

PUBLIC TRANSPORTATION AGREEMENT
BETWEEN
SUBURBAN MOBILITY AUTHORITY FOR REGIONAL TRANSPORTATION
AND
OAKLAND COUNTY PUBLIC TRANSPORTATION AUTHORITY

THIS PUBLIC TRANSPORTATION AGREEMENT ("Agreement") is made this 1st day of November, 2020, by and between the Suburban Mobility Authority for Regional Transportation ("SMART"), a public transportation authority created pursuant to 204 P.A. 1967, and the Oakland County Public Transportation Authority (the "Authority"), an Act 196 public transportation authority created under 96 P.A. 1986 (and may be referred to collectively as the "Parties"). This Agreement shall have a term beginning on the above date and ending on June 30, 2022. Thereafter, each term of this agreement shall be for two (2) years.

WHEREAS, SMART desires to provide certain public transportation services to the Authority as described more particularly in this Agreement and the exhibits/attachments hereto ("Transportation Services"); and

WHEREAS, the Authority and SMART agree that the transportation services undertaken shall be in accordance with the Authority's Mission Statement as amended, to the greatest extent possible; and

WHEREAS, as consideration for the Transportation Services, the Authority will make an annual contribution to SMART as described more particularly in this Agreement (the "Annual Contribution").

NOW THEREFORE, in consideration of the premises, mutual covenants and mutual agreements contained herein, the Parties hereto agree as follows:

ARTICLE I

DEFINITIONS

1.1 “Annual Contribution” means an amount equal to the ad valorem tax collections received by the Authority for the 2020-21 and subsequent tax years as applicable, from the Authority's levy of the one mill tax, as such millage may be required to be reduced pursuant to section 34d of the General Property Tax Act, MCLA 211.34d, on all property subject to tax by the Authority, less those direct costs of administering the collection and distribution of those taxes as allowed under the Act and any other reductions as provided herein.

1.2 “Communities” mean cities, villages, townships or other political subdivisions located within Oakland County.

1.3 “Municipal Credit Funds” means those funds available to SMART as municipal credits in any applicable year pursuant to MCLA 247.660l.

1.4 “Opt-In Communities” means the Communities who passed a millage payable to the Authority to support public transportation in their communities.

1.5 “Opt-Out Communities” means Communities other than Opt-In Communities.

1.6 “SMART Budget” means the financial budget of SMART for each fiscal year, in whole or in part, included in the term of this Agreement for the entire SMART service area, including Oakland County, as set forth in Exhibit D, attached hereto.

1.7 “Transportation Services” means the transportation services to be provided by SMART in Oakland County for each SMART fiscal year, in whole or in part, covered by this Agreement as set forth in Exhibit A attached hereto.

ARTICLE II

TRANSPORTATION SERVICES

2.1 SMART agrees to undertake and provide the Transportation Services as set forth in Exhibit A attached hereto (the "Service Plan") in accordance with this Agreement and all applicable federal, state and local laws as they may from time to time be amended.

2.2 No significant amendment to the Service Plan may be made by SMART without the written consent of the Authority except as noted in paragraph 2.3. For purposes hereof, the term "significant amendment" shall mean any change to the Service Plan which would increase or decrease the cost of Transportation Services in Oakland County by an amount, taking into account all prior changes to the Service Plan, of more than Five Hundred Thousand and 00/100 (\$500,000.00) Dollars in the aggregate during the fiscal year covered by this Agreement.

2.3 In the event that SMART is subject to local, federal or state operating revenue reductions below that projected in an applicable SMART budget and which are beyond its control, service reductions shall be made to the extent minimally necessary in any one SMART fiscal year to balance SMART's budget. Such service reductions shall be made among the counties of Wayne, Oakland and Macomb in proportion to the percentages representing the local contributions of each of the three counties or, if more favorable to Oakland County, as otherwise approved by the SMART Board of Directors.

ARTICLE III

ANNUAL CONTRIBUTION

3.1 The Authority agrees to remit the Annual Contribution to SMART in accordance with the terms and conditions of this Agreement.

3.2 Provided that SMART has fulfilled all its obligations under this Agreement, the Annual Contribution shall be paid by the Authority to SMART in installments payable as follows:

- a. Receipts transferred by Oakland County from the Tax Collections fund to the OCPTA fund from the first (1st) through the fifteenth (15th) day of a month will be distributed to SMART on the 30th day of that month.
- b. Receipts transferred by Oakland County from the Tax Collections fund to the OCPTA fund from the sixteenth (16th) through the last day of a month will be distributed to SMART on the fifteenth (15th) day of the immediately following month.

