

**INTERGOVERNMENTAL AGREEMENT
BETWEEN
MILWAUKEE COUNTY TRANSIT SYSTEM AND CITY OF WAUKESHA
FOR THE PROVISION OF BUS ROUTES**

This intergovernmental agreement ("IGA") for the provision of bus routes is entered into by and between the Milwaukee Transport Services, Inc, ("MTS") operator of Milwaukee County Transit System and a quasi-governmental instrumentality of Milwaukee County, located at 1942 North 17th Street, Milwaukee, Wisconsin 53205 ("MCTS") and the City of Waukesha, a Wisconsin municipal corporation, provider of transit administrative services to Waukesha County for the operation of Waukesha County Transit System located at 201 Delafield Street, Waukesha, Wisconsin 53188 ("Waukesha Metro") (collectively the "Parties").

WHEREAS, both Parties qualify as "municipalities" authorized to enter into contracts for the receipt or furnishing of services pursuant to Wisconsin Statute § 66.0301;

WHEREAS, the Parties previously contracted for the services subject to this IGA for the period Spring 2023 - December 31, 2023;

NOW, THEREFORE, for good and valuable consideration hereinafter set forth, the parties agree as follows:

1. **Route.** Waukesha Metro shall provide Fixed Route transit services from Waukesha County into Milwaukee County via Waukesha Metro Route 1, a map of which is attached to this IGA as Exhibit A. Waukesha Metro Route 1 begins at Waukesha Downtown Transit Center and ends at the Milwaukee Regional Medical Center ("MRMC") in Milwaukee County.

Waukesha Metro is responsible for the management and oversight of its Operations within Milwaukee County.

2. **Schedule.** Waukesha Metro shall run Route 1 on the schedule set forth below:

Weekday Schedule

Monday through Friday ("Weekdays"). between the hours of 5:30 am and 12:00 am approximately every 20 minutes during the daytime hours and every 25 minutes during the evening hours. This route consists of approximately 103 Platform Hours a day, 25 of which are in Milwaukee County.

Saturday

Saturday between the hours of 7:00 am and 11:00 pm approximately every 20 minutes during the daytime hours and every 25 minutes during the evening hours. This route consists of approximately 80 Platform Hours, 18 of which are within Milwaukee.

Sunday

Sunday between the hours of 7:00 am and 10:00 pm approximately every 35 minutes. This route consists of approximately 45 Platform Hours, 10 of which are within Milwaukee.

Both Parties shall make reasonable efforts to schedule Route 1 and BRT busses to arrive at the MRMC at similar times.

Both Parties agree to collaborate on Route 1 service levels, hours of service, schedule and routing, and any other Route 1 operating elements that are mutually beneficial to both Parties and will include a representative of Waukesha County, when necessary. The Parties also agree to consider the levels of service of the Waukesha County segment of Route 1 when collaborating. Service levels and ridership will be reviewed annually, no later than August 1 of each year to determine if changes to Services should be made in the following year. Any changes to service levels must be mutually agreed upon in writing by both Parties 30 days prior to any changes to the Route.

3. **Fare Tariff / Transfer Policy.** Passengers may transfer between Waukesha Metro Transit and MCTS at the MRMC, or other locations that would be normal transfer locations between the systems with

either a valid transfer or pass from either system with no extra cost. MCTS passengers boarding a Waukesha Metro bus must tap their WisGo card or Umo mobile app on the validator to board. If requesting a transfer while boarding, the following rules and fees apply:

- If requesting a transfer from MCTS: MCTS will allow riders with Waukesha transfers or passes to board and ride MCTS routes for no additional fare. Passengers transferring from Waukesha Metro to MCTS must pay full MCTS fare if requesting a transfer to a second MCTS boarding.
- If requesting a transfer from Waukesha: Waukesha Metro will allow riders with MCTS transfers or passes to board Waukesha Metro and ride Route 1 for no additional fare. This MCTS transfer policy is valid at bus stops common to both MCTS and Waukesha Metro. Transfers are valid for 90 minutes from the time of issuance.

The then-current MCTS Local Passenger Tariff will guide all other matters of fare payments between Waukesha Metro and MCTS.

