitions | 32 | Defines terms in agreement |
| **Appendix B** | Operations and Maintenance Responsibilities Matrix | 35 | Summarizes agreement roles and responsibilities |
| **Appendix C** | Performance Standards | 38 | Describes performance standards (e.g., preventative maintenance completed on time; system on-time performance and reliability) |
| **Appendix D** | Seattle Streetcar Report List | 39 | Provides list and schedule for reporting requirements |
| **Appendix E** | Points of Contact | 40 | Identifies designated representatives and contact information |
| **Appendix F** | Partnership Decal | 41 | Provides partnership decal graphic stating streetcar is “Operated in Partnership with King County Metro” |

**Timing of Council Action**

The current operation and maintenance agreement is set to expire on December 31, 2019. In order for there to be an agreement in place following the expiration of the current agreement, both the Seattle City Council and King County Council would need to provide legislative approval for a new agreement by the end of the year. According to Metro staff, the City is tentatively anticipated to take up the proposed agreement at a Seattle City Council committee meeting on November 20th.

**AMENDMENT**

The Council’s Legal Counsel reviewed the proposed agreement and worked with Metro and the City staff to develop Amendment 1, which would correct internal references and make other non-substantive changes.

Title Amendment T1 would correct the title to authorize the Executive to execute the agreement rather than adopt the agreement.

**INVITED**

* Christine Anderson, Streetcar Manager, Rail Division, King County Metro

**ATTACHMENTS**

1. Proposed Ordinance 2019-0409 (and its attachments)
2. Amendment 1 (and its attachment)
3. Amendment T1
4. Transmittal Letter
5. Fiscal Note
6. Redline Version Comparing Transmitted ILA with ILA from Amendment 1
1. Ordinance 15860 [↑](#footnote-ref-1)
2. Ordinance 17876 [↑](#footnote-ref-2)
3. Ordinance 15860 [↑](#footnote-ref-3)
4. Ordinance 17876 [↑](#footnote-ref-4)
5. Section 1.3 [↑](#footnote-ref-5)
6. Section 22.2 [↑](#footnote-ref-6)
7. Section 23.15 [↑](#footnote-ref-7)
8. Section 2.0 [↑](#footnote-ref-8)
9. Appendix B (Operations and Maintenance Responsibilities), as well as the responsibilities outlined throughout proposed agreement [↑](#footnote-ref-9)
10. Section 3.3 [↑](#footnote-ref-10)
11. Section 7.0 [↑](#footnote-ref-11)
12. Section 5.3 [↑](#footnote-ref-12)
13. Section 5.2 [↑](#footnote-ref-13)
14. Sections 6.1, 14.0 [↑](#footnote-ref-14)
15. Section 8.0 [↑](#footnote-ref-15)
16. Section 10.0 [↑](#footnote-ref-16)
17. Section 4.0 [↑](#footnote-ref-17)
18. Section 4.1 [↑](#footnote-ref-18)
19. Section 9.0 [↑](#footnote-ref-19)
20. Appendix C (Performance Standards); Section 6.0 [↑](#footnote-ref-20)
21. Section 21.0 [↑](#footnote-ref-21)
22. Section 18.0 [↑](#footnote-ref-22)
23. Section 19.0 [↑](#footnote-ref-23)
24. Section 20.0 [↑](#footnote-ref-24)
25. The supplemental omnibus (PO 2019-0400) currently being considered by the Council would appropriate approximately $364,000 (revenue-backed) and authorize 3.0 FTEs to support cleaning and maintenance work for the First Hill streetcar line. Executive staff indicate that Metro and the City of Seattle have signed a Letter of Agreement to start the cleaning of passenger facilities under the current operating agreement due to the City’s contract with the current vendor expiring before a new operating agreement can be approved. [↑](#footnote-ref-25)
26. Section 2.0 [↑](#footnote-ref-26)
27. Ordinance 17876, Attachment A, Section 15.1 [↑](#footnote-ref-27)
28. Note that under the proposed agreement, the County contribution would be phased out in 2028 if the City and County fail to agree on a contribution schedule in subsequent renewal periods, so there may be a limited timeframe upon which this would be a relevant issue. [↑](#footnote-ref-28)