

**KELOWNA REGIONAL
TRANSIT SERVICE AGREEMENT**

between

THE CITY OF KELOWNA

and

BRITISH COLUMBIA TRANSIT

Effective

April 1, 2017

INFORMATION CONTAINED IN THIS AGREEMENT IS SUBJECT TO THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT. CONSULT WITH THE AUTHORITY PRIOR TO RELEASING INFORMATION TO INDIVIDUALS OR COMPANIES OTHER THAN THOSE WHO ARE PARTY TO THIS AGREEMENT.

TRANSIT SERVICE AGREEMENT

BETWEEN:

THE CITY OF KELOWNA

(the "Municipality")

AND:

BRITISH COLUMBIA TRANSIT

(the "Authority")

WHEREAS the Authority has, at the request of the Municipality, established the Transit Service Area described in this agreement pursuant to the *British Columbia Transit Act*,

WHEREAS the Authority is authorized to contract for transit services for the purpose of providing and maintaining those services and facilities necessary for the establishment, maintenance and operation of a public passenger transportation system in the Transit Service Area;

WHEREAS the Municipality is authorized to enter into one or more agreements with the Authority for transit services in the Transit Service Area; and

WHEREAS the Municipality and the Authority wish to define their respective rights and responsibilities with respect to the provision of transit services in the Transit Service Area.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises and of the covenants hereinafter contained, the parties covenant and agree with each other as follows:

Contents

SECTION 1: DEFINITIONS.....	4
SECTION 2: INCORPORATION OF SCHEDULES.....	4
SECTION 3: ANNUAL OPERATING AGREEMENT.....	4
SECTION 4: INCORPORATION OF ANNUAL OPERATING AGREEMENT	4
SECTION 5: TRANSIT SERVICE AREA.....	4
SECTION 6: TERM AND TERMINATION	4
SECTION 7: MUNICIPAL RESPONSIBILITIES	5
SECTION 8: AUTHORITY RESPONSIBILITIES	6
SECTION 9: FUNDING AGREEMENT.....	7
SECTION 10: CAPITAL AND OPERATING EXPENDITURES.....	7
SECTION 11: FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT	7
SECTION 12: AMENDMENT	8
SECTION 13: SETTLEMENT OF DISPUTES	8
SECTION 14: ENUREMENT.....	8
SECTION 15: ASSIGNMENT.....	8
SECTION 16: GOVERNING LAW.....	8
SECTION 17: COUNTERPARTS.....	8
SECTION 18: NOTICES AND COMMUNICATIONS.....	9
SCHEDULE "A": DEFINITIONS	11
SCHEDULE "B": TRANSIT SERVICE AREA	14
SCHEDULE "C": SERVICE STANDARDS	15

SECTION 1: DEFINITIONS

The Definitions that shall apply to this Agreement as approved pursuant to the *BC Transit Act* and Regulations are defined in Schedule "A" and, unless the context clearly indicates to the contrary, any words defined in the singular shall include the plural and vice versa.

SECTION 2: INCORPORATION OF SCHEDULES

The parties agree that the attached schedules form part of this agreement and are binding on the parties.

SECTION 3: ANNUAL OPERATING AGREEMENT

The Municipality and the Authority shall enter into an Annual Operating Agreement prescribed by regulation made pursuant to the British Columbia Transit Act.

SECTION 4: INCORPORATION OF ANNUAL OPERATING AGREEMENT

Upon execution, this Transit Service Agreement shall be deemed integrated into the Annual Operating Agreement and thereafter the Transit Service Agreement and Annual Operating Agreement shall be read together as a single integrated document and shall be deemed to be the Annual Operating Agreement for the purposes of the British Columbia Transit Act, as amended from time to time.

SECTION 5: TRANSIT SERVICE AREA

For the purposes of this agreement, the "Transit Service Area" is defined as the area comprised within the boundaries shown in Schedule "B" to be known as the Kelowna Regional Transit Service Area.

SECTION 6: TERM AND TERMINATION

The parties agree that the effective date of this agreement is to be April 1, 2017, whether or not the agreements have been fully executed by the necessary parties. Once this agreement and the associated Annual Operating Agreement are duly executed, this agreement will replace all provisions in the existing Transit Service Agreement and Master Operating Agreement with respect to the rights and obligations as between the Authority and the Municipality.