4. **Standard of Care**. All Services provided by Waukesha Metro shall be performed with reasonable due care and diligence and in compliance with all applicable local, state, and federal laws and administrative regulations as exist at the time this IGA is executed and as shall become effective after execution but prior to termination of this IGA. Waukesha Metro shall maintain in compliance and good standing with all licenses, permits, and certifications required for and relating to the services referred to herein.
5. **Drug/Alcohol Testing**. All safety-sensitive employees performing services under this IGA are subject to FTA drug and alcohol testing rules found in 49 CFR Part 655. Waukesha Metro will comply with 49 CFR Part 665 and will submit a report to MCTS using the forms prescribed, no later than March 1 of year for the previous year's drug and alcohol testing for all safety sensitive employee providing service under this IGA. Waukesha Metro must be ready and able to pass a federal drug and alcohol audit at any time during the term of this IGA. MCTS reserves the right to verify Waukesha Metro's compliance with the FTA drug and alcohol testing rules at any time during the term of this IGA.
6. **Bus Stop Signage**. Waukesha Metro is responsible for the placement and maintenance of all bus stop signs within Milwaukee County for which Waukesha Metro is the sole user. MCTS shall be responsible for placement and maintenance of bus stop signs within Milwaukee County for which both MCTS and the Waukesha Metro are users.
7. **Bus Shelters**. Bus Shelters within Milwaukee County which are owned by MCTS shall continue to be owned and maintained by the MCTS. This includes MCTS bus shelters for which Waukesha Metro is the sole user.
8. **Term**. The term of this IGA shall commence on January 1, 2024, through December 31, 2024, and renew automatically for successive one-year terms until the IGA is terminated as set forth herein.
9. **Compensation**. MCTS shall compensate Waukesha Metro for each revenue hour in which a bus operator operates route service ("Revenue Hours") within Milwaukee County and for one-third of any deadhead time for the route. Waukesha Metro shall not be compensated for Revenue Hours operated outside of Milwaukee County. Waukesha County shall not provide more than 7,724 Revenue Hours annually within Milwaukee County and 1,949 layover hours, for a total of 9,673 total billable hours. There is no guarantee as to the amount of hours paid under this IGA.

Waukesha Metro shall not be compensated for operations which include providing security, emergency response to traffic and other accidents, dispatching, route supervision, policy enforcement, and fare collections ("Operations") either within or outside of Milwaukee County.

Both Parties are responsible for all other costs, including Revenue Hours, incurred from the operation of Route 1 within Waukesha County and the remaining two-third of any deadhead time as agreed upon and between Contractor and Waukesha of which MTS is not a party.

The Revenue Hour rate is \$113.45. This fee will not include any surcharge for paratransit service. On the anniversary date for each future year of the IGA, Waukesha Metro may request a price increase, determined by their annual budgeted operating expenses divided by hours of service. No request for increase will be effective until MCTS agrees in writing. Any changes in the Revenue Hour rate shall be documented in Exhibit B.

10. **Invoicing.** Waukesha Metro shall invoice MCTS its share of the operating cost minus passenger revenues monthly.
 - Passenger revenue collected in Milwaukee County will be calculated at the rate of \$1.00 per passenger based on the 2023 fare structure. Any significant fare changes enacted during the period of this IGA will be documented in Exhibit B and immediately reflected in the rate.
 - Waukesha Metro shall report on the number of passengers on Route 1 between 124th and Bluemound Road and the MRMC.

Invoices shall be submitted monthly by the fifteenth (15th) working day of the month following the month in which services are provided. Invoices shall be submitted to accountspayable@mcts.org.

Invoices shall include: (1) Name and address of Waukesha Metro, (2) invoice date and number, (3) Remittance name and address, (4) Name, title, and phone number of person to notify in event of defective invoice. Accompanying documentation shall include (1) National Transit Database and safety and security reports; (2) Monthly operating statistics reports with all required information to complete the National Transit Database (“NTD”) reporting including, but not limited to: a) unlinked passenger trips, b) revenue collected, c) revenue miles, d) total miles, e) revenue hours, f) total hours, g) operating cost, h) passenger miles, i) vehicles operated in max service, and j) any other information requested by the FTA now or in the future to complete the required NTD reporting. Invoices not containing this information will not be considered a “properly completed invoice” under Wisconsin State Statute.

