

PUBLIC TRANSPORTATION AGREEMENT

among the following:

AATA: Ann Arbor Transportation Authority
2700 South Industrial Highway
Ann Arbor, Michigan 48104
Attention: Michael Ford

Ann Arbor: City of Ann Arbor
301 E. Huron Street
Ann Arbor, Michigan 48107
Attention: City Administrator

Ypsilanti: City of Ypsilanti
One South Huron Street
Ypsilanti, Michigan 48197
Attention: City Manager

County: Washtenaw County
220 North Main
Ann Arbor, Michigan 48107
Attention: County Administrator

1. Acknowledged Facts. The Ann Arbor Transportation Authority (hereafter "AATA") was incorporated by the City of Ann Arbor (hereafter "Ann Arbor") for the purpose of acquiring, owning, operating, or causing to be operated a mass transportation system under the provisions of Public Act 55 of 1963. AATA and Ann Arbor are parties to a certain agreement which sets forth the operational relationship between them and which specifically provides the agreement shall remain in full force and effect until mutually terminated. The City of Ypsilanti has contracted with AATA for transportation services for many years and recently approved a Charter Amendment dedicating certain tax revenue for transportation purposes. The above named parties are planning for countywide public transportation by creating a new authority under Act 196 of 1986 ("New TA"). The New TA, in partnership with the other above named parties, would succeed to the public transportation system currently operated by AATA under the terms of this Agreement and Section 11 of Act 196 of 1986 only when all contingencies of the Agreement are met.

2. Authority Formation. The County, upon the AATA's written request, will create a new Act 196 authority by approving, signing and filing articles of incorporation ("Articles") in substantially the form attached as Exhibit A. Prior to the submission of any request by AATA to County to initiate formation of a public authority all of the following must occur: (i) AATA will publish details of the service and funding plan in newspaper(s) of general circulation in the Washtenaw County, (ii) the Articles of Incorporation in the form presented for approval by the County shall be separately adopted by Ann Arbor and Ypsilanti by affirmative vote of the respective governing bodies. No transfer of assets to the New TA from AATA shall occur unless and until all contingencies stated in Section 4 of this Agreement and any and all conditions which may be established in the Articles of Incorporation have been met.

3. City Transportation Millages.

a. After all of the Section 8 contingencies to Closing are satisfied, Ann Arbor agrees to designate the New TA, as successor to AATA, as the contracting agency for use of the 2.5 mills tax levy under Section 8.18 of the Ann Arbor City Charter and allocated the tax levy in its entirety to AATA at the 2012 millage rate or as adjusted by State of Michigan statute less a municipal service charge of one percent (1%) of the annual millage at the time of the collection of taxes.

b. After all of the Section 8 contingencies to Closing are satisfied, Ypsilanti agrees to transfer its full respective transportation millages at the 2012 millage rate or as adjusted by State of Michigan statute to the New TA effective when the New TA succeeds to AATA's public transportation services.

4. Transfer of Assets. After all of the Section 8 contingencies to Closing are satisfied, AATA will transfer to New TA at closing all assets then owned by AATA, including, without limitation, all rights to the names “Ann Arbor Transportation Authority”. New TA will accept the transfer of those assets subject to all obligations and liabilities regarding those assets existing at the time of the transfer.

5. Assumption of Liabilities. After all of Section 8 contingencies to Closing are satisfied, New TA will assume at closing all liabilities of AATA existing at the time of closing.

6. Indemnification. AATA and its successor-in-interest The New TA shall indemnify and hold Washtenaw County, the Cities of Ann Arbor and Ypsilanti, their elected and appointed officials, employees, agents and volunteers harmless from and against all actions, liabilities, demands, costs and expenses, including court costs and attorney fees, which may arise due to their respective negligent, grossly negligent and/or intentional acts or omissions under this Agreement, and transfer or assumption required under this Agreement once the New TA is operational. This provision shall survive termination or expiration of this Agreement. Nothing in this Section has the effect of waiving the defense of governmental immunity available to an indemnifying party under applicable law as to the acts or omissions of 3rd parties.

7. Full Faith and Credit. The parties agree that Washtenaw County does not by virtue of its action in creating the New TA, provide its full faith and credit for any project undertaken by the New TA. The parties further agree that the Cities of Ann Arbor and Ypsilanti do not by virtue of execution of this Agreement, pledge their respective full faith and credit for any project assumed by the NEW TA at Closing or undertaken by the New TA thereafter when operational.

8. Contingencies to Closing. The closing of the transfer of assets and assumption of liabilities by the NEW TA is contingent upon all of the following occurring on terms acceptable to all parties:

a. The creation of New TA by Washtenaw County.

b. AATA and New TA obtaining all necessary approvals for the transfer of assets and assumption of obligations and liabilities, including approvals that may be required from federal and state agencies, or other lenders who provided funding for those assets and consents from parties to contracts with AATA.

c. AATA taking such necessary actions by its governing body to terminate its operational agreement with Ann Arbor effective at closing.