Upon commencement of this agreement it shall remain in full force and effect unless and until terminated in accordance with the provisions of this Agreement. Either party may terminate this agreement as follows:

- a) Cancellation by the Authority: In the event that the Authority decides to terminate this Agreement for any reason whatsoever, the Authority shall provide at least one hundred and eighty (180) days prior written notice. Such notice to be provided in accordance with Section 18.
- b) Cancellation by the Municipality: In the event that the Municipality decides to terminate this Transit Service Agreement for any reason whatsoever, and by extension the Annual Operating Agreement, the Municipality shall provide at least one hundred and eighty (180) days prior written notice. Such notice to be provided in accordance with Section 18.

SECTION 7: MUNICIPAL RESPONSIBILITIES

In accordance with the terms and provisions of this Agreement, and the *British Columbia Transit Act*, and regulations made pursuant to the Act, the Municipality shall be responsible for:

- a) Participating in the development of, and where in agreement approving, plans and amendments to the Public Passenger Transportation System including:
 - i. Determining service goals, levels and objectives for the Public Passenger Transportation System;
 - ii. Establishing service performance standards and guidelines for the System;
 - iii. Approving transit service plans and, where feasible, incorporating these plans into Official Community Plans and transportation plans for the Municipality;
 - iv. Approving bus routes;
 - v. Approving the Service Specifications prepared by the Authority consistent with operating and capital budgets set by the Authority; and
 - vi. Approving, after prior consultation with the Authority, requests for Special Transit Services in accordance with the policies and procedures developed by the Authority and the contingency budget provisions or as otherwise agreed to by parties for the payment of the Special Transit Services.
- b) Bus stops, shelters and related amenities including:
 - i. Approving, installing and maintaining bus stops, shelters and related amenities. The purchasing of materials, installation and maintenance of stops and shelters and related costs are the responsibility of the Municipality except in instances where the Authority has, by a separate written agreement entered into with the Municipality, agreed to share the costs according to the terms of that agreement;
 - ii. Identifying bus stops or shelters with signs and decals provided by the Authority and consistent with the Authority's brand standards; and
- c) Notifying the Operating Company and the Authority at least 48 hours in advance of any scheduled or anticipated street closures or traffic disruptions affecting transit service; develop alternate routings in consultation with the Operating Company; and ensure that adequate signage is posted along affected portions of routes.
- d) Establishing necessary traffic control by-laws and transit priority measures on their streets;
- e) With respect to System Revenues:
 - i. In consultation with the Authority, establishing a tariff and Fares and prescribing the terms and conditions applicable to each Fare category and amending this Fare structure in whole or in part from time to time;
 - ii. Depositing system revenues received from the Operating Company.
 - iii. Submitting a completed "Report of Revenue" form, supplied by the Authority, within 10 working days of the end of each month showing all system revenues collected on a monthly basis.
- f) With respect to budgets and payment:
 - i. Approving annual budgets consistent with the Service Specification and the Authority's budgets;
 - ii. Paying the amounts owing to the Authority on a monthly basis as invoiced by BC Transit in accordance with the budget provided in the Annual Operating Agreement;
 - iii. Where requested by BC Transit, the Municipality shall determine its administration costs relative to its responsibilities. Payment for these costs shall not exceed 2% of the Direct Operating Costs provided in the budget provided in the Annual Operating Agreement;
- g) Supporting the sustainability of the Public Passenger Transportation System by:

- i. Taking into consideration the impacts on transit service effectiveness when making local land use decisions;
 - ii. Promoting the use of the Public Passenger Transportation System.
- h) Notifying the Operating Company and the Authority of any customer complaints or concerns received by the Municipality; and,
- i) The Municipality may negotiate and enter into Community Transit Partnership Agreements only with prior written approval from the Authority;
- j) The Municipality agrees that the Authority will be the primary spokesperson for transit operational issues relating to the Public Passenger Transportation System and will cooperate when necessary to ensure accurate and effective public communications.

SECTION 8: AUTHORITY RESPONSIBILITIES

The Authority shall:

- a) Set the annual operating and capital budgets for all transit services in the Transit Service Area;
- b) Provide the personnel required to develop and implement transit service plans, fare tariffs and marketing programs for the Transit Service Area;
- c) Administer and manage the activities of the operating company with respect to the services provided under this agreement, including:
 - i. Conducting financial and service audits of the Public Passenger Transit System; and
 - ii. Monitor the Transit Services provided in the Transit Service Area and report and make recommendations to the Municipality with respect to the standards of service and performance of the public transportation systems
- d) Institute marketing programs for transit service in the Transit Service Area, including:
 - i. In consultation with the Municipality, providing public information, marketing and communications services consistent with the budget established in the Annual Operating Agreement and the Authority's branding standards to promote the Public Passenger Transportation System, and
 - ii. Ensuring that the Municipality's respective corporate graphic standards are met in local promotions and communications.
- e) In accordance with the terms and provisions of this Agreement, and the *British Columbia Transit Act* and relevant *Regulations*, the Authority shall be responsible for providing and directing the Shared Services Resources for managing the Operating Company's overall delivery of Transit Services including:
 - i. Establishing customer service practices and procedures; and
 - ii. Conducting any inspections and audits the Authority deems necessary of the Operating Company, Transit Services, Revenue Service Vehicles, Premises and other Physical Assets.
- f) Develop policies and procedures for the delivery of the Transit Services including:
 - i. Prescribing Registered User eligibility criteria and developing procedures and policies to be used by the Operating Company for the assessment and registration of Eligible Users for Custom Transit Services; and
 - ii. Developing procedures and policies for the delivery of Extra Services.
- g) Plan, prepare and implement the Transit Services including:
 - i. Providing Public Passenger Transportation System marketing in accordance with Section 8(d) of this agreement;
 - ii. Ensuring that the terms and conditions of the transit advertising agreement between the Authority and the advertising contract company are met, and

- that the designated revenues generated by this contract are credited to the Municipality;
- iii. Negotiating the terms of the Provincial BC Bus Pass and ensuring that the designated revenue is credited to the Municipality;
 - iv. Providing to the Municipality on a periodic basis reports which will specify:
 - 1) The actual costs of service compared to the budgeted costs specified in the Annual Operating Agreement;
 - 2) The revenue accrued to date, including farebox and other transit revenue (obtained from the Municipality or credited to the Municipality) compared to the budgeted revenue amount; and
 - 3) The annual performance summary of the service compared to the service standards established by the Municipality as outlined in Schedule "C".
 - h) Determining and providing the Revenue Service Vehicles, Premises and other Physical Assets required by the Operating Company for the provision of the Transit Services pursuant to lease or license agreements with the Authority and monitor the use, maintenance and conditions of such Revenue Service Vehicles, Premises and Physical Assets;
 - i) Provide to the Municipality full contact information for the Operating Company, so that the Municipality may fulfill all obligations under this agreement and/or the Annual Operating Agreement with respect to providing notice to the Operating Company;
 - j) Exercise its authority as primary spokesperson for transit operational issues relating to the Public Passenger Transportation System in a manner which does not interfere with the authority of the Municipality to communicate with the public with respect to local public transportation issues; and,
 - k) The Authority shall receive and review any and all proposals from the Municipality to enter into a Community Transit Partnership Agreement and, if acceptable to the Authority, provide its prior written approval of such Community Transit Partnership Agreement, such approval not to be unreasonable withheld by the Authority.

SECTION 9: FUNDING AGREEMENT

The Municipality and the Authority agree to contribute their respective portion of the annual cost of the Public Passenger Transportation System as prescribed in the Annual Operating Agreement.

SECTION 10: CAPITAL AND OPERATING EXPENDITURES

Nothing in this agreement shall be construed as committing the Authority or the Municipality to incur capital or operating expenditures for equipment, facilities or otherwise, within the Transit Service Area unless the same shall be contained within the approved budget of British Columbia Transit.

SECTION 11: FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

This Agreement and the parties hereto are subject to the provisions of the Freedom Of Information And Protection Of Privacy Act ("FOIPPA"). Any information developed in the performance of this Agreement, or any personal information obtained, collected, stored pursuant to this Agreement, including database information, shall be deemed confidential and subject to the provisions of the FOIPPA including the handling, storage, access and security of such information. Confidential information shall not be disclosed to any third party except as expressly permitted by the Authority or pursuant to the requirements of the FOIPPA.

SECTION 12: AMENDMENT

This agreement may only be amended in writing signed by the Municipality and the Authority and specifying the effective date of the amendment.

SECTION 13: SETTLEMENT OF DISPUTES

In the event of any dispute arising between or among the parties as to their respective rights and obligations under this Agreement, or in the event of a breach of this Agreement, the parties agree to use their best efforts to find resolution through a mediated settlement. However, in the event that mediation is not successful in finding a resolution satisfactory to all parties involved, any party shall be entitled to give to the other notice of such dispute and to request arbitration thereof; and the parties may, with respect to the particular matter then in dispute, agree to submit the same to a single arbitrator in accordance with the applicable statutes of the Province of British Columbia.