MCTS is exempt from Federal Excise Taxes and Wisconsin State Sales Taxes.

Within thirty (30) days of the receipt of all required billings and reports, MTS will make payment to Waukesha metro of the undisputed net amount due. The 30 days do not start to run until all forms are accurate, complete, and include all revisions requested by MCTS. Failure to e-mail the invoice to the address provided may delay payments for which MCTS is not responsible. Section 66.0135, Wisconsin Statutes, Prompt Pay Law, will not apply to payment for programs and services provided hereunder.

11. **Reports.** Waukesha Metro shall provide MCTS a year-end report for operating statistics by no later than February 15 of the year following any calendar year in which Waukesha Metro provides services. The required year end reporting will include: a) operating cost total broken down by vehicle operations, b) vehicle maintenance, facility maintenance and general administration costs as required for the National Transit Database (“NTD”) F30 form c) allocated capital leasing/depreciation expense as required for the NTD B30 form d) major/minor mechanical failures for our purchased service as required for NTD R20 form e) fuel usage in gallons for the purchased service as required for NTD A30 form, f) vehicle inventory as required for the NTD A30 form, g) station and maintenance facilities count as required for NTD A10 form, and h) route statistics as required for the NTD S10 form.
12. **Indemnification.** Waukesha Metro agrees to the fullest extent permitted by law, to indemnify, defend, and hold harmless, MCTS, and its agents, officers, and employees, from and against all loss, fees, fines, damages, costs, and expense (including costs and reasonable attorney’s fees) incurred as a result of any claim arising from (A) statutory benefits under Workers’ Compensation laws, (B) suits at law or in equity, caused by any wrongful, intentional, or negligent act or omission of Contractor, or its agents, and (C) compensation or claims for compensation made by Waukesha Metro for services performed relating to or arising from this IGA.

Waukesha Metro agrees to indemnify MCTS for any amount(s) MCTS may be required to repay by virtue of payments made to Waukesha Metro by MCTS under this IGA that MCTS, Milwaukee County, or FTA

determines to be overpayments or inappropriate payment. If any claims arise out of or are connected with the activities covered by IGA: MCTS will notify Waukesha Metro promptly upon learning of such claim, however, MCTS's failure to notify Waukesha Metro promptly shall not affect Waukesha Metro's obligation to indemnify MCTS unless such failure to notify Waukesha Metro materially prejudices Waukesha Metro's ability to defend against the action.

Waukesha Metro shall not have sole control over the defense of the claim unless agreed upon in writing by MCTS. Waukesha Metro cannot agree to a settlement or consent judgment that requires any affirmative payment or other conduct on the part of MCTS without MCTS's prior written consent, such consent shall not be unreasonably withheld or delayed; and MCTS will provide Waukesha Metro with all reasonable information and assistance that is requested by Waukesha Metro to defend such claim at Waukesha Metro's expense, however, MCTS's failure to provide reasonable information and assistance shall not affect Waukesha Metro's obligation to indemnify MCTS unless such failure materially prejudices Waukesha Metro's ability to defend against the action; and MCTS has the right to obtain its own counsel at its own expense.