The Annual Contribution shall be subject to a final reconciliation and payment once Oakland County makes its final reconciliation.

3.3 Notwithstanding Sections 3.1 and 3.2 above, the Authority may retain a maximum of \$40,000.00 of the Annual Contribution from the first and any other installment due in order to cover the costs of the Authority in connection with each of its fiscal years covered by this Agreement. The Authority shall prepare and provide SMART with an accounting of all expenditures deducted from the Annual Contribution.

3.4 Notwithstanding anything to the contrary contained in this Agreement, in no event may the Authority withhold paying the installments set forth above due to non-compliance by SMART with the Service Plan unless SMART shall have been previously notified by the Authority of such noncompliance. Once substantial compliance has been achieved, the Authority shall promptly remit the installments withheld.

3.5 Any interest earned on the Annual Contribution prior to payment shall be paid to SMART. Said interest shall be paid along with the installment due pursuant to Section 3.2 above.

ARTICLE IV

SMART BUDGET

4.1 Conformity With Project Budget. SMART shall carry out and perform the Transportation Services identified in Exhibit A, subject to the limitations described in Article II.

4.2 The SMART Budget shall, among other things, provide for services in Oakland County of a value of not less than the "allowable percentage" of total SMART revenues attributable to local funding provided to SMART by the Authority. As used herein, the term "allowable percentage" shall mean the percentage of SMART's total revenues attributable to the Annual Contribution provided by the Authority, determined on a reasonable basis acceptable to the Authority, less five percent (5%) (as the stipulated, maximum deviation factor).

ARTICLE V

PERFORMANCE REPORTING

5.1 As a condition precedent to the release of the first payment of the Annual Contribution due SMART, it shall provide the Authority with a Performance Audit as determined by the Oakland County Board of Commissioners, and Report of SMART's operations for the most recent fiscal year at SMART's expense, and if requested by the Authority, verification of the Performance Report by the Internal Audit Division of Oakland County or other third party selected by agreement between SMART and the Authority. Each Performance Report shall address the parameters set forth in Exhibit B as it may be amended from time to time by agreement.

5.2 SMART shall submit the Performance Report to the authority on or before April 30 of each year during the term of this Agreement. If the Authority timely receives the Performance Report on or before June 15 of that year, the Authority will review the Performance Report to determine whether SMART's public transportation services in Oakland County are reasonably acceptable and warrant renewal of the Agreement.

ARTICLE VI

FINANCIAL STATEMENT AUDIT

6.1 As a condition precedent to the release of payment of the Annual Contribution due, SMART shall provide the Authority with SMART's most recent audited financial statements, prepared in accordance with generally accepted accounting principles ("GAAP") by SMART's auditor (the "Financial Statements").

6.2 SMART will provide to the Authority, within thirty (30) days after the end of each fiscal quarter of SMART, quarterly interim compiled financial statements prepared in accordance with GAAP (provided that any notes may be omitted). The interim financial statements shall indicate variances between actual and budgeted amounts for the quarter at the Financial Statement level.

ARTICLE VII

ALLOCATION OF MUNICIPAL CREDITS

7.1 Municipal Credit Funds shall be allocated to the Communities and paid by SMART in accordance with the statute. SMART shall provide the Authority with a report on Municipal Credit Funds expenditures as approved by SMART Board of Directors in substantially the same form as in Exhibit C.

ARTICLE VIII

PERFORMANCE OF THE TRANSPORTATION SERVICES

8.1 General

- a. SMART shall commence, carry on, and complete the Transportation Services in a sound, economical and efficient manner, and in compliance with the Service Plan.
- b. Except as expressly set forth in this Agreement, nothing in this Agreement shall subject the Authority to any obligations or liabilities of SMART, its contractors or subcontractors, or any other person not a party to this Agreement (and therefore, no third-party beneficiaries are created by this agreement), in connection with the performance of any Transportation Services.

8.2 Authority Meetings. SMART's General Manager and other appropriate representatives shall make their best efforts to attend all meetings of the Authority where s/he or his/her representatives shall respond to inquiries of the Authority and provide such reports as reasonably requested.

