

**PURCHASE OF SERVICE
OPERATING AGREEMENT**

BETWEEN

SUBURBAN MOBILITY AUTHORITY FOR REGIONAL TRANSPORTATION

And

THE LAKE ERIE TRANSPORTATION COMMISSION

For

MONROE AREA TRANSPORTATION

THIS CONTRACT is made and entered into as of the date hereinafter appearing, by and between the SUBURBAN MOBILITY AUTHORITY for REGIONAL TRANSPORTATION, an entity organized and existing under the provisions of Act 204 of the Public Acts of 1967, as amended, hereinafter referred to as "SMART", and the LAKE ERIE TRANSPORTATION COMMISSION, An Act 7 Inter-Local Commission formed by the City of Monroe and the Township of Frenchtown, hereinafter referred to as the "COMMISSION."

WITNESSETH:

WHEREAS, SMART, pursuant to the provisions of Act 204, Public Acts of 1967, as amended, has been empowered to acquire, plan, construct, operate and maintain transportation systems and facilities within its jurisdiction; and

WHEREAS, the COMMISSION is desirous of managing and operating certain public transportation services within the service area that includes the City of Monroe, the Townships of Frenchtown, Monroe, and Bedford, and areas of Monroe County, as is more specifically described in Exhibit "A" (Service Area and Program), attached hereto and made a part hereof, hereinafter called the "PROJECT"; and

WHEREAS, SMART has retained First Transit to provide transit management services, hereinafter referred to as the "CONTRACTOR"; and

WHEREAS, the purpose of this Contract is to state the terms and conditions under which the services in the PROJECT will be undertaken;

NOW, THEREFORE, in consideration of the mutual covenants, and representations contained herein, the parties agree as follows:

1. THE PROJECT

The COMMISSION shall undertake, carry out and complete the public transportation services of the PROJECT in accordance with the terms and

conditions of this Contract, and as are more specifically described in Exhibit "A", attached hereto and made a part hereof, and in conformance with the Budget as set forth in Exhibit "B", attached hereto and made a part hereof.

The CONTRACTOR agrees to furnish management services reasonably required by SMART and necessary for the efficient operation of the PROJECT under the policies, standards and procedures established by SMART.

SMART shall recognize the COMMISSION as the transportation policy board for PROJECT services. The COMMISSION shall determine the official local transportation policy via its communication with local government, business, and civic groups. Such policy shall include issues such as type and level of services, fares and other rates, and the extent of the local subsidy funds to be made available in support of PROJECT services, subject to the approval of SMART.

2. TERM OF CONTRACT

This Agreement shall become effective as of July 1, 2015 and remain in effect through June 30, 2016, subject to the termination provisions below.

3. INDEPENDENT CONTRACTOR

The COMMISSION is an independent contractor and retains the right to exercise full control and supervision over its employees, their compensation and discharge; and agrees to be solely responsible for all matters relating to payment of such employees, including compliance with social security, withholding, and all other regulations governing such matters. The COMMISSION agrees to be responsible for its own acts and dishonest or fraudulent misconduct of, or intentional torts committed by its employees during the life of this Contract.

4. PERSONNEL AND OTHER ASSISTANCE

The CONTRACTOR will furnish a Project Manager, who shall be selected and serve in that capacity with the approval of SMART, at the expense of the COMMISSION, and shall provide the active management of the transit system for an on behalf of SMART. This approval shall not be unreasonably withheld.

5. REVIEW AND APPROVAL OF SUBCONTRACTING

The COMMISSION shall submit any proposal to subcontract any portion of the PROJECT to SMART for its review and approval. Any third-party responses to the proposal shall be submitted to SMART for its information. Third-party contracts to undertake any work contemplated under this Contract, and any amendments thereto, shall be approved by

SMART prior to the execution of the subcontract by the COMMISSION. Approval by SMART shall not be construed to relieve the COMMISSION of any responsibility for the fulfillment of this Contract.

6. PROJECT ACCOUNTS AND REPORTING

The COMMISSION shall report all required financial and operating data to SMART in such manner and at such time(s) as prescribed in the "Community Transit Manual", hereinafter referred to as the ADMINISTRATIVE MANUAL, including future revisions of same. The ADMINISTRATIVE MANUAL is also incorporated into this contract by reference.