SECTION 14: ENUREMENT

This Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective successors.

SECTION 15: ASSIGNMENT

This Agreement shall not be assignable without prior written consent of the parties.

SECTION 16: GOVERNING LAW

This Agreement is governed by and shall be construed in accordance with the laws of the Province of British Columbia, with respect to those matters within provincial jurisdiction, and in accordance with the laws of Canada with respect to those matters within the jurisdiction of the government of Canada.

SECTION 17: COUNTERPARTS

This contract and any amendment hereto may be executed in counterparts, each of which shall be deemed to be an original and all of which shall be considered to be one and the same contract. A signed facsimile or .pdf copy of this contract, or any amendment, shall be effective and valid proof of execution and delivery.

SECTION 18: NOTICES AND COMMUNICATIONS

All notices, claims and communications required or permitted to be given hereunder shall be in writing and shall be sufficiently given if personally delivered to a designated officer of the parties hereto to whom it is addressed or if mailed by prepaid registered mail to the Authority at:

BRITISH COLUMBIA TRANSIT
c/o President & CEO
P.O. Box 610
520 Gorge Road East
Victoria, British Columbia V8W 2P3

and to the Municipality at:

THE CITY OF KELOWNA
c/o Transit and Programs Manager
1435 Water Street
Kelowna, BC V1Y 1J4

and, if so mailed, shall be deemed to have been received five (5) days following the date of such mailing.

IN WITNESS WHEREOF, the parties have hereunto set their hand this ____ day of _____,
20____.

THE CITY OF KELOWNA

BRITISH COLUMBIA TRANSIT

PRESIDENT & CEO

CORPORATE SECRETARY

SCHEDULE "A": DEFINITIONS

- a) **“Annual Operating Agreement”** means the Annual Operating Agreement and all attached schedules negotiated and entered into on a periodic basis pursuant to the British Columbia Transit Act, between the parties hereto this Transit Service Agreement;
- b) **“Attendant”** means a person whose presence is essential to the Registered User to enable the Registered User to physically use the service and whose origin and destination are the same as the Registered User;
- c) **“Community Transit Partnership Agreement”** means a partnership agreement entered into by the Municipality and a third party pursuant to Section 7(i) and Section 8(k), whereby the third party agrees to pay a fee to the Municipality in order to fund certain services provided under the Service Specifications;
- d) **“Companion” or “Escort”** means a person who accompanies the Registered User but whose presence is not essential to the Registered User to physically use the service and whose origin and destination are the same as the Registered User;
- e) **“Conventional Transit Services”** shall mean services and facilities operated by or for a Public Passenger Transportation System to transport persons on specified fixed routes and schedules using public streets or thoroughfares, but does not include Custom Transit Services or Paratransit Services;
- f) **“Custom Transit Services”** shall mean services and facilities operated or provided by a Public Passenger Transportation System for on demand point to point transportation of any Registered User;
- g) **“Direct Operating Costs”** means the sum of the Fixed Costs and Variable Costs of service, maintenance and other costs of service, where:
 - i. **“Fixed Costs”** means items of cost that may be reasonably and conveniently identified with the overall service but which cannot be directly assigned to a unit of service such as hours or kilometres of service. Items of cost will exclude the cost of items which are normally capitalized but may include appropriate charges for depreciation of capital assets or the leasing of capital assets. The use of the term Fixed Costs does not mean that some items of cost included will not vary depending on service requirements;
 - ii. **“Variable Costs”** means items of cost which may be reasonably and conveniently identified and allocated to a specific unit of service such as hours or kilometres of service;
 - iii. **“Maintenance Costs”** means parts and materials, sublet and labour costs of a qualified licensed mechanic for the maintenance of the Revenue Service Vehicles, but shall not include costs associated with interior and exterior transit advertising signs and non-mechanical servicing of Revenue Service Vehicles such as fuelling, clearing fareboxes, cleaning and painting wheel rims, vehicle washing and other work performed by a serviceman; and,
 - iv. **“Other Costs”** shall include but not be limited to vehicle insurance costs, incurred by the Authority and Operating Company, contingency costs, taxi program costs (if applicable);
- h) **“Eligible User”** means any person who is deemed eligible to use Custom Transit Services as defined in Section 11 of the British Columbia Transit Act Regulations.
- i) **“Extra Service”** means Overloads or Special Transit Service;
- j) **“Fare”** means an entitlement to ride upon the services of the Public Passenger Transportation System;
- k) **“FOIPPA”** means the Freedom of Information and Protection of Privacy Act and Regulations (British Columbia);
- l) **“Operating Company”** means:

- i. the company or person contracted by the Authority to operate and manage the Public Passenger Transportation System within the Transit Service Area, or
 - ii. a person designated by the minister to contract with the Authority with respect to the operation by that person of a Public Passenger Transportation System in the Transit Service Area;
- m) **“Overloads”** means additional Revenue Service Vehicles operating on specified routes to cope with ridership demands which cannot be served by the regularly scheduled service;
- n) **“Paratransit Services”** shall mean services and facilities operated or provided by a Public Passenger Transportation System offering more flexible service than Conventional Transit Services. Paratransit Service is a blend of Conventional Transit Services and Custom Transit Services providing service to able bodied transit passengers as well as Registered Users using the same Revenue Service Vehicles that deviate periodically from their fixed route and fixed schedules to provide on demand point to point service;
- o) **“Physical Assets”** other than revenue service vehicles, means any land, buildings, equipment or other items of a material nature which for accounting purposes are considered to contribute to delivery of Transit Services for a period exceeding one fiscal year;
- p) **“Premises”** means the lands, buildings and equipment owned or leased by the Authority and used in the provision of the Public Passenger Transportation System;
- q) **“Public Passenger Transportation System”** means a public transit system as prescribed by the British Columbia Transit Act;
- r) **“Registered User”** means an Eligible User who has satisfied certification and registration requirements established by the Authority to allow them to use Custom Transit Services;
- s) **“Revenue Hours”**, **“Revenue Kilometres”** means those units of service that are actually offered to the public as reflected in the public timetable and set out in the Service Specification, including lay over time between trips;
- t) **“Service Specifications”** means a detailed description of the Public Passenger Transportation System;
- u) **“Shared Services Resources”** means the management, planning, financial, procurement, fleet and maintenance management, contract and performance management, marketing, environmental, safety, training and other services and resources provided by the Authority to support the Public Passenger Transportation System;
- v) **“Special Transit Service”** means infrequent and temporary service provided within the Transit Service Area for specific events or purposes beyond the Revenue Hours outlined in the Service Specifications. Special Transit Services will not exceed the boundaries of the ICBC coverage unless written permission is given in advance by the Municipality and the Authority;
- w) **“Statutory Holidays”** means New Year’s Day, Family Day, Good Friday, Victoria Day, Canada Day, B.C. Day, Labour Day, Thanksgiving Day, Remembrance Day, Christmas Day and Boxing Day and/or any other days that may be gazetted as being a holiday in and for the Province of British Columbia;
- x) **“System Revenues”** means the revenue of the Public Passenger Transportation System and includes revenue from farebox, revenue from sale of passes and tickets, revenue from advertising contracts and any other Fare related revenue accruing from the operation of the Public Passenger Transportation System pursuant to this Agreement;
- y) **“Taxi Saver”** means a custom transit program that provides a direct subsidy in the form of taxi saver coupons to Registered Users;

- z) **“Transit Services”** includes without limitation any activity related to the provision of the Public Passenger Transportation System, whether conducted directly or indirectly by the Operating Company or its agents, affiliates, subsidiaries, contractors or representatives, to operate, maintain, repair or store vehicles, equipment or infrastructure and conduct any related environmental and waste management measures and includes Conventional, Custom and Paratransit Transit Services;
- aa) **“Taxi Supplement”** A portion of Custom Transit Service in which the operating company dispatches taxis in the same shared-ride manner as regular custom transit vehicles in accordance with the Service Specifications; and,
- bb) **“Transit Service Area”** means the boundaries of the Transit Services as defined in Schedule “B” of this Agreement.

SCHEDULE "B": TRANSIT SERVICE AREA

The boundaries of the Transit Service Area shall be defined as follows:

The boundaries of the Kelowna Regional Transit Service Area shall be the municipal boundaries of the Corporation of the City of Kelowna in effect September 25, 1980, the corporate boundaries of the City of West Kelowna, the District of Peachland of the Regional District of Central Okanagan, the corporate boundaries of the District of Lake Country, and Central Okanagan West Electoral Area IR# 9 and IR# 10 and a portion Central Okanagan East Electoral Area (Ellison) only.

SCHEDULE “C”: SERVICE STANDARDS

The service standards established for the Kelowna Regional Transit System are to be reviewed, confirmed and incorporated into this schedule at a future date in accordance with Section 12 of this Agreement to satisfy the requirements of Section 8(g)iv(3).