13. **Paratransit Service.** Waukesha Metro is responsible for and will provide paratransit services in the Federally required $\frac{3}{4}$ mile buffer around Route 1 including around all segments of Route 1 that extend into Milwaukee County. MCTS is responsible for and will provide Transit Plus paratransit services in the Federally required $\frac{3}{4}$ mile buffer around the former MCTS GoldLine as it extends into Waukesha County from 124th & Bluemound Road to Brookfield Square shopping center. This extended service into Waukesha County is anticipated to end date on December 31, 2024, or as such date is mutually agreed upon. Waukesha Metro agrees to provide paratransit services in compliance with applicable FTA and ADA requirements, which requirements must flow down to any third-party subcontractors providing this service on behalf of Contractor.
14. **Warranties.** Waukesha Metro warrants that (a) the services and equipment provided under this IGA will be free from material defects and conform in all material respects to the descriptions set forth in this IGA, (b) the Services will be performed in a professional and workmanlike manner; (c) it has and will maintain all necessary licenses, consents, and permissions necessary to perform its obligations under this IGA, and (d) Waukesha Metro is compliant with all PCI-DSS and other Data Security requirements necessary to provide the services under this IGA.
15. **Affirmative Action/Equal Employment Opportunity.** Waukesha Metro will comply with all applicable provisions imposed by or pursuant to Milwaukee County Code of General Ordinances Chapter 42 when and where applicable and as said Ordinance may be amended. MCTS shall notify Contractor in the event that new ordinances are issued.
16. **Data Security.** MCTS requires that Waukesha Metro protect personally identifiable or confidential information by following all applicable state and federal data security privacy laws or any data security provisions contained in Waukesha Metro's third party agreements for data storage, hosting, credit card processing and/or any other service that requires the transfer of MCTS's employee's or rider's data and to indemnify MCTS for all legal liability resulting from or arising out of the release of such information based on the acts of Waukesha Metro or the acts of its employees, contractors or assigns or any breach of contract by Waukesha Metro.
17. **Marketing.** MCTS and Contractor will raise public awareness of the Services and will build ridership by marketing Route 1. Contractor will provide an annual marketing plan to MCTS by November 1st of each year. Additionally, Contractor will print public timetables at no cost to MCTS and is responsible for making timetables available to the public at existing outlets used by Waukesha Metro provide a reasonable number of timetables to MCTS for distribution at MCTS outlets.
18. **Termination.**
For Default. If either Party fails to fulfill its obligations under this IGA in a timely or proper manner, or violates any of its provisions, the other Party shall there upon have the right to terminate it by giving

thirty (30) days written notice of termination of contract, specifying the alleged violations, and effective date of termination. The Party receiving notice may promptly cure the alleged violation prior to the end of the thirty (30) day period.

Opportunity to Cure

The non-breaching party may, in their sole discretion may, in the case of a termination for breach or default, allow the other Party 30 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 the breaching Party fails to remedy to the non-breaching Party’s satisfaction within 30 days after receipt of written notice setting forth the nature of said breach or default, the non-breaching Party shall have the right to terminate this IGA without any further obligation to the other Party.

In the event of termination, MCTS will only be liable for services rendered through the date of termination and not for the uncompleted portion, or for any materials or services. Any such termination for default shall not in any way operate to preclude MCTS from also pursuing all available remedies and its sureties for said breach or default. Waiver of remedies for breach of any covenant, term or condition of this IGA shall not limit MCTS' remedies for any succeeding breach of that or of any other term, covenant, or condition of this IGA.

Termination for Convenience. MCTS may terminate this IGA at any time for any reason by giving 30 days written notice of such termination. In the event of said termination, Waukesha Metro shall reduce its activities hereunder as mutually agreed to, upon receipt of said notice. Upon said termination, Waukesha metro shall be paid for all services rendered through the date of termination within 30 days of the submission of an invoice.

Survivability: Sections 13, 22, 23 and 29 will survive any termination of this IGA.

19. **Insurance.** Waukesha Metro agrees to maintain policies of insurance and proof of financial responsibility to cover costs as may arise from claims for damages to property of and/or claims which may arise out of or result from its activities, by whomever performed, in such coverage and amounts as required and approved by MCTS. Acceptable proof of such coverage shall be furnished to MCTS prior to commencement of activities under this IGA. A Certificate of Insurance including declarations page, shall be submitted for review for each successive period of coverage for the duration of this IGA, unless otherwise specified by MTS, in the minimum amounts specified below. Waukesha Metro shall provide evidence of the following coverages and minimum amounts

Type of Coverage	Minimum Limits
Wisconsin Workers' Compensation and Employer's Liability & Disease	Statutory/Waiver of Subrogation \$100,000/\$500,000/\$100,000
<u>General Liability</u> Bodily Injury and Property Damage to include Personal Injury, Fire, Products and Completed Operations	\$1,000,000/occurrence \$2,000,000/aggregate
<u>Automobile Liability</u> Bodily Injury and Property Damage All Autos	\$10,000,000 Per Accident
<u>Umbrella Liability</u> Policy will follow form to underlying Aggregate Employer's, General, and Automobile Liabilities policies.	\$5,000,000/occurrence \$5,000,000/aggregate

MTS and Milwaukee County shall be named as an Additional Insured on the General and Automobile Liability policies with respects to the services provided in this IGA. A Waiver of Subrogation shall be

afforded to MTS on the Workers' Compensation policy. A 30-day written notice of cancellation or non-renewal shall be afforded to MTS.