7. MAINTENANCE OF RECORDS

The COMMISSION shall keep time sheets and other personnel records, invoices, canceled and voided checks, journals, accident reports, maintenance records, dispatch records and all other supporting documents pertaining to the PROJECT operation for three (3) years from the date of the final payment by SMART under this Contract.

8. AUDIT OF ACCOUNTS AND RECORDS

The COMMISSION shall permit SMART or its authorized representative to audit COMMISSION'S accounts and records pertinent to PROJECT operations at any reasonable time during the life of the contract and any reasonable time within six (6) years from the date of final payment by SMART under this Contract. Such audit may extend to the records or related entities and subcontractors to the extent necessary to verify charges to the PROJECT.

9. COMPLIANCE WITH LAWS

The COMMISSION shall in the performance of this Contract, comply with applicable State, Federal and Local statutes, ordinances and regulations.

10. DRIVER'S TRAINING

The COMMISSION'S employees must receive initial drivers training and refresher training every three (3) years thereafter. To fulfill the training requirements, SMART offers the COMMISSION three (3) options:

- A. Individual Driver Training: New drivers: \$25.00 per student driver plus, if necessary, the actual hourly rate of an additional in service operator/trainer. Refresher training: \$10.00 per student driver.

- B. Train the Trainer: \$1,145.00 per trainer/student. There will be additional costs associated with the option paid directly to the National Safety Council.
- C. Training Consultant: The COMMISSION may employ a private firm or utilize such services from another source. Such program must use the SMART Small Bus training program or an equivalent approved by SMART.

11. NON-DISCRIMINATION

The COMMISSION shall not discriminate against any employee or applicant for employment because of race, color, sex, age, handicap, religion, ancestry, marital status, national origin, place of birth, or sexual orientation. The COMMISSION shall take affirmative action to ensure that applicants are employed and that employees are treated during their employment without regard to their race, color, sex, age, handicap, religion, ancestry, marital status, national origin, place of birth, or sexual orientation. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection of training, including apprenticeship. The COMMISSION agrees to post in conspicuous places, available to employees and applicants, employment notices to be provided by SMART setting forth the provisions of this non-discrimination clause. In connection with the performance of this Contract, the COMMISSION shall comply with the provisions of the State of Michigan "Prohibition of Discrimination in State Contracts", and any additional provisions, as required by law. COMMISSION further covenants that it will comply with the Civil Rights Act of 1964 (78. Stat. 252) and the Michigan Civil Rights Acts of 1976 (Act No. 454, PA 1967) and will require a similar covenant on the part of any consultant and/or subcontractor employed in the performance of this Contract.

12. INTEREST OF MEMBERS OF CONGRESS

No member of or delegate of the Congress of the United States shall be permitted any share or part of this Contract or to any benefit arising therefrom.

13. INTEREST OF PUBLIC OFFICIALS

No member, officer or employee of any public body, during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in this Contract or the benefits thereof.

14. INTEREST OF LAKE ERIE TRANSPORTATION COMMISSION

Other than the stipulation below, the COMMISSION covenants that it has no interest, direct or indirect, in the affairs of SMART, the State of Michigan, or of any local jurisdiction or other entity which would conflict in any manner with the performance of service under this Contract; and that no individual or subcontractor having such interest shall be employed by the COMMISSION.

STIPULATION: That appointed members of the LAKE ERIE TRANSPORTATION COMMISSION (LETC) may be elected or appointed officials or employees of the local jurisdictions represented on the LETC, or otherwise qualified to serve as a LETC member under the terms and conditions of the Inter-Local Agreement between the City of Monroe and the Charter Township of Frenchtown.

15. SECTION 13 (c) AGREEMENT

The COMMISSION agrees to abide by the terms and conditions of any agreement entered into by SMART pursuant to 49 USC 5333(b), "13 (c)", of the Federal Transit Act, as amended, in the performance of its obligations hereunder.

