

RESOLUTION 2025-07
TO APPROVE AN INTERLOCAL COOPERATION AGREEMENT BETWEEN
THE CITY OF BLOOMINGTON, INDIANA AND
THE BLOOMINGTON PUBLIC TRANSPORTATION CORPORATION

- WHEREAS, Indiana Code § 36-1-7 et seq. permits governmental entities to jointly exercise powers through Interlocal Cooperation Agreements; and
- WHEREAS, Indiana Code § 36-9-4-11 authorized the creation of the Bloomington Public Transportation Corporation ("BPTC"), which is a public corporate body, separate from and independent of the City of Bloomington ("City"), both of which are governmental entities empowered by Indiana Code § 36-1-7-1 to enter into Interlocal Cooperation Agreements; and
- WHEREAS, Indiana Code § 36-1-7-4 requires the fiscal body of the municipality to approve of all Interlocal Cooperation Agreements; and
- WHEREAS, Indiana Code § 36-9-4-33 authorizes the Board of Directors of a Public Transportation Corporation to contract with any person upon the terms and conditions the Board considers best for the Corporation; and
- WHEREAS, the City provides services to the BPTC, which if not so provided would have to be provided by the BPTC itself, or secured from private professional firms; and
- WHEREAS, the BPTC wishes to compensate the City for the services it provided;

NOW, THEREFORE, BE IT HEREBY RESOLVED BY THE COMMON COUNCIL OF THE CITY OF BLOOMINGTON, MONROE COUNTY, INDIANA, THAT:

SECTION 1. Pursuant to Indiana Code § 36-1-7 et seq., the Common Council of the City of Bloomington, as the fiscal and legislative body of the City of Bloomington, in Monroe County, Indiana, hereby approves the Interlocal Cooperation Agreement between the City of Bloomington and the Bloomington Public Transportation Corporation, a copy of which is attached hereto as Exhibit A and made a part hereof.

SECTION 2. If any sections, sentence or provision of this resolution, or the application thereof to any person or circumstances shall be declared invalid, such invalidity shall not affect any of the other sections, sentences, provisions, or applications of this resolution which can be given effect without the invalid provision or application, and to this end the provisions of this resolution are declared to be severable.

SECTION 3. This resolution shall be in full force and effect from and after its passage by the Common Council and approval by the Mayor.

PASSED AND ADOPTED by the Common Council of the City of Bloomington, Monroe County, Indiana, upon this 16 day of April, 2025.



HOPI STOSBERG, President
Bloomington Common Council

ATTEST:



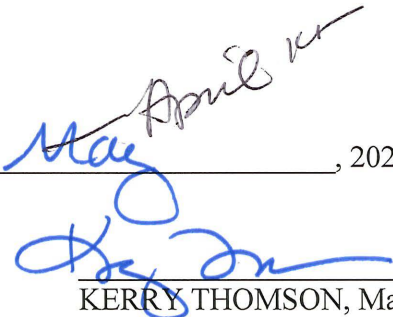
NICOLE BOLDEN, Clerk
City of Bloomington

PRESENTED by me to the Mayor of the City of Bloomington, Monroe County, Indiana, upon this 21 day of April, 2025.



NICOLE BOLDEN, Clerk
City of Bloomington

SIGNED and APPROVED by me upon this 22 day of May, 2025.



KERRY THOMSON, Mayor
City of Bloomington

SYNOPSIS

This resolution approves of an Interlocal Cooperation Agreement between the City of Bloomington, Indiana and the Bloomington Public Transportation Corporation (BPTC).

Distributed to: Clerk, Council Attorney, Bloomington Public Transportation Corporation, Controller, Legal, and Mayor.