20. **Recording Keeping and Access to Records.** Waukesha Metro shall maintain and, upon request, furnish to MCTS at no cost any and all information requested by MCTS relating to the quality, quantity, and cost of services covered by this IGA and shall allow authorized representatives of MCTS and MCTS' funding sources to have access to all records necessary to confirm Waukesha Metro's compliance with this IGA. Access to information shall include computerized data and/or other electronic information used by the Waukesha Metro, made available in formats suitable for data analysis, such as queries, using conventional software programs. Waukesha Metro shall maintain official documentation evidencing in proper detail the compliance with all required FTA and Federal laws as required by this IGA and maintain all such records for a period of at least three (3) years after the date of this IGA expires.
21. **Right to Audit.** Waukesha Metro its officers, directors, agents, partners and employees shall allow the Milwaukee County Audit Services Division and MTS contract administrators ("Designated Personnel") and any other party the Designated Personnel may name, with or without notice, to audit, examine and make copies of any and all records of the Waukesha Metro related to the terms and performance of the IGA for a period of up to three years following the end date of this IGA. Any subcontractors or will be bound by the same terms and responsibilities as the Waukesha Metro, All subcontracts or other agreements for work performed will include written notice that the subcontractors or other parties understand and will comply with the terms and responsibilities. Waukesha Metro and any subcontractors understand and will abide by the requirements of Chapter Section 34.09 (Audit) and Section 34.095 (Investigations concerning fraud, waste, and abuse) of the Milwaukee County Code of General Ordinances.
22. **Continuity of Service.** Waukesha Metro and MCTS jointly recognizes that the services under this IGA are vital. Therefore, upon contract expiration or termination, MCTS may continue them under the same terms and conditions. If requested by MCTS in writing within 90 days of contract expiration, Waukesha Metro agrees to provide Services for up to 120 days after this IGA terminates.
23. **Modifications.** Both Parties acknowledge this IGA may be renegotiated in the event of changes required by the need to make modifications to the services, law, regulations, court action, or inability of either party to perform as committed in this IGA. Any modifications or amendments must be in a written amendment signed by the authorized representatives of both Parties.
24. **Prohibited Practices.** Contractor attests that it is familiar with Milwaukee County's Code of Ethics (Chapter 9 of the General Ordinances of Milwaukee County) which states in part, "No person shall offer or give to any public official or employee, directly or indirectly, and no public official or employee shall solicit or accept from any person, directly or indirectly, anything of value if it could reasonably be expected to influence the public official's or employee's vote, official actions or judgment, or could reasonably be considered as a reward for any official action or inaction or omission by of the public official or employee."
25. **Assignment Limitation.** Neither party shall assign its obligations hereunder without the prior written consent of the other.
26. **Public Records.** Both Parties understand they are each bound by the Public Records Law, and as such, all the terms of this IGA are subject to the provisions of Section 19 of Wisconsin Statutes. Both Parties agree that they shall be obligated to assist the other in retaining and timely producing all records requested by a third party that are related to this IGA and are subject to the Wisconsin Public Records Law.

If either Party objects to the release of records by on the basis of confidentiality, the objecting Party shall provide legal counsel or other necessary assistance to defend the designation of confidentiality

and each Party agrees to hold the other Party harmless for any costs or damages arising out of an agreement to withhold or release the aforementioned records.