16. PROJECT EQUIPMENT AND/OR FACILITIES PROVIDED BY SMART

SMART shall provide, without charge, equipment and/or facilities to the COMMISSION as specified in Exhibit "C" attached hereto and made a part hereof, subject to the following terms and conditions:

- (A) Exhibit "C" (Project Equipment) may be revised from time to time, as necessary.
- (B) The COMMISSION shall use PROJECT equipment and/or facilities only for services as specified in Exhibit "A" (Service Area and Program) and for necessary activities directly connected with the performance of such services.
- (C) Title to all property, real or personal, relating to the PROJECT shall remain with SMART, whether such items are provided directly by SMART or purchased by the COMMISSION on SMART's behalf with funds supplied under this Contract. SMART has the right to repossess PROJECT equipment and to reassign items of equipment as required for the best interest of SMART.
- (D) SMART retains the sole right to determine the style, color, location, etc. of all painting, logos, and lettering to be applied to SMART equipment and facilities.

- (E) SMART shall be responsible for the replacement of equipment, if it is mutually determined by SMART and the COMMISSION that such equipment is no longer economically feasible to maintain.

17. EQUIPMENT MAINTENANCE

The COMMISSION shall maintain all PROJECT equipment in good working condition, unless it is determined by SMART and the COMMISSION that specific items of equipment are no longer feasible to maintain. COMMISSION agrees that it will not allow any equipment to be out of service for a period of time in excess of seven (7) calendar days, unless this results from conditions beyond its control. Maintenance shall be carried out in conformance with specifications for such equipment, as may be available either from its manufacturer, or the maintenance procedures specified by SMART.

18. INSURANCE AND INDEMNIFICATION

I. Vehicle Insurance

The COMMISSION shall advise SMART in writing of its decision to select Option A or Option B at the time of signing this contract, and shall provide a minimum of 60 days notice prior to the proposed effective date of a change from one Option to another.

OPTION A: SMART Provided Insurance

COMMISSION may be included in SMART's vehicle insurance programs described below, and be charged a "premium" accordingly. Premiums are predicated by the pooled loss experience of all SMART-owned vehicles and are assessable based on retrospective rating.

1. Physical Damage:

SMART shall provide comprehensive and collision insurance on a book value basis for all SMART-owned vehicles. Purchase of Service contractors pay \$1,000 deductible per occurrence for each damaged vehicle. On any loss that exceeds the deductible, SMART reserves the right to either repair the vehicle or replace it with one from SMART's central maintenance reserve. The COMMISSION is responsible for payment of the deductible, regardless of the book value of the vehicle. In the event a vehicle has no remaining book value (and thus no insurance), SMART will pay repair costs in excess of the deductible paid by COMMISSION, or replace it with a maintenance reserve vehicle.

2. Vehicle Liability:

SMART warrants that it is a qualified self-insurer for vehicle liability, with a self-insured retention per occurrence of \$1,000,000 and excess vehicle liability insurance in the amount of \$10,000,000 per occurrence. Said self-insurance and excess insurance shall include the COMMISSION as an additional insured with respect to operation of SMART-owned vehicles, to the extent that use of PROJECT equipment is within the scope of the PROJECT as defined in this contract.

OPTION B: COMMISSION -Provided Insurance

COMMISSION may purchase its own vehicle insurance, provided it provides the coverage, limits of liability, and conditions described below. Any and all insurance must be written with an insurer admitted and licensed in the State of Michigan and approved by SMART's Manager of Risk Management. Proposed insurance carriers should have a Best's rating of "A VI" or above, however, SMART reserves the right to accept or reject any proposed carrier. SMART must be provided with certificates of insurance prior to the effective date of said coverage, and must be provided a complete copy of the insurance policy(ies) within the thirty (30) days following their effective date.

Coverage must be primary and non-contributory and provide a waiver of subrogation in favor of SMART. If the COMMISSION is self-insured, a certificate from the appropriate State agency must be furnished by such agency to SMART. If during the term of the contract, the insurance certificate or any required coverage expires or is otherwise modified, the COMMISSION is responsible for immediately providing a renewed certificate of insurance to SMART. The purchase of insurance coverage or furnishing the aforesaid certificate to SMART shall not be a satisfaction of the COMMISSION'S indemnification of SMART.

