

Kelowna Regional

ANNUAL OPERATING AGREEMENT

between

City of West Kelowna

and

British Columbia Transit

Effective

April 1, 2021

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.

ANNUAL OPERATING AGREEMENT

BETWEEN:

City of West Kelowna

(the "Municipality")

AND:

British Columbia Transit

(the "Authority")

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;

WHEREAS the parties hereto have entered into a Transit Service Agreement which sets out the general rights and responsibilities of the parties hereto;

WHEREAS the Municipality and the Authority are authorized to share in the costs for the provision of a Public Passenger Transportation System pursuant to the *British Columbia Transit Act*;

AND WHEREAS the parties hereto wish to enter into an Annual Operating Agreement which sets out, together with the Transit Service Agreement, the specific terms and conditions for the Public Passenger Transportation System for the upcoming term.

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:

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SECTION 1: DEFINITIONS

Unless agreed otherwise in the Annual Operating Agreement, the definitions set out in the Transit Service Agreement shall apply to this Annual Operating Agreement including:

- a) “Annual Operating Agreement” shall mean this Annual Operating Agreement and any Annual Operating Agreement Amendments negotiated and entered into by the parties subsequent hereto;
- b) “Transit Service Agreement” shall mean the Transit Service Agreement between the parties to this Annual Operating Agreement, including any amendments made thereto;
- c) “Incurred” means an event or transaction has taken place for which an obligation to pay exists, even if an invoice has not been received, such that the underlying evidence indicates there is little or no discretion to avoid the obligation. The value of the obligation is to be calculated in accordance with recognized Canadian accounting standards.

SECTION 2: INCORPORATION OF SCHEDULES

All schedules to this agreement are incorporated into the agreement, and form part of the agreement.

SECTION 3: INCORPORATION OF TRANSIT SERVICE AGREEMENT

Upon execution, this Annual Operating Agreement shall be deemed integrated into the Transit Service 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 4: TERM AND RENEWAL

- a) The parties agree that the effective date of this agreement is to be April 1, 2021, whether or not the agreements have been fully executed by the necessary parties. Once this agreement and the associated Transit Service 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.
- b) Upon commencement in accordance with Section 4(a) of this agreement, the term of this agreement shall be to March 31, 2022 except as otherwise provided herein. It is acknowledged by the parties that in the event of termination or non-renewal of the Annual Operating Agreement, the Transit Service Agreement shall likewise be so terminated or not renewed, as the case may be.
- c) 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 12.
 - 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 12.

SECTION 5: 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 6: 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 7: MISCELLANEOUS PROVISIONS

- a) Amendment: This agreement may only be amended in writing signed by the Municipality and the Authority and specifying the effective date of the amendment.
- b) Assignment: This Agreement shall not be assignable without prior written consent of the parties.
- c) Enurement: This Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective successors.
- d) The parties agree that this agreement is in substantial compliance with all relevant legislative requirements to establish the rights and obligations of the parties as set out in the *British Columbia Transit Act*.

SECTION 8: LOCAL CONTRIBUTIONS AND RESERVES

British Columbia Transit service is provided using a cost sharing model. Where any transit related contributions are received and/or third party revenues are earned that are in excess of expenses, the Authority is required to hold these excess funds in a reserve account for use against transit related expenditures in future years. When unanticipated expenditures occur that were not included in the budget and cannot be covered by reserves, the Authority will seek to recover these based on the cost sharing ratios between the Municipality and the Authority.

Eligible Operating Expenses

The Authority will invoice the Municipality and collect on monthly Municipal invoices based on Incurred Eligible Operating Expenses to provide Transit Service. Eligible Operating Expenses are comprised of the following costs of providing Public Passenger Transportation Systems:

- a) *For Conventional Transit Service:*
 - i. the operating costs for providing Conventional Transit Service excluding interest and amortization;

- i. the amount of any operating lease costs of BC Transit for Conventional Transit Services;
 - ii. the amount of the municipal administration charge not exceeding 2 percent of the direct operating costs payable under an Annual Operating Agreement;
 - iii. an amount of the Annual Operating Costs of the Authority not exceeding 8 percent of the direct operating costs payable under an Annual Operating Agreement;
- b) *For Custom Transit Service:*
- i. the operating costs for providing Custom Transit Service excluding interest and amortization, but including the amount paid by the Authority to redeem taxi saver coupons issued under the Taxi Saver Program after deducting from that amount the amount realized from the sale of those coupons;
 - i. the amount of any operating lease costs of the Authority for Custom Transit Service;
 - ii. the amount of the municipal administration charge not exceeding 2 percent of the direct operating costs payable under an Annual Operating Agreement; and,
 - iii. an amount of the Annual Operating Costs of the Authority not exceeding 8 percent of the direct operating costs payable under an Annual Operating Agreement;
- c) Eligible Operating Expenses exclude the costs of providing third-party 100 percent-funded services.
- d) Annual operating costs of the Authority are operations, maintenance and administration costs that are for the shared benefit of all transit systems operated by the Authority. These costs are allocated to each transit system on a pro rata basis based on the nature of the costs.