ARTICLE IX

PROJECT ADMINISTRATION AND MANAGEMENT

9.1 In General. SMART is responsible for administration and management of the Transportation Services.

9.2 Inspection Rights. The Authority or its designee may conduct periodic on-site inspections of the Transportation Services and SMART's records to evaluate the effectiveness of SMART's performance of the Transportation Services and its adherence to this Agreement. Inspections by the Authority shall not relieve SMART of its responsibilities and liabilities

hereunder. Any inspection must be coordinated with SMART's personnel for purposes of adhering to applicable safety regulations and minimizing disruption.

ARTICLE X

RECORD KEEPING, AUDITS, INSPECTION, REPORTS, EVALUATION AND COOPERATION

10.1 Records Retention. Financial records, supporting documentation, statistical records, and all other records pertinent to the Transportation Services must be retained by SMART and be made readily available to authorized representatives of the Authority for the duration of the agreement.

10.2 Cooperation. SMART shall provide a periodic summary to the Authority of available grant opportunities and shall seek input and support from the Authority, as practicable, for any grants that could impact the Transportation Services, but which are otherwise not available to SMART. In addition and as practicable, SMART shall cooperate and provide input as needed by the Authority with respect to any grants available to it. SMART shall provide periodic updates to the Authority with respect to the marketing and advertising of the Transportation Services. The Parties shall cooperate in elevating the quality, accessibility and level of the Transportation Services and their equitable distribution and access. The Parties shall meet at least annually to discuss strategic goals and plans for the following year, to correct deficiencies in performance if found to exist and to advance the goals and principles set forth in this Agreement, including but not limited to, maximizing service and equitable inclusion.

ARTICLE XI

INSURANCE

11.1 Liability Insurance. SMART shall purchase and maintain, during the term of the agreement between the Parties, types and amounts of insurance which are set forth on Exhibit E attached hereto. The contractual liability insurance as applicable to SMART's obligations herein, shall be specifically endorsed to include coverage for the indemnity agreement described in Article XII below.

ARTICLE XII

INDEMNIFICATION

12.1 To the extent permitted by law, each party hereto shall hold the other harmless and indemnify the other, and each of their Board members, agents, employees, representatives, attorneys, volunteers and accountants, from and against any and all losses, expenses, damages (including loss of use), demands and claims, and shall defend any suit or action, whether at law or in equity, brought against them or any one or more of them based on any alleged injury (including death), or damage relating to or arising out of any act or omission of the other party, its officers, employees, agents, contractors, subcontractors and licensees, arising out of this Agreement or in connection with the Transportation Services, and shall pay all damages, judgments, costs, and expenses, including attorney's fees, in connection with any demands and claims resulting therefrom. The obligations under this Article XII shall survive the completion of the Transportation Services required to be performed hereunder by SMART and any end to this Agreement.

ARTICLE XIII

NON-COLLUSION

13.1 SMART warrants that it has not paid and agrees not to pay any bonus, commission, fee, or gratuity for the purpose of obtaining any approval pursuant to this Agreement. No SMART officer or employee, or board member shall be permitted to any share or part of this Agreement or to any material benefit arising therefrom.

ARTICLE XIV

SIGNS AND IDENTIFICATION

14.1 The Parties will not be identified on any vehicles, buildings, stations, equipment and other items used or acquired by them in connection with the Transportation Services without the prior written consent of the other Party, excluding SMART's standard vehicle branding.

ARTICLE XV

SEVERABILITY

15.1 If any provision of this Agreement is held invalid for any reason whatsoever, the remaining provisions shall not be affected thereby if such remainder would continue to conform to the purposes, terms, and requirements of applicable law.

ARTICLE XVI

ASSIGNMENT AND AGREEMENT

16.1 This Agreement shall not be assigned, transferred, conveyed, sublet or otherwise disposed of without the prior written consent of SMART and the Authority.

ARTICLE XVII

AMENDMENT

17.1 The Parties agree that no modification of this Agreement, or any Exhibits or Attachments hereto, shall be of any force or effect unless such amendment is dated, reduced to

writing, executed by both Parties, and attached to and made a part of this Agreement. No services shall be commenced and no costs or obligations incurred in consequence of any amendment to this Agreement or any attachments hereto unless and until such amendment has been executed and made a part of this Agreement.

ARTICLE XVIII

TITLES

18.1 The Parties agree that the titles of the articles and paragraphs of this Agreement are inserted for convenience of identification only and shall not be considered for any other purpose.

ARTICLE XIX

DOCUMENTS FORMING THIS AGREEMENT

19.1 The Parties agree that this Agreement, the Exhibits attached hereto and documents referred to herein constitute the entire Agreement between the Parties hereto, that there are no agreements or understandings, implied or expressed, except as specifically set forth or incorporated by reference in the Agreement and that all prior arrangements and understandings in this connection are merged into and contained in this Agreement.