1. Physical Damage

COMMISSION shall purchase vehicle physical damage insurance, including comprehensive and collision coverage, for SMART-owned vehicles for the greater of actual cash value or book value of the vehicle. SMART shall be named as Loss Payee on the policy, and be provided with a minimum of 30 days prior written notice of cancellation. COMMISSION shall be responsible for the payment of any deductible and SMART will not be obligated to pay for repairs to the vehicle.

2. Vehicle Liability

COMMISSION shall purchase vehicle liability insurance for SMART-owned vehicles, including \$5,000,000 per occurrence Bodily Injury/Property Damage (CSL is acceptable), and Michigan No-Fault protection. SMART shall be named as Additional Insured on the liability policy and be provided a minimum of 30 days prior written notice of cancellation.

II. Insurance Other Than Vehicular

Regardless of option selection for SMART-owned vehicle insurance, the COMMISSION shall purchase the following insurance and provide SMART with certificates of insurance including 30 days notice of cancellation or change in coverage.

1. Workers' Compensation

COMMISSION shall maintain statutory Workers' Compensation and \$500,000 Employer's Liability insurance for all employees, and require such insurance for all employees of any sub-contractors.

2. General Liability

COMMISSION shall maintain comprehensive general liability insurance with a limit not less than \$1,000,000, including contractual liability. Said policy shall name SMART as Additional Insured.

3. Other State or Federally Funded Vehicles

COMMISSION shall maintain insurance on any vehicle not titled or registered to SMART, but for which State or Federal dollars are used to support the purchase of the non-SMART-owned vehicle, including vehicle liability with a limit not less than \$5,000,000 combined single limit. Said policy shall name SMART as Additional Insured.

19. INDEMNIFICATION

Notwithstanding any other provision in this agreement, COMMISSION shall indemnify, defend and save harmless SMART, its officers, agents, employees, and members of its Board of Directors from any and all claims, losses and damages, including costs and attorney fees occurring or resulting from any act, omission or negligence of or chargeable to the parties, their officers, agents, employees, subcontractors, successors and/or assigns arising out of and pursuant to this agreement.

20. SERVICE SCHEDULING AND INTERRUPTION

SMART shall establish scheduling of service to be provided, based on recommendations of the COMMISSION. Such scheduling shall specify vehicles in service at various times, and total revenue vehicle hours and miles to be operated per day, week, month, etc., and will be adjusted seasonally or at other appropriate times. For a particular operating day, COMMISSION shall have authority to amend the scheduling established by SMART, by increasing or decreasing vehicles hours scheduled that day by up to 10% of the standard number of vehicle hours scheduled or by five vehicle hours, whichever is less.

In the event that the COMMISSION deems it necessary to add or cancel service beyond the limitations above, prior approval of the designated SMART administrative officer must be obtained. In the event that a severe service interruption results from catastrophe, weather or other Act of God, or work stoppage, COMMISSION shall notify SMART within one hour of its occurrence.

21. PASSENGER FARES AND OTHER REVENUE

The COMMISSION shall establish passenger fares as specified in Exhibit "A". Any such fares shall include the provision of half fares to older adults and disabled individuals during at least off-peak periods, in accordance with Federal and State law. Any changes in such fares must be specifically approved by SMART after appropriate public hearing.

22. ADVANCE

A schedule of advance funds to be provided under this Contract and any prior contracts is included in Exhibit "B" Summary. This contract continues any prior advance funds. The balance of advance funds shall be deducted at the latest date necessary to recoup the entire advance by the end of the Contract term unless a successor contract has been entered into between the parties which provides for the continuance of this advance.

23. DIRECT PAYMENT OF COSTS BY SMART

SMART may pay directly to the provider of goods and/or services such costs of PROJECT operation as it may determine to be appropriate. Such costs may include, but are not limited to:

- (A) utilities and major repairs to the operating facility
- (B) radio and telephone system charges
- (C) insurance on PROJECT equipment and facility
- (D) bulk purchase of fuel and oil
- (E) parts and supplies for vehicle maintenance

Payments made by SMART under this paragraph shall reduce SMART's payment obligation hereunder to the extent of the amount paid.