**SERVICE AGREEMENT BETWEEN
THE CITY OF BLOOMINGTON, INDIANA AND
THE BLOOMINGTON PUBLIC TRANSPORTATION CORPORATION
FOR THE YEAR 2025**

WHEREAS, Ind. Code §36-9-4-11 authorized the creation of the Bloomington Public Transportation Corporation (“BPTC”), which is a municipal corporation, separate from and independent of the City of Bloomington; and

WHEREAS, Ind. Code §36-9-4-33 authorizes the Board of Directors of a Public Transportation Corporation to contract with any person upon the terms and conditions the Board considers best for the Corporation; and

WHEREAS, the City of Bloomington, Indiana (“City”) provides services to the BPTC, which if not so provided would have to be provided by the BPTC itself, or secured from private professional firms; and

WHEREAS, the BPTC wishes to compensate the City for the services provided; and

WHEREAS, these payments for services are based upon statistically verifiable costs which have been converted to an hourly rate or to an annual fee; and

WHEREAS, this Agreement may be renewed at the end of its term only after both the City and BPTC review the services provided so that the scope of services and compensation can be adjusted, if necessary;

NOW, THEREFORE, the City and the BPTC agree as follows:

1. Duration

- A. This Agreement shall be in full force and effect from January 1, 2025 until December 31, 2025. Unless terminated, this Agreement shall automatically renew from year to year without further approval or notice required.
- B. The parties agree that if either wishes to renegotiate this Agreement, they shall provide written notice, as required herein, to the other party and the parties shall meet, at a mutually agreeable time, to negotiate such changes and shall obtain all necessary approvals before the renegotiated agreement takes effect.

2. Purpose

The purpose of this Agreement is to establish that the City shall provide certain services to the BPTC, and that the BPTC shall compensate the City for these services.

3. Provision of Services

- A. The City shall provide the BPTC with the services of the City’s Legal Department including Risk Management services. Said services may include, but not be limited to:

- Securing insurance coverage in the amounts and types mutually agreed upon;
- Preparing, negotiating, and reviewing contracts;
- Representing the BPTC in legal matters;
- Initiating and responding to legal actions on behalf of the BPTC;
- Reviewing ordinances and resolutions;
- Advising and counseling Bloomington Transit management and the BPTC Board of Directors in legal matters;
- Investigating and administering BPTC tort claims and other insurance-related claims and/or lawsuits; and,
- Providing safety-related training for BPTC employees.

Attorney fees shall be billed quarterly at an hourly rate of \$97.87 per hour in 2025¹, based on the number of hours of legal service provided to BPTC. Clerical fees shall be billed quarterly at an hourly rate of \$30.90. These fees will increase by three percent each year of renewal of this Agreement. Legal will not bill BPTC for more than ten hours a month for clerical services.

B. The City, by and through its Information & Technology Services (ITS) Department shall provide the BPTC with comprehensive information technology (IT) operation and support services. Said IT services shall include, but not be limited to, the following:

- Coordination of the service and repair of BPTC desktop and server computers, including monitors and associated peripheral components. BPTC shall be responsible for any costs incurred to repair the equipment by outside vendors;
- Maintenance of the BPTC local area network;
- Coordination of computer hardware, software, peripheral device and general information technology purchasing and capital replacement;
- Management of operating system, server and software licensing;
- Deployment of tested standardized desktop builds;
- GIS services (mapping, address data maintenance, custom data requests);
- Provision of commodity Internet bandwidth;
- Provision and maintenance of network connectivity between BPTC facilities on the City's fiber optic ring;
- Webhosting for the BPTC's website, web services and mobile services;
- Provision of daily archiving and back-up services; and
- Ensuring compliance with federal and state requirements.

The City shall supply these services to BPTC subject to the following conditions:

¹ This rate was calculated based on the original rate of \$77.25 per hour in 2017 and the 3% annual increase per the terms of this contract.