27. **Non-Conviction For Bribery**. Waukesha Metro hereby declares and affirms that, to the best of its knowledge, none of its officers, directors, or partners or employees directly involved in obtaining contracts has been convicted of bribery, attempted bribery, or conspiracy to bribe under the laws of any state or the federal government.
28. **Confidentiality**. Waukesha Metro agrees that, aside from obligations under the public records law as more fully described herein and as determined in cooperation with MTS, Waukesha Metro shall maintain all materials and communications developed under or relating to this IGA as confidential and shall disclose them only to or as directed by the individual who is signing this IGA on behalf of MCTS or their designee. Waukesha Metro understands that breach of confidentiality, especially regarding information that is not subject to public records law disclosure, may harm or create liability for MCTS and may require Waukesha Metro to indemnify MCTS as provided herein.
29. **Notices**. All notices with respect to this IGA shall be in writing. Except as otherwise expressly provided herein, a notice shall be deemed duly given and received upon delivery, if delivered by hand, or three days after posting via US Mail, to the party addressed as follows:

To: City of Waukesha	To: MCTS
Attn.: Brian Engelking	Attn.: Director of Procurement
Address: 2311 Badger Drive	Address: 1942 N. 17th St
Waukesha, WI 53188	Milwaukee, WI 53205

Either party may designate a new address for purposes of this IGA by written notice to the other party

30. **Governing Law**. This IGA and the rights and obligations of the Parties hereunder shall be construed in accordance with and governed by the laws of State of Wisconsin without regard to its conflict of law provisions.
31. **Disputes**. If a dispute arising from or related to this IGA cannot be resolved informally by the Parties, the Parties will escalate such dispute to senior management, with the intention of reaching a good faith resolution within 30 business days of the escalation date. In the event any dispute under this IGA that cannot be resolved within the 30-business day period, the Parties agree that the dispute will be resolved by any State court of competent jurisdiction in the state of Wisconsin in the County of Milwaukee. The court shall have the discretion to award the prevailing Party its reasonable attorneys' fees and costs.
32. **Invalidity, Remedies Not Exclusive**. The invalidity in whole or in part of any term or condition in this IGA shall not affect the validity of the remainder of these Terms and the application of such provisions to other persons or circumstances shall not be affected thereby. The rights and remedies provided herein shall not be exclusive and are in addition to any other rights and remedies in law or equity.
33. **Entire Contract**. This IGA sets forth the entire agreement of the Parties, with all attached exhibits and assurances, as negotiated is contained herein. This IGA supersedes all oral agreements and negotiations and all writings not herein referred to and incorporated.
34. **Non-Appropriation of Funds**. Both Parties understand and agree that funding of this IGA is completely dependent upon state and federal grants and contracts. MCTS' obligation to purchase services described herein is contingent upon present local, state, and federal grants and contracts continuing at their present levels. Should such funding sources terminate or be reduced, MCTS reserves the right, in its sole discretion, to terminate or reduce purchasing under this IGA to reflect any reduction in such funding. It is further recognized and agreed by both Parties that each Party is subject federal, state and local laws, grant conditions and regulations, and both Parties agrees to comply with all such provisions for the period of this IGA.

35. **Federal Terms and Conditions.** Both Parties acknowledge and agree they shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those set forth in the United States Code, its implementing regulations, the United States of America DOT FTA Master Agreement and the FTA Circular 4220.1F, whether or not expressly set forth herein. Both Parties further acknowledges changes in federal law, regulation, other requirements, or guidance will become part of the Contract by automatic amendment thereto, and those changes shall apply to subcontractors at any tier.

The applicable federal terms and conditions are detailed in MTS' Federal Intergovernmental Agreement Terms for Provision of Routes found on MCTS' website, <https://www.ridemcts.com/business-partners>, which are herein expressly incorporated by reference. As set forth below, all DOT- or FTA-mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any of MCTS' requests that would cause MCTS to be in violation of the FTA terms and conditions. In the event of any conflict among the requirements of clauses applicable to the Contractor, the most stringent requirements of the clauses will apply.

36. **Counterparts.** This IGA may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A signed copy of this IGA delivered by facsimile, e-mail, or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this IGA.

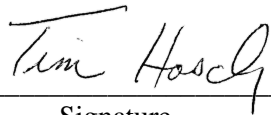
37. **Authorization.** Signature of each Party warrants they are authorized to sign on behalf of the Party.

