

MEMORANDUM OF UNDERSTANDING

Amongst the jurisdictions of

The City of Annapolis, Maryland;

and

Howard County, Maryland

Collectively,

THE CENTRAL MARYLAND TRANSPORTATION & MOBILITY CONSORTIUM

DATED AS OF: February 28, 2014

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE PARTIES OF THE
CENTRAL MARYLAND TRANSPORTATION & MOBILITY CONSORTIUM**

RECITALS

This Memorandum of Understanding (“MOU”) is entered into by the City of Annapolis, Maryland, a body corporate and politic, and Howard County, Maryland, a body corporate and politic, (individually, each a “Party” and collectively, either the “Parties”).

WHEREAS, the purpose of this MOU is to set forth the understandings that shall govern the Parties’ cooperative efforts to establish an efficient and effective coordinated regional fixed-route and paratransit bus system throughout central Maryland which will be branded and referred to as the “Regional Transportation Agency of Central Maryland” (or “RTA”); and

WHEREAS, the Parties agree that each shall be a full and equal partner in this endeavor; and

WHEREAS, as provided in this MOU, the Parties agree to appoint members to the Steering Committee, which shall establish initial bylaws and operating procedures for the Central Maryland Transit & Mobility Commission (the “Commission”), as defined in Article II of this MOU; and

WHEREAS, as provided in this MOU, the Parties shall appoint representatives to the Commission, which shall provide policy and direction for the services operated under the RTA and shall oversee the third-party contractor who will manage the RTA on behalf of the Parties; and

WHEREAS, the obligations set forth in this MOU are contingent on compliance with all personnel, budgeting, purchasing, and expenditure laws, regulations and requirements applicable to each Party, including, but not limited to, all applicable county and/or city codes and charters; and

WHEREAS, each of the Parties currently provides funding for fixed-route and/or paratransit bus services (the “Transit Services) in their individual jurisdictions through a combination of private and public organizations; and

WHEREAS, the existing approach to the provision of Transit Services by individual Parties may, at times, result in cost inefficiencies, duplication of effort, and unnecessary administrative and financial burdens on the Parties;

WHEREAS, the Transit Services individually provided by the Parties may operate into some or all of the other Parties’ jurisdictions, while maintaining different rules and fares that could be seen as confusing or inconsistent to customers; and

WHEREAS, under the current individual organizational structures for providing Transit Services, the Parties are unlikely to provide additional local funding for regional Transit Services that cross jurisdictional boundaries during the initial term of this MOU; and

WHEREAS, the Parties provide operational funding to outside Transit Services that operate transit services within their respective jurisdictions; and

WHEREAS, The Parties have determined that there is a need for more control over the financial management and quality of such Transit Services; and

WHEREAS, direct access to State and Federal funding for Transit Services is not always available to private organizations, including those utilized by some of the Parties to provide Transit Services; and

WHEREAS, central Maryland requires regional Transit Services, like the proposed RTA, that cross municipal, city, and county lines to link existing residential areas with employment and services, and to provide the last mile connection for regional rail commuters; and

WHEREAS, the Parties would realize significant financial and operating benefits through economies of scale by combining their individual Transit Services; and

WHEREAS, existing contracts and grants of the Parties for individually provided Transit Services will expire on or about June 30, 2014;

NOW THEREFORE, in consideration of these Recitals, and the mutual covenants and agreements of the Parties hereinafter set forth, the sufficiency of which the Parties acknowledge, the Parties agree as follows:

I. GENERAL ACKNOWLEDGMENTS BY THE PARTIES

- A. The Parties acknowledge and agree that Howard County, Maryland, on behalf of the Parties, shall procure an independent third-party contractor (the "Contractor") to incorporate a for-profit corporation (the "Corporation") to manage and operate Transit Services on behalf of the Parties, in accordance with the Howard County Code and Charter, as may be amended, and the contract between Howard County and the Contractor (the "Contract").
- B. The Parties acknowledge and agree that Howard County, Maryland will serve as the Contract Manager, as described in Article III herein, until such time as an authority or other State-legislated organization is established, or the Commission votes to appoint a new Contract Manager.
- C. The Parties acknowledge and agree to establish a written funding schedule ("Funding Schedule") for purposes of financing the Parties' Transit Services in accordance with the Contract. The Funding Schedule is attached hereto and incorporated herein as **Exhibit A**.

