

MEMORANDUM OF UNDERSTANDING
BETWEEN
BUTLER COUNTY REGIONAL TRANSIT AUTHORITY
AND THE
CITY OF MIDDLETOWN

This Memorandum of Understanding (MOU) is made by and between the Butler County Regional Transit Authority, 3045 Moser Court, Hamilton, OH 45011 (BCRTA), and the City of Middletown, 1 Donham Plaza, Middletown, OH (the City), who may be referenced individually as “Party” and collectively as “Parties.”

SECTION 1: PURPOSE

- 1.1 The purpose of this MOU is to establish BCRTA as the designated recipient of all federal transit funds for the benefit of the Middletown Urbanized Area. This means BCRTA will permanently assume and perform all FTA related transit responsibilities for the Middletown Urbanized Area.
- 1.2 Designated recipients are defined in Chapter 49, Section 5302(5) of the United States Code as either “an entity... in accordance with the planning process under sections 5303 and 5304, by the Governor of a State, responsible local officials, and publicly owned operators of public transportation, to receive and apportion amounts under section 5336 to urbanized areas of 200,000 or more in population” OR a “state or regional authority, if the authority is responsible under the laws of a state for a capital project and for financing and directly providing public transportation”.
- 1.3 As an urbanized area, the City of Middletown is a designated recipient entity for federal transit funds.
- 1.4 The “Middletown Urbanized Area” is the urban area delineated after each decennial census for the purpose of tabulating and presenting data for the urban and rural population and housing within the United States as most recently defined by the US Department of Commerce Census Bureau in 87 FR 80114, Docket 2022-28286,
- 1.5 BCRTA is a designated recipient of federal transit funds from the FTA separate and apart from the City’s designated recipient status.
- 1.6 The United States Department of Transportation (DOT), through the Federal Transit Administration (FTA), only awards federal transit funds through grant awards to direct or designated recipients.

SECTION 2: TERM OF MOU; TERMINATION; NOTICE

- 2.1 This MOU becomes effective on the date it is signed by both parties (the Effective Date).

- 2.2 The MOU may be terminated if: (i) the Parties mutually agree in writing to terminate the MOU; or (ii) the City provides the BCRTA with at least One Hundred Eighty (180) days' prior written notice of its desire to terminate the MOU for any reason.
- 2.3 All notices to be given hereunder shall be emailed or mailed to the following:

The City of Middletown

_____,
1 Donham Plaza
Middletown, OH 45042
[email]

BCRTA

Matthew Dutkevicz, Executive Director
3045 Moser Court
Hamilton, OH 45011
dutkeviczmm@butlercountyrta.com

- 2.4 Transfer of Rolling Stock and Equipment:

In the event of termination, the transfer of any and all rolling stock and equipment that was previously property of the City of Middletown is to be transferred back from BCRTA to the City of Middletown as outlined in the appropriate Federal Transit Administration (FTA) Guidelines found in: FTA Circular 5010.1F Section 8 Pages IV 50-51. This process is to be initiated by engaging FTA and ODOT for guidance/appropriate reporting and oversight.

SECTION 3: OBLIGATIONS OF BCRTA

In furtherance of this MOU, BCRTA:

- 3.1 Agrees to execute a letter to the Ohio Department of Transportation (ODOT) and OKI Regional Council of Governments (OKI) requesting that the Governor of the State of Ohio and OKI recognize BCRTA as the designated recipient for all USDOT FTA funds currently apportioned to the City of Middletown, OH as a regional authority.
- 3.2 Agrees to, within 60 days of execution of this MOU, accept full responsibility for the care and maintenance of all transit assets.
- 3.3 Agrees to transfer or create new contracts for all services that support City transit within 180 days of execution of this MOU.
- 3.4 Agrees to provide the same level of transit service to the Middletown Urbanized Area as exists at the time of this MOU, excluding CincyLink commuter services and "R" routes which are locally funded/matched by BCRTA.
- 3.5 Agrees to seek local match operating assistance annually, or as let by ODOT, to support operations within the City of Middletown Urbanized Area. If operating assistance is

awarded, the City's local general fund contribution may be offset by any award of General Revenue Funds operating match made by ODOT Office of Transit.

