



CITY OF NILES

November 30, 2023

Mayor Sean Denison
City of Buchanan, MI
302 N. Redbud Trail
Buchanan, MI 49047

Dear Mayor Denison:

It has been a privilege to provide public transportation services to the citizens of Buchanan. The feedback from public transportation users has been very positive and we have been able to increase transportation options for your residents.

We are currently investing in new software that will help us better identify ridership by jurisdiction but I can tell you DART ridership trips increased 14,200 since adding service for Buchanan. Berrien Bus' software also isn't very effective at breaking down ridership by jurisdiction but it appears Buchanan trips were close to 5,200 on an annual basis when this organization provided public transportation service.

The City of Niles is hopeful we can renew the public transportation agreement which is due to expire December 31, 2023. This arrangement greatly benefits the residents of both communities.

Please let me know if you require any further information or discussion.

Sincerely,

Richard Huff
City Administrator

**INTERGOVERNMENTAL AGREEMENT FOR
TRANSIT SERVICE**

This Intergovernmental Agreement for Transit Service ("Agreement") is made this ___ day of _____ 2023 ("Effective Date") by and between the City of Niles, Michigan, a Michigan home rule City, having the address of 333 North 2nd Street, Niles Michigan 49120 ("Niles") and the City of Buchanan, Michigan, a Michigan home rule city, having the address of 302 North Redbud Trail, Buchanan, Michigan 49107 (hereinafter "Buchanan") (each individually a "Party" and collectively the "Parties").

WHEREAS, Buchanan wishes to provide public bus transit services to its citizens and members of the public and have Niles Dial-A-Ride ("DART") service provide these same services through operation and maintenance of a public transit system for Buchanan pursuant to the terms of this Agreement;

WHEREAS, the Parties are authorized to enter into this Agreement under Michigan Public Act 35 of 1951, being MCL 124.1, et seq.; and

WHEREAS, the Parties find it in the best interest of the public health, safety and welfare to provide such transit service to Buchanan and the Parties now wish to formally memorialize their obligations related to providing the transit services specified in this Agreement.

NOW THEREFORE, in consideration of the mutual promises herein and other good and valuable consideration, the receipt and adequacy of which is acknowledged, the Parties agree as follows:

1.0 Service.

1.1 General. Throughout the term of this Agreement, the City of Niles DART shall provide transit service as set forth below, in compliance with all applicable law, including without limitation applicable Federal law.

1.2 The City of Niles DART agrees to provide demand response and/or deviated fixed route transit service to the citizens of Buchanan and the surrounding area from 7:00 a.m. to 5:00 p.m. Monday through Friday and 10:00 a.m. to 3:00 p.m. on Saturday, with the exception of major holidays, training dates, and inclement weather closures as determined by the City of Niles and DART management.

1.3 Additional Service. Additional transit service may be provided by Niles DART, in its discretion, as Niles determines appropriate given the demand for service, available resources, and cost allocation. Additional transit service shall be at Niles' sole cost, unless the parties enter into a dated written amendment to this Agreement for additional services at a rate different from that set in this Agreement.

1.4 Buses. Niles shall provide buses sufficient to operate during posted service hours. Buchanan shall not be responsible for capital rolling stock acquisition or for costs associated with replacement of buses necessary to provide service.

1.5 Marketing. Niles DART shall provide all marketing and advertising products, materials, route maps, and schedules for the Service.

2.0 Term and Termination.

2.1 Term. This Agreement shall commence on the Effective Date, and shall continue in full force and effect until December 31, 2026, unless sooner terminated as herein provided. This Agreement shall only renew upon a dated written agreement between the parties.

2.2 Termination. Either Party may terminate this Agreement for cause at any time during the Term of this Agreement upon one hundred eighty (180) calendar day's prior written notice, for cause.

3.0 Payment

3.1 Payment. During the term of this Agreement, Buchanan shall pay Niles DART for the Service the entire amount of Buchanan's revenue generated from its dedicated transportation millage (approximated to be \$90,000.00 per year). Payment shall be made following the State of Michigan tax schedule (remit taxes collected the 1st-15th of the month and the 16th through end of month, within 10 days). In the event of termination before the end of a fiscal year, the millage amount to be paid to Niles shall be prorated for the days of Service provided in that fiscal year.