24. COMPENSATION FOR OPERATING COSTS

SMART shall subsidize the net cost of the PROJECT up to a maximum of an amount to be determined and approved by SMART's Board of Directors, as specified in Exhibit "B". Said subsidy shall be paid under the terms and conditions agreed upon between both parties.

25. TERMINATION BY LEGISLATIVE OR COURT ACTION

This Contract shall be cancelled, effective immediately, upon either Legislative or Court action causing a termination and/or reduction of State and/or Federal funds to SMART.

26. TERMINATION OF CONTRACT FOR CAUSE

If either party hereto, through any cause within its control, shall fail to fulfill in timely and proper manner its obligations under this Contract or shall violate any of the covenants, agreements or stipulations herein. The party without fault shall give the other party prompt written notice of such default, setting forth the facts in reasonable detail; and in the event that the allegedly defaulting party has not remedied such default within thirty (30) days, the non-defaulting party shall have the right to terminate this agreement for cause. If such right of termination for cause is exercised, the party without fault shall have no further liability to the other party excluding repayment of an advance if by COMMISSION. and shall be entitled to damages sustained by such breach including costs and attorney fees sustained in an effort to collect their damages, if any.

27. GENERAL CONDITIONS OF TERMINATION OR EXPIRATION

- (A) If SMART exercises the right to terminate this Contract for cause, or because of conditions beyond the control of SMART, such termination shall have immediate effect upon receipt of written notice by the COMMISSION.
- (B) Upon notification of termination of this Contract, the COMMISSION shall not incur new obligations for the period after the effective date of termination, and shall cancel as many outstanding obligations as possible.
- (C) Upon either termination or expiration, the COMMISSION shall submit final billings, reports, and other information requested by SMART within thirty (30) days from the effective date of such termination or expiration. After audit and payment of such final

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billings by SMART, SMART shall be under no further obligation to the COMMISSION.

(D) Any notification of termination required hereunder shall be made only in writing and delivered by certified mail, return receipt requested, to the following party, as the case may be:

(1) If to SMART:

SUBURBAN MOBILITY AUTHORITY for REGIONAL
TRANSPORTATION
535 Griswold, Suite 600
Detroit, Michigan 48226
Attention: John Hertel, General Manager

(2) If to the COMMISSION:

LAKE ERIE TRANSPORTATION COMMISSION
1105 West Seventh Street
Monroe, Michigan 48161

(E) In the event of termination or expiration of this Contract, the COMMISSION shall cooperate with SMART in an orderly transition from its involvement in the Project operation, to include but not be limited to: Inventory of all goods, records and equipment including rolling stock, and all other actions necessary for an orderly transition. Further, COMMISSION shall provide written notification to SMART of all claims and legal actions pending against the COMMISSION with respect to the PROJECT.

28. COUNTERPARTS OF CONTRACT

This Contract may be executed in several counterparts, each of which shall be deemed to be an original.

29. SEVERABILITY AND INTENT

Should any part of this Contract be declared to be invalid, unconstitutional or beyond the authority of either party to enter into or carry out, such decision will not affect the validity of the remainder of this Contract, which will continue in full force and effect.

This Contract is not intended to be a third-party beneficiary Contract and confers no rights on anyone other than SMART and the CONTRACTOR.

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30. ASSIGNMENT

This Contract shall not be assigned, transferred or pledged by either party without the prior written consent of the other party. However, this Contract shall be binding upon the successors or assigns, of the respective parties.

31. EFFECT

This Contract shall become binding on the parties hereto and of full force and effect upon the signing thereof by the duly authorized officials for the LAKE ERIE TRANSPORTATION COMMISSION (COMMISSION) and the SUBURBAN MOBILITY AUTHORITY for REGIONAL TRANSPORTATION (SMART).

This is the complete Agreement of the parties and may only be amended in a writing signed by both parties.

SUBURBAN MOBILITY AUTHORITY
for REGIONAL TRANSPORTATION

By _____
John C. Hertel, General Manager

Date: _____

LAKE ERIE TRANSPORTATION

By: _____

Its: _____

Date: _____