- 3.6 Agrees to vacate the City Bus Garage at 400 N Main St and allow the City to use the building at 400 N. Main St. for any other purpose consistent with any remaining FTA interest, contractual obligations, or regulations.
- 3.7 Agrees to provide irregularly scheduled Supplemental Transit Services upon terms mutually agreed upon by the Parties. Requests for Supplemental Transit Service shall be limited to those conforming to limitations and requirements set forth by the FTA.

SECTION 4: OBLIGATIONS OF THE CITY

In furtherance of this MOU, the City:

- 4.1 Agrees to execute a letter to ODOT and OKI affirming BCRTA's request to the Governor of the State of Ohio and OKI to recognize BCRTA as the designated recipient for USDOT FTA funds apportioned to the City of Middletown, OH, and remove the City as the designated recipient of these funds.
- 4.2 Agrees to provide an annual general fund contribution of five hundred and fifty thousand dollars (\$550,000) to BCRTA on January 1st of the first year this MOU is in effect. Following the first year of this MOU, the City agrees to increase the City's annual general fund contribution in an amount equal to the Consumer Price Index "All Items less food and energy in U.S. city average all urban consumers, not seasonally adjusted" as available from the Bureau of Labor Statistics on January 1st of each year. In no scenario can the City's general fund contribution be less than \$550,000 in any year.
- 4.3 Agrees to cooperate with BCRTA to notify BCRTA of accounts and share agreements as required to transfer services and payment responsibility, as outlined in Section 3.3 above.
- 4.4 Agrees to transfer all rolling stock, tools, buildings (excluding the storage garage at 400 N Main St), inventory, and equipment purchased or constructed with FTA funds to the BCRTA within 180 days after the Effective Date of this MOU.
- 4.5 Agrees to, in a separately executed document, lease to BCRTA the property located at 55 S. Broad Street, or a reasonable portion thereof, for the purposes of maintaining and operating the existing Transit Station until such a time as funding may be obtained by BCRTA for the purposes of relocating or rebuilding a station. The City acknowledges its commitment to allow the Station to be used for public transit purposes consistent with FTA's interest in the asset as described in FTA C 5010.1E.
- 4.6 Agrees that, upon completion of all obligations in this MOU required to transfer responsibilities, the City will no longer be responsible for the following:
 - 4.6.1. Maintaining transit-specific plans or policies
 - 4.6.2. Maintaining transit assets or facilities

- 4.6.3. Completing an FTA Triennial Review
- 4.6.4. Approving transit-specific plans or policies at the City Council level
- 4.6.5. Approving transit-specific procurements at the City Council level
- 4.6.6. Dedicating City personnel to transit, completing FTA training or executing ECHO draws
- 4.6.7. Submitting National Transit Database (NTD) information
- 4.6.8. Managing Accounts Payable and Receivable for transit or BCRTA
- 4.6.9. Executing or having oversight responsibility to the FTA or the USDOT

SECTION 5: MUTUAL OBLIGATIONS - BCRTA AND THE CITY

In furtherance of this MOU, the Parties collectively:

- 5.1 Agree to meet or communicate annually no later than September 1st of each year to determine the level of public transit service provided within the City for the following calendar year.
- 5.2 Agree to meet or communicate annually no later than September 1st of each year to determine the level of ODOT local match and City general fund contribution. If the total of both items is less than the required local match in item 4.2, then BCRTA shall immediately provide public notice or hearings for service reduction effective January 1 of the following year to balance service with budget and match.
- 5.3 Agree to work cooperatively to seek discretionary grants and address new and emerging transit needs as identified by City staff or the BCRTA.
- 5.4 Agree that if a tax is ever levied within the Middletown Urbanized Area in support of public transit that fulfills the local match obligation of this MOU, both the City and BCRTA shall be relieved of their obligations to provide local match and seek local match assistance as described herein.