Lease Fees

The Authority will invoice the Municipality and collect on monthly Municipal invoices for Lease Fees on tangible capital assets owned by the Authority that are used in the provision of transit service. Lease Fees are comprised of the following:

- a. The Municipality's fee for use of the asset, including for the costs of acquisition, construction, development and betterment of the asset and the costs of installing the asset at the location and condition necessary for its intended use;
- a. Debt financing and risk related charges or costs payable on assets;
- b. Payment into a reserve fund for preventative maintenance and major repair of assets owned or leased by the authority;
- c. Amounts sufficient for the Authority to recover all other costs relating to the asset, including, but not limited to taxes and administrative charges.

Where Lease Fees are received that exceed actual asset-related expenses in any given period, these will be placed in a pooled reserve. This reserve will be used to offset against future Lease Fees as outlined above.

Reserve Funds

The Authority will establish the following for each transit system to record the contributions that have been received but not yet earned as follows:

- a. **Operating Reserve:** Contributions by the Municipality prior to March 31, 2021, towards Eligible Operating Expenses that have been matched with a Provincial share Contribution but have not been used to fund incurred Eligible Operating Expenses.
 - i. Any expenditure of monies from the Operating Reserve will only be credited towards shareable Eligible Operating Expenses for the transit system for which it was collected.
 - i. The Operating Reserve excludes amounts collected from the Municipality on Lease Fees and will not be used toward Lease Fees.
 - ii. The Authority will provide a quarterly statement of account of the Operating Reserve balance including contributions, amounts utilized and any interest earned for the Operating Reserve.
- b. **Local Transit Fund:** Contributions by the Municipality towards Eligible Operating Expenses that have been received but not matched with a Provincial share contribution will be deferred in the Local Transit Fund.
 - i. Any expenditure of monies from the Local Transit Fund will:
 1. only be credited towards the Municipality's share of expenses for the transit system for which it was collected.
 1. be applied to reduce Municipal invoices at the discretion of the Municipality as agreed to under the Annual Operating Agreement or amendments as required.
 - i. The Local Transit Fund may be used towards Lease Fees.
 - ii. The Authority will provide a quarterly statement of account of the Local Transit Fund balance including contributions, amounts utilized and interest earned.

SECTION 9: SAFE RESTART CONTRIBUTION

Under the Safe Restart program, the federal and provincial governments provided a joint one-time contribution to transit systems in BC (the "Safe Restart Contribution") in 2020/21.

The Authority applied the Safe Restart Contribution as follows:

- a. As a one-time allocation towards the Municipality's share of 2020/21 Eligible Operating Expenses;
- a. After applying the allocation of Safe Restart Contribution, any excess contributions received from the Municipality were deferred to the Local Transit Fund;
- b. The Authority will apply the remaining Local Transit Fund balance to reduce 2021/22 and future Municipal invoices at the discretion of Local Government Partners as agreed to under an Annual Operating Agreement or amendments as required.

It is expected that by receiving the Safe Restart contribution the Municipality will work with the Authority to maintain targeted essential transit service levels by not reducing transit service below existing planned service levels and maintain affordability by limiting annual fare increases to 2.3% through March 31, 2024.

SECTION 10: 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 11: 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 12: 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 where an electronic signed document is emailed to the parties or if mailed by prepaid registered mail to the Authority at:

British Columbia Transit

c/o Executive Assistant, Business Development

P.O. Box 9861

520 Gorge Road East

Victoria, British Columbia V8W 9T5

and to the Municipality at:

City of West Kelowna

c/o Chief Financial Officer

2760 Cameron Rd.

West Kelowna, B.C. V1Z 2T6

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 _____, 2021.

