

**AMENDED AND RESTATED AGREEMENT
BETWEEN CITY OF ANN ARBOR
AND
CITY OF YPSILANTI
COUNTY OF WASHTENAW, MICHIGAN
CREATING A LOCAL DEVELOPMENT FINANCE AUTHORITY
PURSUANT TO PA 281 OF 1986 AS AMENDED)**

The City of An Arbor ("Ann Arbor") and City of Ypsilanti ("Ypsilanti"), both located in Washtenaw County, Michigan, collectively known as 'The Parties' enter into this Amended and Restated Agreement, pursuant to Public Act 281 of 1986, as amended, restating their Agreement that was effective June 27, 2002, and amended effective November 5, 2013, to read as follows:

Premises:

Having determined that it is in the best interest of the residents of their respective communities, and in an effort to eliminate the conditions of unemployment, underemployment and joblessness, and to promote economic growth in Ann Arbor and Ypsilanti, the governing bodies of the Parties have acted to establish a multi-jurisdictional local development finance authority pursuant to Act 281 of the Public Acts of Michigan of 1986 ("PA 281") as amended, and to designate an authority district (the "District"). The local development finance authority has been named "Local Development Finance Authority of the City of An Arbor and City of Ypsilanti." (The "Authority"). The Authority is established for the purpose of enabling the implementation of the Smartzone designation awarded by the Michigan Economic Development Corporation to each community jointly.

Therefore, the Parties agree to the following:

1. Governing Board; Terms and Appointment: The governing body of the Authority ('Board') shall consist of, nine (9) voting members, appointed in the following manner:
 - a. The City Council of the City of Ann Arbor shall appoint five (5) members of the Authority Board, two (2) of which shall be appointed to terms ending June 30, 2003; two (2) on June 30, 2004, and one (1) on June 30, 2005. One of the City of Ann Arbor appointments shall be a Councilmember.
 - b. The City Council for the City of Ypsilanti shall appoint two (2) members of the Authority Board, one (1) on June 30, 2004, and one (1) on June 30, 2005.
 - c. The Washtenaw County Board of Commissioners shall appoint one (1) member of the Authority Board, which shall be appointed initially to fill the unexpired term (through June 30, 2019) of an Authority Board seat previously filled by the City of Ypsilanti. Such Board position shall continue to be appointed in accordance with this Agreement and applicable law by the Washtenaw County Board of Commissioners.
 - d. The chief executive officer of Washtenaw Community College shall appoint one (1) member of the Authority Board, who shall be appointed initially to fill the

unexpired term (through June 30, 2021) of an Authority Board seat previously filled by the City of Ann Arbor. Such Board position shall continue to be appointed in accordance with this Agreement and applicable law by the chief executive officer of Washtenaw Community College.

- e. The Board shall appoint four (4) ex-officio non-voting members consisting of a representative from the MEDC, a representative from the Accelerator, a representative from the City of Ypsilanti, and a representative from the City of Ann Arbor. In Addition, the Board may appoint other ex-officio members for the Board.
- f. Except as provided in this Section 1 for the initial appointments to the Board, subsequent Board members shall serve terms of four (4) years. Upon expiration of a Board member's term, the member shall continue serving as a member of the Authority Board until the appointment of his or her successor.
- g. An appointment to fill a vacancy shall be made in the same manner as the original appointment. An appointment to fill an unexpired term shall be for the unexpired portion of the term only.

Commented [BB1]: Amended to conform with MCL 125.4405(1) and (5), which requires four year term and formal removal process. The 90-day expiration is contrary to the plain language that a member holds office until a successor is appointed (subsection 1).

2. Governing Board; Terms and Removal:

- a. Subject to notice and an opportunity to be heard, a member of the Board may be removed before the expiration of his or her term for cause by the governing body. The City of Ann Arbor shall constitute the "governing body" for the five members it appoints and the City of Ypsilanti shall constitute the "governing body" for the two members it appoints. For all other members, the City of Ann Arbor and the City of Ypsilanti shall together constitute the "governing body".
- b. At least sixty (60) days prior to the expiration of a Board member's term, the Board shall notify the entity responsible for appointment of such Board member thereof.