- BPTC shall conform to all City of Bloomington IT policies, including the proper licensing of software, system security requirements and acceptable use standards;
- BPTC shall notify the ITS Help Desk of any IT support issues within one business day of occurrence;
- BPTC computers must be secured by ITS in such a way as to prevent modification and possess a standardized ITS desktop build;
- At BPTC's request, ITS shall develop technical specifications and minimum requirements for new technologies, including but not limited to software, hardware, externally-developed applications for the web or desktop;
- BPTC shall consult with ITS at the earliest stage of deliberations on new technologies. BPTC and ITS shall jointly analyze and evaluate new information technology systems before purchase by BPTC, including but not limited to software, hardware and externally-developed applications for the web, desktop or mobile-device environments; BPTC and ITS shall endeavor to reach reasonable and mutual agreement on new technologies to ensure compatibility and optimization with BPTC's local area network;
- BPTC reserves the right to make all final decisions on the purchase of new technologies (including but not limited to software, hardware and externally-developed applications for the web, desktop or mobile-device environments). In the event of disagreement on the selection of new technologies (including but not limited to software, hardware and externally-developed applications for the web, desktop or mobile-device environments), ITS reserves the right to not support any such new technology systems purchased by BPTC. At its option, ITS may terminate all provisions of Section 3.B. of this Agreement in accordance with Section 12 of this Agreement;
- BPTC shall adhere to and enforce the provisions of the City of Bloomington's Information Technology Policies and Procedures Manual, with the exception of Section 3.01 (B), personal use. Attached as Exhibit A is a copy of the IT manual. BPTC will set its own policies on personal computer use;
- BPTC shall not grant access to the City's network and networked systems to a third party except with the approval and facilitation of ITS;
- BPTC shall provide ITS with copies (digitally if possible) of current and future contracts with IT-related vendors, including up-to-date contract information;
- BPTC shall consult with ITS before making any changes to its facilities that could affect networking, printing, surveillance and/or telephone services and thus the quality of services ITS provides to BPTC;
- BPTC will strive to bring its systems in line with the ITS support environment over time;
- BPTC will work with ITS to clearly define who (vendors, BPTC staff or ITS staff) is responsible for the support of BPTC's various applications and servers;

- Barring disaster or other serious emergency, ITS shall assure BPTC of two-hour response time to any issues or problems with BPTC's local area network that affect BPTC's ability to successfully carry out mission critical functions. ITS shall assure BPTC of next day response time to any issues or problems with BPTC's local area network that affect non-mission critical functions;
- BPTC will keep its hardware and software up-to-date with regular maintenance;

ITS will provide BPTC with the same level of service and professionalism as it provides City departments.

ITS' costs of the services described herein shall be \$13,048.04 in 2025², to be paid in quarterly installments. This fee will increase by three percent each year of renewal of this Agreement.

4. Other Services

The City shall provide BPTC services from other City departments on an as-needed basis at the same fee charged for legal services.

5. Limitation on Scope of Services

The obligation of the City to provide services under this Agreement is subject to the right of each Department to refuse to perform any particular service or category of services where the Department determines that performance of same would be detrimental to the Department's ability to fulfill its City functions, for any reason. It is the intention of the City to continue the same or more general amount and level of service to BPTC as is presently being provided, while making explicit the City's right in the future, as it has done in the past, to refuse services to BPTC in situations described in this Paragraph.

6. Records

The City agrees to maintain all records necessary to support claimed costs, including hourly records of time spent by Legal and other staff in providing services to BPTC.

7. Direct Service Charges

The BPTC also agrees to pay any direct charges for certain central services actually used by BPTC which are accounted for and billed to City agencies as Internal Service Charges.

8. Notice

Any notices, submissions or documents required by this Agreement shall be sent to the City of Bloomington, care of the Mayor's Office, City Hall, Showers Plaza, Post Office Box 100, Bloomington, Indiana 47402 or to the Bloomington Public Transit Corporation, care of Bloomington Transit, 130 West Grimes Lane, Bloomington, Indiana 47403.

² This rate was calculated based on the original rate of \$10,300 in 2017 and the 3% annual increase per the terms of this contract.

9. Access to Records and Reports

- A. The City agrees to permit any of the following parties to reproduce records related to this Agreement by any means whatsoever or to copy excerpts and transcriptions as reasonably needed: BPTC, Federal Transit Administration (“FTA”), the Comptroller General of the United States or any of their authorized representatives, the Secretary of Transportation of the United States or any of their authorized representatives, and the Indiana State Board of Accounts.
- B. The City agrees to maintain all books, records, accounts and reports required under this Agreement for a period of not less than three years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which the City agrees to maintain same for five years after exhaustion of litigation.