City of West Kelowna

British Columbia Transit

Vice President, Business Development

Vice President, Finance and Chief Financial Officer

SCHEDULE "A": TARIFF AND FARES

APPENDIX 1: TARIFF NOTES

Conventional Transit Fares:

Effective as of

Sept. 1, 2015

- a) Single Cash Fares:
 - i) Adult/College Student \$2.50
 - ii) Senior \$2.50
- iii) Student \$2.50
 - iv) Child 4 or under - Free when accompanied by an adult.
 - v) Accessible Transit Attendant - Free
- b) Tickets (sheet of 10):
 - i) Adult/College Student \$22.25
 - ii) Senior/Student* \$20.25
- c) One Day Pass:
 - i) Adult/College Student \$ 6.50
 - ii) Senior \$ 6.50
 - iii) Student \$ 6.50
- d) Monthly Pass:
 - i) Adult \$70.00
 - ii) Senior* \$45.00
 - iii) Student* \$45.00
 - iv) College Student** \$55.00
 - v) College Semester Pass** \$176.00
- e) U-Pass per semester \$63.00
- f) Transfers: allow for unlimited travel for up to 90 minutes from the time of issue.
- g) BC Bus Pass valid for the current calendar year and available through the Government of British Columbia BC Bus Pass Program.
- h) CNIB Identification Card available from the local office of the CNIB.
- i) BC Transit Employee Bus Pass.

* Reduced fare with valid ID for seniors aged 65 and over, and students in full-time attendance to grade 12.

** Reduced fare for full-time registered college students available only at Okanagan College and Spratt-Shaw Community College.

SCHEDULE "B": SERVICE SPECIFICATIONS

Kelowna Conventional Transit Service:

The Local Transit Service Area for Kelowna Conventional transit service shall be: 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.

The Annual Service Level for the City of West Kelowna's share of the Kelowna Conventional transit service shall be **16,200** Revenue Service Hours.

The Exception Days recognized annually for the Kelowna Conventional transit service are:

Exception Days	Service Level
Good Friday	Sunday
Easter Monday	Monday
Victoria Day	Sunday
Canada Day	Saturday
BC Day	Sunday
Labour Day	Sunday
Thanksgiving Day	Sunday
Remembrance Day	Sunday
Christmas Day	Sunday
Boxing Day	Saturday
New Year's Day	Sunday
Family Day	Sunday

Kelowna Community Transit Service:

The Local Transit Service Area for Kelowna Community transit service shall be: 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.

The Annual Service Level for the City of West Kelowna's share of the Kelowna Community transit service shall be **11,400** Revenue Service Hours.

The Exception Days recognized annually for the Kelowna Community transit service are:

Exception Days	Service Level
Good Friday	Sunday
Easter Monday	Monday
Victoria Day	Sunday
Canada Day	Saturday
BC Day	Sunday
Labour Day	Sunday
Thanksgiving Day	Sunday
Remembrance Day	Sunday
Christmas Day	Sunday
Boxing Day	Saturday
New Year's Day	Sunday
Family Day	Sunday

SCHEDULE "C": BUDGET

KELOWNA/CENTRAL OKANAGAN CONVENTIONAL

	OFFICIAL AOA 2021/22	CITY OF KELOWNA	CITY OF WEST KELOWNA	WESTBANK FIRST NATION	DISTRICT OF LAKE COUNTRY	CORD / ELLISON
TOTAL REVENUE	\$4,752,590	\$4,752,590				
TOTAL OPERATING COSTS	\$20,562,002	\$17,007,475	\$1,964,182	\$388,375	\$1,161,076	\$40,895
TOTAL COSTS (including Local Government Share of Lease)	\$22,688,079	\$18,768,451	\$2,164,652	\$427,811	\$1,282,011	\$45,154
NET LOCAL GOVERNMENT SHARE OF COSTS	\$3,885,201	\$2,407,765	\$819,787	\$163,265	\$477,476	\$16,908

REVENUE SHARE	100.00%	0.00%	0.00%	0.00%	0.00%	0.00%
COST SHARE (Not Including BRT)	82.83%	9.43%	1.85%	5.69%	0.20%	
BRT SHARE	67.15%	26.34%	6.51%	0.00%	0.00%	

KELOWNA COMMUNITY BUS CONVENTIONAL

	OFFICIAL AOA 2021/22	CITY OF KELOWNA	DISTRICT OF WEST KELOWNA	WESTBANK FIRST NATION	DISTRICT OF PEACHLAND	DISTRICT OF LAKE COUNTRY
TOTAL OPERATING COSTS	\$3,002,624	\$1,185,355	\$1,019,832	\$484,202	\$138,183	\$175,053
TOTAL COSTS (including Local Government Share of Lease)	\$3,221,601	\$1,271,801	\$1,094,206	\$519,514	\$148,260	\$187,820
NET LOCAL GOVERNMENT SHARE OF COSTS	\$1,748,991	\$690,483	\$593,808	\$282,210	\$80,507	\$101,983
Cost Share		39.48%	33.96%	16.13%	4.60%	5.83%