Commented [BB2]: Updated to reflect that governing body is defined under MCL 125.4402(u) and that only a governing body may remove a member per MCL 125.4405(5). Notice section updated to reflect that County and Community College are not governing bodies (but we still want to give them notice).

3. Minutes and By Laws:

- a. The approved minutes of the meetings of the Board shall be furnished by the Board on a timely basis to the governing bodies of each of the Parties and every quarter the Board shall submit a written quarterly report of the status of the Authority's activities and finances to the governing body of each Party.
- b. The first by-laws shall be approved by both governing bodies. Any subsequent amendments to the by-laws, after approval by the Board, shall be provided to both governing bodies of the Parties and unless objected to by at least one of the governing bodies of the Parties within (30) days of the Parties receipt of the proposed amendment shall become effective.

- 4. Budget, Financial Records of the Authority, Audit: The Authority shall annually prepare and submit for the approval of the Board a budget for the operation of the Authority for the ensuing fiscal year. The budget shall be prepared in the manner and contain the information generally required of the municipal departments of the Parties. Said budget shall be in conformance with the SmartZone plan, and

consistent with the annual plan of the SmartZone for that year. Before the Board may adopt the budget, the governing bodies of the Parties shall approve it, with each governing body limited to approval of that portion of the budget that utilizes tax increment financing funds within their community. The Board shall submit financial report to the Parties at the same time and on the same basis as required of municipal departments. The Authority shall be audited annually by the City of Ann Arbor's independent auditor until the City of Ypsilanti begins contributing revenue. When the City of Ypsilanti begins contributing revenue, the Authority shall be audited by the City of Ypsilanti's auditor every other year and the City of Ann Arbor's auditor during the other years. All expense items of the Authority shall be publicized annually and records of the Authority shall be open to the public pursuant to the provisions of the Freedom of Information Act, Act No. 442 of the Public Acts of 1976, as amended.

Commented [BB3]: Reflects current practice and agreement.

5. Dissolution of the Authority: The Authority may be dissolved and this agreement may be terminated as provided in this Section. The Authority may be dissolved at any time by resolution of either Party after written notice is given to the other Party at least thirty (30) days prior to such action being taken. This written notice shall be given to the other parties' City Administrator and City Clerk. In addition, however, the governing bodies of the parties are expressing their intent to dissolve the Authority on July 1, 2004 unless the Authority has successfully implemented the Tax Increment and Financing Plan for the An Arbor/Ypsilanti SmartZone. Prior to dissolution at any time becoming effective, all expenses and liabilities of the Authority must be paid. Thereafter, the Authority shall distribute and convey all real property rights and interests owned by the Authority between the Parties on the basis of the location of the real property. All other tangible and intangible assets of the Authority other than unexpended tax increment revenues shall be distributed and conveyed by the Authority between the Parties on a pro-rate basis based, over the period of the Authority captured tax increment revenues, on the aggregate captured values of property located in each city that was subject to the Authority's tax increment financing plan for purposes of determining tax increment revenues. All unexpended and unencumbered tax increment revenues of the Authority upon dissolution shall be remitted to each taxing jurisdiction in proportion to their millage subject to capture.
6. Governing Law: This agreement shall be governed by and construed in accordance with the laws of the State of Michigan.
7. Severability: If any court of competent jurisdiction shall rule any clause of this Agreement invalid or unenforceable, the invalidity or unenforceability of such clause, provision or section shall not affect any of the remaining clauses, provisions or sections.

IN WITNESS WHEREOF, the Parties have caused this Amended and Restated Agreement to be duly executed on the dates indicated below.

Commented [BB4]: Ypsilanti should add their necessary signatories.

FOR THE CITY OF ANN ARBOR

By _____
Christopher Taylor, Mayor DATE

By _____
Jacqueline Beaudry, City Clerk DATE

Approved as to substance:

By: _____
Tom Crawford, Chief Financial Officer

By _____
Howard S. Lazarus, City Administrator

Approved as to form and content

By _____
Stephen K. Postema, City Attorney