SECTION 6: GENERAL PROVISIONS

- 6.1 Subject to the contractual transfer provisions outlined in Sections 3.2, 3.3, 4.3, 4.4, and 4.5, all other agreements or MOUs executed between the City and BCRTA shall be null and void.
- 6.2 Neither this MOU nor any rights, duties, or obligations described herein shall be assigned by any party hereto without the prior express written consent of the other party.
- 6.3 This MOU shall be construed and interpreted and the rights of the parties determined in accordance with the laws of the State of Ohio. To the extent that BCRTA is a party to any litigation arising out of, or relating in any way to the MOU or the performance thereunder such an action shall be brought only in a court of competent jurisdiction in Butler County, Ohio.
- 6.4 This MOU constitutes the entire agreement and understanding between the parties, and any changes or modifications to this MOU shall be made and agreed to by all parties in writing.

- 6.5 Captions. Captions contained in this MOU are included only for convenience of reference and do not define, limit, explain or modify this MOU or its interpretation, instruction or meanings and are in no way intended to be construed as part of this MOU
- 6.6 Severability. If any Clause of this MOU is held invalid, the remainder of the MOU shall not be affected thereby if such remainder would then continue to conform to the terms and requirements of applicable law.
- 6.7 Force Majeure. If a Party's performance of obligations under this MOU is materially hampered, materially interrupted, or materially interfered with for unforeseen reasons entirely outside of its control including, but not limited to: fire, casualty, lockout, strike, labor conditions, utility or telecommunications provider service interruption, unavoidable accident, riot, war, earthquake, landslides, public health pandemic, disease, or other acts of God; or by the enactment, issuance, or operation of any municipal, county, State, or federal law, ordinance or executive, administrative, or judicial regulation, order or decree (except that of BCRTA acting in its commercial or contracting capacity); or by any local or national emergency, the impacted party shall employ all reasonable mitigation measures; to the extent that a Party's performance remains materially hampered, interrupted or interfered with notwithstanding such mitigation, and provided that the Party impacted has provided to the other Party notice within seven (7) days of commencement of event materially impeding performance, such Party shall be excused from performance of this MOU; and to the extent BCRTA is the impacted Party, BCRTA will not be responsible for payment of services not yet rendered but shall not be excused from responsibility for payments for work performed or services provided.
- 6.8 Access to Records. BCRTA shall have access to any books, records, and documents of the City that are reasonably related to this MOU for audits, examinations, excerpts, and transcripts, and copies thereof shall be furnished upon reasonable advance request, during the period the MOU is in effect and for three years after the MOU terminates or expires or as long as required by the FTA, whichever is later, except in the event of litigation or settlement of claims arising from the performance of this MOU, in which case the City agrees to maintain same until BCRTA has disposed of all such litigation, appeals, or claims related thereto.
- 6.9 No Pending Lawsuits. The City represents that they are aware of no pending lawsuits, claims, pre-suit discussions, and other legal actions or obligations at the Effective Date of this MOU. The City agrees to notify BCRTA immediately if it becomes aware of any pending lawsuits, claims, pre-suit discussions, and other legal actions or obligations. This obligation shall extend beyond the Effective Date of this MOU.

SECTION 7: SIGNATURES

IN WITNESS WHEREOF, the parties have executed this MOU as of the day and year last written below.

CITY OF MIDDLETOWN, OHIO

**BUTLER COUNTY REGIONAL
TRANSIT AUTHORITY**

BY: _____

BY: _____

Ashley Combs, Acting City Manager

Matthew Dutkevicz, Executive Director

DATE: _____

DATE: _____