

INTERGOVERNMENTAL AGREEMENT FOR TRANSIT SERVICE

This Intergovernmental Agreement for Transit Service ("Agreement") is made this ____ day of _____, 2021 ("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 cease being a direct provider of bus transit services to its citizens and members of the public ~~on the transportation routes described in this Agreement~~ 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 1.1~~ General. Throughout the term of this Agreement, shall provide transit service as set forth ~~in Exhibit A ("Service"), attached hereto and incorporated herein by this reference in accordance with the routes and schedules contained in Exhibit A (the "Route Schedule") below,~~ in compliance with all applicable law, including without limitation applicable Federal law.

The City of Niles's 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.

1.2 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's 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.

1.3 Buses. Niles shall provide buses sufficient to ~~operate during posted service hours~~ ~~serve the Route Schedule~~. Buchanan shall not be responsible for capital rolling stock acquisition or for costs associated with replacement of buses necessary to provide ~~Services~~ service for the Route.

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Commented [KG1]: Exhibit A was not sent with the agreement. This exhibit should describe the service provided, which is primarily demand response, as well as the deviated fixed route.

1.4 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 _____, 2023, 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. 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 remitted in an annual lump sum payment within sixty (60) calendar days of date of collection by Buchanan. Any unexpended millage fund balance held by Buchanan shall be transferred to Niles as of the Effective Date, except for a reserve amount of _____ to be retained by Buchanan to address pending claims and cover required audit expenses. 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.

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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. Buchanan's passenger fares shall remain at the currently charged rates for the Term of this Agreement. Upon renewal, 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 Bus Transfers. In additional consideration for entering into this Agreement, Buchanan shall transfer, subject to any existing liens and MDOT restrictions, without cost, titles for all buses currently being used by public transit services by Buchanan, as allowed by Michigan law and regulations, to Niles for the Term of this Agreement or until this Agreement is terminated pursuant to Section 2.2, whichever occurs first. The buses subject to transfer are listed by make, year and vehicle identification number in Exhibit A to this Agreement. Unless otherwise agreed in a dated writing by the parties, title to the buses shall be surrendered by Niles to Buchanan immediately upon the ending date of the Term of this Agreement or the date of termination pursuant to Section 2.2, whichever occurs first if Buchanan intends to use the buses for the provision of public transit services. If the buses, or replacement buses subsequently received by Niles, will no longer be used for the provision of public transit service for Buchanan, MDOT must be consulted to determine proper disposition.

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6.0 Miscellaneous.

6.1 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 locate in the County of Berrien, State of Michigan.

6.2 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.

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

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

6.5 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.

6.6 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.

6.7 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.

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6.8 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.

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6.9 Liens. Niles shall not permit the placing of any liens or security interests on the buses listed in Exhibit A to this Agreement.

6.10 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.

6.11 Severability. If any one or more provisions of this Agreement or the application thereof to any person or circumstances 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.

6.12 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.

6.13 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.

Heather Grace, City Manager
Mayor

Nicholas Shelton,

City of Buchanan, MI
302 N Redbud Trail
Buchanan, MI 49107

City of Niles, MI
333 N 2nd Street
Niles, MI 49120

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