ARTICLE XX

APPLICABLE LAW

20.1 This Agreement shall be construed pursuant to and governed by the substantive laws of the State of Michigan and applicable federal law (but any provision of Michigan law shall not apply if the application of such provision would result in the application of the law of a state or jurisdiction other than Michigan).

ARTICLE XXI

MISCELLANEOUS

21.1 All notices which are required or may be given under this Agreement shall be in writing and shall be deemed to have been duly given when received if personally delivered; one working day after transmitted, if transmitted by telecopy or similar electronic transmission method; when received, if sent by recognized expedited delivery service; five (5) days after it is sent, if mailed first class mail, and, when received if sent certified mail, return receipt requested, with postage prepaid. In each case notice shall be sent to:

To the Authority:

ATTN: Chair

Oakland County Public Transportation Authority

1200 N. Telegraph Road

Pontiac, Michigan 48341

To SMART:

Suburban Mobility Authority for Regional Transportation

ATTN: General Manager

535 Griswold, Suite 600

Detroit, MI 48226

With a copy sent to:

Suburban Mobility Authority for Regional Transportation


ATTN: General Counsel

535 Griswold, Suite 600

Detroit, MI 48226

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed
by affixing their signatures below:

SUBURBAN MOBILITY AUTHORITY FOR
REGIONAL TRANSPORTATION


By: 
Khalil Rahal (Nov 2, 2020 11:50 EST)
Khalil Rahal
Its: Chair

Khalil Rahal

E-signed 2020-11-02 11:50AM EST
krah@waynecounty.com



OAKLAND COUNTY PUBLIC
TRANSPORTATION AUTHORITY

By: 
Melanie C. Piana (Nov 2, 2020 21:22 EST)
Melanie Piana
Its: Chair

Melanie C. Piana

E-signed 2020-11-02 09:22PM EST
melpiana@gmail.com



PUBLIC TRANSPORTATION SERVICES AGREEMENT SCHEDULE OF EXHIBITS

Exhibit A	Transportation Services
Exhibit B	Performance Audit/Report Parameters
Exhibit C	SMART Resolution Approving Municipal Credit Distribution
Exhibit D	SMART Annual Budget
Exhibit E	Insurance Certificate

Exhibits A and B. Oakland County Public Transportation Services and Performance Reporting

A: Transportation Services

SMART will provide a descriptive summary of the transit services it supports and provides in Oakland County, to be updated quarterly. This document will include maps, graphics, and text and will be formatted in a way to make it compatible with a web page and mobile web viewing through a link. The listing of services will be hosted on SMART's website, and a link to that page will be posted by OCPTA on their website. The listing will include the following:

- Description of Different Types of Services (including number of routes of each type)
- Annual Ridership of each Type of Service
- List of Services Sorted by Community (including description of community control over service design, and identifying which communities have opted in to OCPTA)
- Map of Fixed Route and Flexible Route/Shuttle Services
- Summary of types of vehicles (including fuel types and percentage fully accessible)
- Graphics/Diagrams Explaining How Various Services Work
- Specific Summary/Callout of Mobility Innovations (e.g. Connected/Autonomous Vehicle Infrastructure, Mobility as a Service (MaaS))

B: Performance Reporting

Performance Reporting will be updated on an ongoing basis, and will be prepared using all available metrics and methods as adopted by other agencies and regulatory bodies, such as National Transit Database, USDOT, MDOT, SEMCOG, Oakland County, and RTA. The data will be hosted on SMART's website. It may include the following (these numbers will be calculated using reasonable ways to tie the data to Oakland-based services when practicable):

Transit Service Performance:

- Average Weekday Unlinked Trips
- Average Saturday Unlinked Trips
- Average Sunday Unlinked Trips
- SMART-Operated Curb-to-Curb Service
- CPP-Operated Curb-to-Curb Service
- Annualized Vehicle Revenue Miles
- Peak Vehicle Count for Fixed Route
- Peak Vehicle Count for Non-fixed Route (can be broken out by services)
- (SMART-wide) Average Fleet Age (Fixed Route and non-Fixed Route)

Customer Service:

- Trips Scheduled via Phone
- Customer Complaints Received
- Calls Resolved on First Call
- Average Response Time for Complaints Requiring Follow-up

Other Agency Performance:

- Budgeted positions vs filled (including progress in quarter and YTD)
- Fare purchase method (cash vs pass vs mobile)