- D. The Parties acknowledge and agree to provide funds to the Contract Manager in accordance with the Funding Schedule, subject to appropriation and availability.
- E. The Parties acknowledge and agree that, beginning on July 1, 2014, the Transit Services currently provided by the Parties through a number of private and public organizations shall be provided through the Corporation.
- F. The Parties acknowledge and agree to create the Commission for purposes of providing policy direction concerning the Transit Services provided by the Corporation under the brand of the RTA.
- G. The Parties acknowledge and agree that in the event an authority or other State legislated organization is established to provide regional Transit Services in central Maryland pursuant to State law, this MOU shall continue to govern the relationship among the Parties to the fullest extent permitted by State law.

II. ESTABLISHMENT AND GOVERNANCE BY THE PARTIES

- A. Contractor. As provided in the Contract, the Contractor shall:
 - 1. File articles of incorporation and by-laws for the establishment of the Corporation with the Maryland State Department of Assessments and Taxation.
 - 2. Provide the required number of dedicated staff to manage the Corporation. Such staff shall be employees of the Contractor and shall not be employees of the Parties; all costs associated with their employment, including taxes and other fees, shall be the responsibility of the Contractor. A fixed-fee will be paid to the Contractor as provided in the Contract.
 - 3. Possess equipment and employ the remainder of the employees necessary to provide Transit Services for the Parties. Such employees shall be employees of the Corporation and shall not be employees of the Parties. The Corporation will be compensated on an expense reimbursement basis as provided in the Contract.
 - 4. Comply with any written directions or orders from the Contract Manager, the Commission, or where applicable, the individual parties.
 - 5. Provide written or oral reports concerning the operation and management of the Corporation and the Transit Services provided as reasonably required by the Commission, Contract Manager, or individual parties.

B. Commission.

1. The Commission shall be comprised of representatives appointed by each Party. The Parties shall appoint two (2) representatives to the Commission on or before July 1, 2014.
2. The Commission's responsibilities shall include determining the RTA's overall mission and purpose, reviewing and overseeing the performance of the RTA and the Contractor, ensuring effective organizational planning and adequate financial resources for the RTA, managing those financial resources effectively, and representing the interests of the Parties.
3. The Commission shall have the right to select the Contract Manager. Once seated, the Commission will have the right to change the Contract Manager if they deem that such action is necessary.
4. The Commission shall convey, as appropriate, recommendations and directions from the Parties through the Contract Manager to the Contractor.
5. The Commission shall evaluate options for the establishment of legislation to create a public transportation authority or other governmental entity to manage and administer the Transit Services covered by this MOU.
6. The Commission shall oversee the Contract Manager and may, from time to time as reasonably necessary, require the Contract Manager to provide written reports concerning the performance of the Contractor.

D. Steering Committee.

1. Each Party shall appoint two (2) representatives to serve as members of the Steering Committee within two weeks of executing this MOU.
2. The Steering Committee shall establish preliminary bylaws and operating procedures for the Commission. The bylaws and operating procedures shall, at a minimum:
 - a. establish that each Party represented on the Commission shall be a full and equal partner with equal rights and voting powers as they pertain to the overall administration of the RTA, regional Transit Services, or any other instances when the activities involve the operation or management of the RTA as a whole;
 - b. identify those circumstances in which Commission decisions may only be made with greater-than-majority voting, and establish the voting thresholds for such decisions;

- c. set forth conditions under which RTA-operated services must comply specifically or exclusively with a particular Parties' requirements, procedures, regulations, policies or practices, such as where a service operates wholly within a particular Party's jurisdictional boundaries;
 - d. set forth conditions under which RTA-operated services will comply primarily with Commission-adopted procedures, policies or practices, such as where a service operates across Parties' jurisdictional boundaries;
 - e. establish the minimum number of meetings of the Commission; and, the frequency of meetings, and the Parties' right to call additional meetings of the Commission as deemed necessary;
 - f. establish procedures for oversight of the Commission by the funding Parties;
 - g. establish the procedure for the proposal, adoption and approval of rules, policies and procedures by the Commission subject to the requirement that all parties shall have an equal vote as to such policies and procedures;
 - h. contain any other provisions necessary for managing the affairs of the Commission, such as the establishment of committees, and the procedure for reviewing and amending the policies and procedures of the RTA;
 - i. develop purchasing and personnel procedures that meet all Federal, State and Party purchasing and personnel procedures and requirements;
 - j. develop operating principles and standards for Transit Services that will support special Transit Services projects and otherwise meet the Transit Services requirements of each Party.
 - l. develop policies and procedures for the application of funding and revenue received, including farebox and advertising revenue.
3. The Commission by-laws and operating procedures shall not be effective until such time as each Party provides written notice of its approval of such by-laws and operating procedures to all other Parties. Each Party shall not unreasonably withhold its approval if the by-laws and operating procedures are consistent with the terms of this MOU. In the event that a Party is unable to approve the by-laws and operating procedures, it may terminate its participation in this MOU upon ninety (90) days notice.
 4. The Commission shall have the right to amend the preliminary by-laws established by the Steering Committee with such amendment requiring a two-thirds majority of the Commission, provided that any amendment that alters the