4.0 Operation.

4.1 General. Niles DART agrees that the Service shall be operated consistent with the description under Section 1 of this Agreement, which may be modified from time to time upon execution of a dated written amendment to this Agreement, and consistent with the general practices and procedures of Niles DART.

4.2 Signage and Bus Stops. As of the signing of this agreement, there are no active bus stops, signs or shelters in the City of Buchanan. No new signs, stops, or shelters shall be erected on municipal property without the prior dated written agreement of the Parties. Costs associated with any construction, improvement, and/or maintenance of signage, bus stops, and/or bus shelters located on municipal property within the city limits of Buchanan shall be established as a part of the aforementioned agreement.

4.3 Fares. Fares will be set in accordance with the DART Fare Change policy, which requires a public hearing and review by the Niles City Council.

4.4 Hours of Operation. The Service shall be provided consistent with days and hours of operation, including holiday closures, of Niles DART.

4.5 General Manager. The Niles DART General Manager, or designee, shall be solely responsible for the day-to-day operations of the Service, including coordination and oversight of all transit-related consultants, oversight of all marketing activities, providing information about the Service to the public and business community, applying for and tracking grants, ridership and routing analysis, capital rolling stock maintenance; and acquisition, facility acquisition, construction and

maintenance costs; complaint monitoring and response, and all other job functions as noted in the General Manager's Niles DART job description.

5.0 Miscellaneous.

5.1 Governing Law and Venue. This Agreement shall be governed by the laws of the State of Michigan and any disputes concerning the provisions hereof shall be brought in the court of competent jurisdiction located in the County of Berrien, State of Michigan.

5.2 No Waiver. Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by any Party shall not constitute a waiver of any of the other terms or obligations of this Agreement.

5.3 Integration. This Agreement constitutes the entire agreement between the Parties and supersedes all prior oral or written communications, discussions, negotiations and drafts.

5.4 Third Parties. There are no intended third-party beneficiaries to this Agreement.

5.5 Notice. Any notice under this Agreement shall be in writing, and shall be deemed sufficient when directly presented or sent pre-paid, first class U.S. Mail to the Party at the address set forth on the first page of this Agreement.

5.6 Modification. This Agreement may only be modified or amended upon a dated written agreement of the Parties. No agent, employee, or representative of either Party is authorized to modify any term of this Agreement, either directly or impliedly by a course of action.

5.7 Governmental Immunity. Both Parties and their officers, attorneys and employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities or protections provided by Michigan law. Notwithstanding any provision herein, Buchanan shall, to the extent allowed by law, indemnify and hold Niles harmless for any claim or cause of action or liability for same for any occurrence or incident prior to the date of this Agreement.

5.8 Assignment; Subcontracting. Neither Party shall assign or otherwise transfer any interest in this Agreement, or enter into any assignment of or subcontract for the provision of any of the Services to be performed under this Agreement, without the prior dated written consent of the other party.

5.9 Independent Contractor Relationship. The relationship of Niles DART to Buchanan is and shall continue to be that of an independent contractor and no liability or benefits, such as worker's compensation, pension rights or liabilities, arising out of or related to a contract for hire or an employer/employee relationship, shall arise or accrue to either party or either party's agents or employees as a result of the performance of this Agreement. Nothing contained herein shall be deemed or construed by the parties hereto, nor by any third party, as creating an agency relationship, or a partnership or joint venture between the parties hereto, it being understood and agreed that none of the provisions contained herein, nor any acts of the parties hereto, shall be deemed to create any relationship between the parties hereto other than an independent contractor relationship.

5.10 Severability. If any one or more provisions of this Agreement or the application thereof to any person or circumstance shall to any extent be declared or determined to be invalid or unenforceable, the validity, legality and enforceability of the remainder of this Agreement, or the application of such provisions to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected or impaired thereby, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

5.11 Captions. The headings of the sections and other subdivisions in this Agreement are for convenience only and shall not be used to construe or interpret the scope or intent of this Agreement or in any way affect the same.

5.12 Mutual Waiver of Consequential Damages: The parties waive claims against each other for consequential, special and exemplary damages caused by, related to or arising out of this Agreement or the failure to perform properly any obligation arising out of or relating to this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

Sean Denison, Mayor
City of Buchanan, MI
302 N. Redbud Trail
Buchanan, MI 49047

Nick Shelton, Mayor
City of Niles, MI
333 N. Second Street
Niles, MI 49120