Business Name: City of Waukesha

By: _____ Date: _____
Signature

Name Printed Title

Milwaukee Transport Services, Inc

By:  _____ Date: _____ 11/17/2023 _____
Signature

__Tim Hosch, CFO_____
Name Printed Title

Exhibit A – Route 1 DTC to MRMC

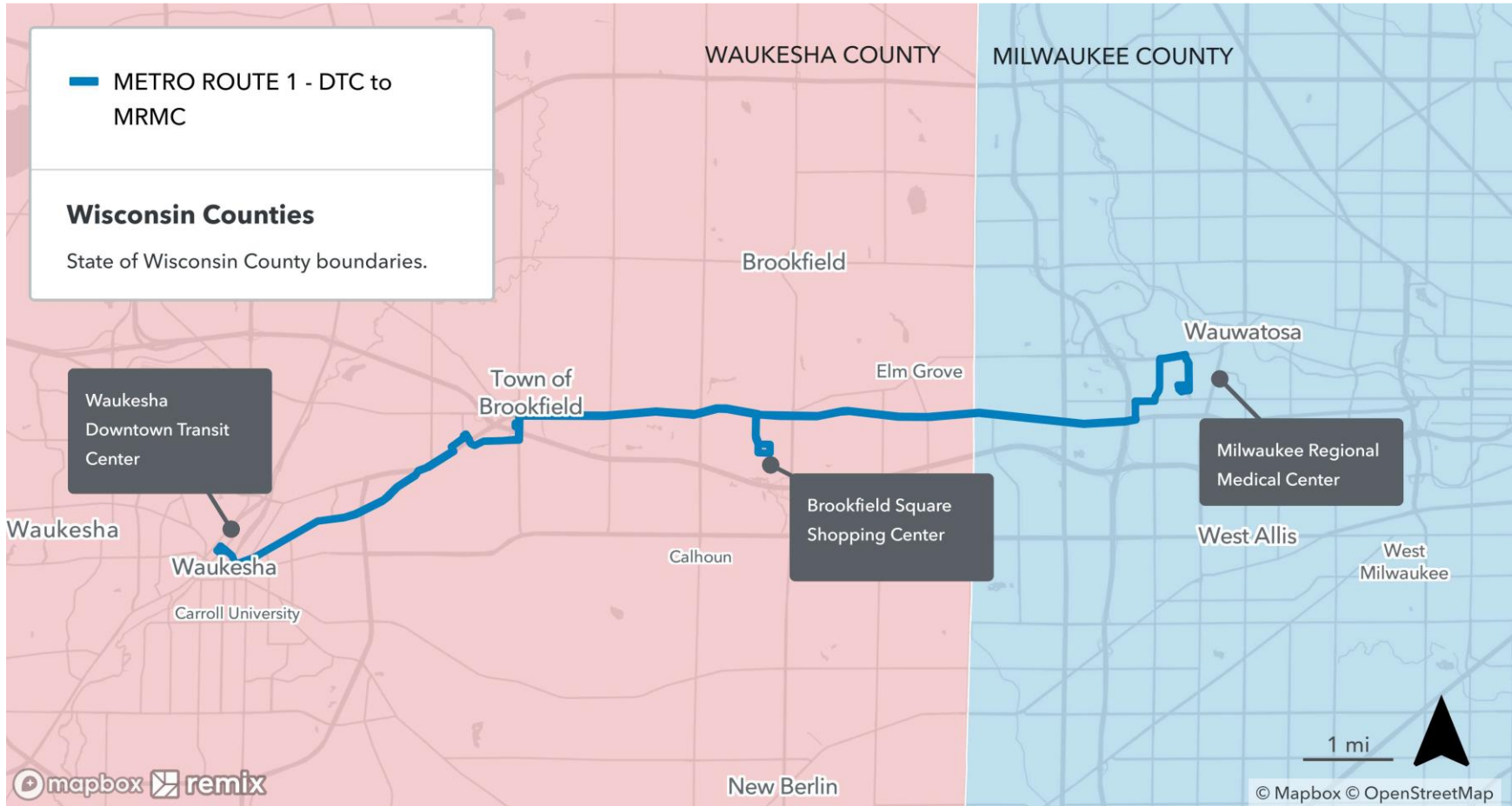


Exhibit B

Any pricing changes to this IGA shall be effected by documenting the change in this Exhibit and having authorized MCTS and Waukesha County signatures initial. Upon initiation, the price change shall become part of the contract by automatic amendment thereto.