d. In exchange for the mayor’s nomination with council confirmation, of seven directors of New TA’s board, annual submission to Ann Arbor of the AATA’s proposed budget and yearly audit and the New TA’s agreement to apprise Ann Arbor City Council and solicit Council’s advice prior to making major long-term policy actions concerning mass transportation services and at a minimum, the continued level of services provided by its predecessor-in-interest AATA, Ann Arbor agrees (i) take such necessary actions by its governing body to terminate its operational agreement with AATA effective at closing; (ii) take such necessary actions by its governing body to authorize the execution and delivery of this Agreement and all documents and instruments contemplated by this Agreement, and the performance by Ann Arbor of the obligations to be performed by it hereunder; and (iii) designate the New TA, as successor to AATA, as the contracting agency for use of the 2.5 mills tax levy under Section 8.18 of the Ann Arbor City Charter and allocated the tax levy in its entirety to AATA at the 2012 millage rate or as adjusted by State of Michigan statute less a municipal service charge of one percent (1%) of the annual millage at the time of

the collection of taxes upon transfer from an Act 55 to an Act 196 authority.

e. In exchange for the City of Ypsilanti mayor's nomination with council confirmation, of one director of New TA's board, the new TA agreement to apprise and solicit the Ypsilanti City Council's advice prior to making major long-term policy actions concerning mass transportation, and at a minimum, the continued level of services provided by its predecessor-in-interest, AATA the City of Ypsilanti agrees to pay its charter transportation millage at the 2012 millage rate or as adjusted by State Statute to the New TA upon transfer from an Act 55 to an Act 196 authority.

f. Authority-wide voter approval before December 31, 2014, of a New TA Act 196 funding source adequate to fund ongoing operations of New TA. Any ballot question submitted to the voters of the City of Ann Arbor and/or the City of Ypsilanti shall clearly identify the new funding as additional to the existing millage and in Ypsilanti specifically authorize the continued collection and transfer of the full Charter Transportation millage to the new Act 196 TA.

9. Ann Arbor Approval. Notwithstanding anything in this Agreement to the contrary, if voters in the City of Ann Arbor fail to approve the NEW TA Act 196 funding source at any interim vote prior to December 31, 2014, regardless of whether it is approved or not by the other voting jurisdictions, then the City shall have the right to, but is not required to (i) withdraw from this Agreement without penalty; (ii) veto any attempted termination by AATA of the AATA-City operation agreement; and (iii) refuse to designate and/or assign its millage under Section 3(a). If Ann Arbor voters fail to approve the NEW TA Act 196 funding source before December 31, 2014, regardless of whether it is approved or not by the other voting jurisdictions, then the City shall withdraw from this agreement without penalty, shall veto any attempted termination by AATA of the AATA-City operation agreement, and shall refuse to designate and/or assign its millage under Section 3(a).

10. Closing Date. The transfer of assets and assumption of liabilities will occur at a date, time and place agreed between AATA and New TA, but no later than October 1, 2015, given the clearance of all contingencies.

11. Public Transportation Services and Cooperation Before Closing. Before the closing, AATA retains full authority and control over the conduct of its business. AATA will reimburse New TA for reasonable business expenses incurred by New TA before closing, including expenses relating to New TA's formation and preparation to close this transaction.

12. Termination of Agreement.

a. Automatic Termination. This Agreement will terminate automatically if (i) Closing does not occur before December 31, 2015, or if (ii) after incorporation of the Authority and the expiration of the statutory withdrawal period from the public authority, the City of Ann Arbor is the only participating political subdivision in Washtenaw County in the New TA. It is recognized by all the parties that if either of these conditions occur the stated objectives of Act 196 and this Agreement will not have been met and the Agreement shall be null and void.

b. Discretionary Dissolution or Withdrawal Conditions. The Washtenaw County Board will also be allowed to dissolve the New TA if there is no Authority-wide voter approved funding passed before December 31, 2014, or voter approval passes Authority-wide but the same is defeated in the City of Ann Arbor. The City of Ann Arbor may also withdraw from the new TA Agreement using any of the methods authorized by MCL 124.458. In the event the City of Ann Arbor exercises any of the foregoing rights, the City of Ann Arbor may immediately terminate this agreement upon written notice to the other parties.

c. Effective Date, Continuity of Services. No such termination or dissolution shall be effective unless and until provision for continued transportation services to Ann Arbor and Ypsilanti is in place, operational and all liabilities on the New TA have been satisfied.

13. General Provisions.

a. Notices. Any notice required or permitted under this agreement is deemed given either upon personal delivery or within two business days after mailing by U.S. first-class mail, postage prepaid, to the parties at their respective addresses shown on this agreement's first page.

b. Assignment. No party may assign any of its rights or delegate any of its duties under this agreement without the prior written consent of the other parties.

c. Choice of Law: This Agreement shall be governed and construed in accordance with the laws of the State of Michigan

d. Entire Agreement and Amendment. This agreement contains the entire agreement among the parties with regard to its subject matter, supersedes all previous understandings, and may be amended only in writing signed by all parties and approved by the board of each party.

ANN ARBOR TRANSPORTATION AUTHORITY
(AATA)

Dated: _____, 2012

By: _____
Michael Ford, Chief Executive Officer

CITY OF ANN ARBOR

Dated: _____, 2012

By: _____
John Hieftje, Mayor

By: _____
Jacqueline Beaudry, City Clerk

Approved as to substance

Steven D. Powers, City Administrator

Approved as to form

Stephen K. Postema, City Attorney

CITY OF YPSILANTI

Dated: _____, 2012

By: _____
Paul Schreiber, Mayor

By: _____
Frances McMullen, City Clerk

ATTESTED TO:

City Administrator

APPROVED AS TO FORM:

John Barr, City Attorney

WASHTENAW COUNTY

Dated: _____, 2012

By: _____
Conan Smith, Board Chair

ATTESTED TO:

Lawrence Kestenbaum
County Clerk/Register

APPROVED AS TO FORM:

Curtis N. Hedger
Office of Corporation Counsel