10. No Obligation by the Federal Government

- A. The BPTC and the City acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Agreement and shall not be subject to any obligations or liabilities to the BPTC, the City, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- B. The City agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified.

11. Program Fraud and False or Fraudulent Statements or Related Acts

- A. The City acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §3801 et.seq. and U.S. DOT regulations, “Program Fraud Civil Remedies,” 49 C.F.R. Part 31, may apply to its actions pertaining to this Project. Upon execution of the underlying contract, the City certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the City further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the City to the extent the Federal Government deems appropriate.
- B. The City agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provide by FTA. It is further agreed that the clause shall not be modified.

12. Termination for Convenience

Either party may terminate this Agreement, in whole or in part, at any time by written notice to the other party when it is in the party's best interest. The City shall be paid its costs, including Agreement close-out costs, and on work performed up to the time of termination. The City shall promptly submit its termination claim to the BPTC to be paid to the City. If the City has any property in its possession belonging to the BPTC, the City will account for the same, and dispose of it in the manner the BPTC directs.

13. Termination for Default

If the City fails to deliver supplies or to perform the services within the time specified in this Agreement or any extension or if the City fails to comply with any other provisions of this Agreement, the BPTC may terminate this Agreement for default. The BPTC shall terminate by delivering to the City a Notice of Termination specifying the nature of the default. The City will only be paid the Agreement price for supplies delivered and accepted or services performed in accordance with the manner or performance set forth in this Agreement.

If it is later determined by the BPTC that the City had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the City, the BPTC, after setting up a new delivery of performance schedule, may allow the City to continue work, or treat the termination as a termination for convenience.

If BPTC fails to perform in the manner called for in this Agreement, or if BPTC fails to comply with any provisions of this Agreement, the City may terminate this Agreement for default. The City shall terminate by delivering to the BPTC a Notice of Termination specifying the nature of the default. The BPTC shall pay the Agreement price for supplies delivered and accepted or services performed in accordance with the manner or performance set forth in this Agreement.

If it is later determined by the City that the BPTC had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the BPTC, the City, after setting up a new delivery of performance schedule, may continue work, or treat the termination as a termination for convenience.

14. Opportunity to Cure

Each party to this Agreement in their sole discretion may, in the case of a termination for breach or default, allow the other party ten (10) days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted, and other appropriate conditions.

If either party fails to remedy to the other party's satisfaction the breach or default of the terms, covenants, or conditions of this Agreement within ten (10) days after receipt of written notice setting forth the nature of said breach or default, the aggrieved party shall have the right to terminate this Agreement without any further obligation to the other party, except for the payment of any supplies or services performed prior to termination. Any such termination for default shall not in any way operate to preclude a party from also pursuing all available remedies for said breach or default.

15. Waiver of Remedies for Any Breach

In the event that a party to this Agreement elects to waive its remedies for any breach by the other party of any covenant, term or condition of this Agreement, such waiver shall not limit the aggrieved party's remedies for any succeeding breach of that or any other term, covenant, or condition of this Agreement.

16. Civil Rights

The following requirements apply to the underlying Agreement:

- A. Nondiscrimination – In accordance with Title VI of the Civil Rights Act, as amended 42 U.S.C. §2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. §12132, and Federal transit law at 49 U.S.C. § 5332, the City agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the City agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

- B. Equal Employment Opportunity – The following equal employment opportunity requirements apply to the underlying Agreement:

- (1) Race Color, Creed, National Origin, Sex – In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the City agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11275, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 200e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect the performance undertaken in the course of this Agreement. The City agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. In addition, the City agrees to comply with any implementing requirements FTA may issue.
- (2) Age – In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§ 623 and Federal transit law 49 U.S.C. § 5332, the City agrees to refrain from discrimination against present and prospective employees

for reason of age. In addition, the City agrees to comply with any implementing requirements FTA may issue.

- (3) Disabilities – In accordance with Section 102 of the Americans with Disabilities, as amended, 42 U.S.C. § 12112, the City agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 C.F.R. part 1630, pertaining to employment of persons with disabilities. In addition, the City agrees to comply with any implementing requirements FTA may issue.

- C. Subcontracts – The City also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

17. Disputes

Should either party to this Agreement suffer injury or damage to person or property because of any act or omission of the party or of any of their employees, agents or others whose acts are legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such a damage.

All claims, counterclaims, disputes and other matters in question between the BPTC and the City arising out of or relating to this Agreement or its breach will be decided by good faith negotiation between the parties, followed by alternative dispute resolution such as mediation or arbitration if the parties mutually agree, or an action in a court of competent jurisdiction within the State in which the BPTC is located.

The duties and obligation imposed by this Agreement and the rights and remedies available hereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the BPTC or the City shall constitute a waiver of any right or duty afforded any of them under the Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

18. Disadvantaged Business Enterprise

If applicable, the City agrees to the following measures to facilitate participation by disadvantaged business enterprises (DBE) in the project:

- A. This Agreement may be subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. BPTC's overall goal for DBE participation is 0.48%
- B. The City shall not discriminate on the basis of race, color, national origin or sex in the performance of this Agreement. The City shall carry out applicable requirements of 49 CFR

Part 26 in the award and administration of this DOT-assisted Contract. Failure by the City to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as BPTC deems appropriate. Each subcontract the City signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

- C. The City and any subcontractors may be required to report its DBE participation obtained through race-neutral means throughout the period of performance.
- D. The City is required to pay its subcontractors performing work related to this Agreement for satisfactory performance of that work no later than 30 days after the City's receipt of payment for that work from the BPTC. In addition, the City is required to return any retainage payments to those subcontractors within 30 days after the City's work related to this Agreement is satisfactorily completed.
- E. The City must promptly notify BPTC, whenever a DBE subcontractor performing work related to this Agreement is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The City may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of BPTC.

19. Energy Conservation

If applicable, the City agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

20. Required State Assurances

The City hereby certifies that it is in full compliance with the E-verify requirements of I.C. 22-5-1.7-11 and with the non-investment in Iran requirements of I.C. 5-22-16.5.

21. Prompt Payment

The City agrees to pay each subcontractor or firm under this Agreement for satisfactory performance of its contract no later than thirty (30) days from the receipt of each payment the City receives from BPTC. The City agrees further to return retainage payments to each subcontractor or firm within thirty (30) days after the subcontractor or firm's work is satisfactorily completed. Any delay or postponement of payment from the above-referenced timeframe may occur only for good cause following written approval of BPTC. This clause applies to both DBE and non-DBE subcontractor or firms.

- A. If the City fails to pay the subcontractor or firm within thirty (30) days, the City must notify BPTC and the subcontractor or firm, in writing, of its intention to withhold all or part of the subcontractor or firm's payment with the reason for nonpayment.
- B. The City is obligated to pay interest to the subcontractor or firm on all amounts owed by the City that remain unpaid after thirty (30) days following receipt by the City of

payment from BPTC for work performed by the subcontractor or firm under that contract, except for amounts withheld as allowed in subdivision A. of this section. Unless otherwise provided under the terms of the contract, interest shall accrue at the rate of one percent (1%) per month, except for the amounts withheld for cause.

- C. Should either the City or subcontractor or firm advise BPTC of a payment issue involving a DBE contractor or firm, the DBE officer shall be notified so as to investigate, as appropriate.
- D. BPTC may conduct prompt payment audits that require the City to submit appropriate documentation to verify compliance with this provision.

22. Federal Changes

The City shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the latest Master Agreement between BPTC and FTA, as they may be amended or promulgated from time to time during the term of this Agreement. The City's failure to do so comply shall constitute a material breach of this Agreement

DATED this _____ day of _____, 2025

CITY OF BLOOMINGTON

**BLOOMINGTON PUBLIC
TRANSPORTATION CORPORATION**

By: _____

Kerry Thomson, Mayor

By: _____

James McLary, Chair