voting rights or decision-making authority of the Parties may only be made by unanimous consent.

5. The Commission shall have no right to encumber or assume decision-making authority over a Party's exclusively-internal services, procedures or regulations without the consent of that Party.

III. OBLIGATIONS OF CONTRACT MANAGER

- A. The Contract Manager shall adhere to all terms and conditions set forth in any Grant Agreements that provide Transit Service funding, regardless of the Party to the Grant Agreement.
- B. Howard County, Maryland, as a body corporate and politic of the State of Maryland, shall serve as the Contract Manager until such time as an authority or other governmental entity is established by the State of Maryland to ensure that all available funding opportunities may be maximized.
- C. The Contract Manager shall coordinate with the Parties in the transition of Transit Services to the Contractor.
- D. The Contract Manager shall provide a weekly report to all Parties that shall include transitional activities during the current week and planned transitional activities for the following week.
- E. The Contract Manager shall coordinate with the Parties in the establishment of the Commission and the Steering Committee and shall provide support as requested or required to their activities.
- F. Upon implementation of the Transit Services, the Contract Manager shall provide the Parties with a monthly progress and financial status report of the RTA, along with any other documents, reports, and other information as reasonably requested by the Commission or individual parties.
- G. The Contract Manager shall act as the RTA representative to the Commission and shall, informally, report to the Commission. The Contract Manager will be a non-voting member of the Commission.
- H. The Contract Manager shall be responsible for coordinating with the RTA and the Parties in the submission of annual and discretionary grant applications.
- I. The Contract Manager shall be responsible for ensuring that RTA financial reports are reflective of the operation and the participation of each of the Parties.

- J. The Contract Manager shall be responsible for ensuring that the Contractor is meeting all Federal, State, and other governing procurement requirements as provided in the Contract including, but not limited to, service and fare changes, as well as all requirements of any relevant Grant Agreements.
- K. The Contract Manager will coordinate and consult with the Parties to establish the Funding Schedule for the Parties' Transit Services.
- L. The Contractor Manager shall ensure that all funding and revenue received, including farebox and advertising revenue, are appropriately allocated to each Party as specified in the Commission by-laws. Through this MOU, it is understood that such funding and revenue will, unless otherwise changed by the Commission, be applied to each Party consistent with such receipts at the execution of the MOU.

IV. OBLIGATIONS OF THE PARTIES

- A. Each Jurisdiction shall timely respond to reasonable information requests related to the creation of the RTA, the Commission and the Steering Committee and shall comply with all reporting and compliance requirements by deadlines established by the Commission.
- B. Each Party shall maintain all books and records pertaining to the creation of the RTA, the Commission and the Steering Committee in compliance with all State and Federal audit procedures.
- C. Subject to the availability and appropriation of funding, each Party shall endeavor to allocate the same amount of funds toward Transit Services beginning on July 1, 2014 for FY15 as the Party allocated toward Transit Services in FY14, and shall endeavor to continue to allocate the same amount of funds toward Transit Services in subsequent fiscal years.
- D. For services beginning on July 1, 2014, each Party shall timely contribute those available and appropriated funds, as specified in the Funding Schedule, to support the Transit Services.
- E. All Parties will provide personnel resources, as reasonable, required and appropriate, to support the purpose and intent of this MOU.
- F. All Parties agree to make reasonable efforts to avoid any unreasonable delay in the allocation, provision, and expenditures of funding and support to the participating jurisdictions and organizations involved in the RTA.
- G. The Parties shall complete an inventory of all assets, including the fair market value of such assets, prior to July 1, 2014.

- H. Each Party shall establish an internal process for evaluating purchasing options for assets for the Transit Services provided through this MOU. Each Party may exercise its right to purchase such assets directly or through the Corporation.
- I. The Parties shall work collaboratively on securing grants and funding to support the expansion of Transit Services covered under this MOU.
- J. The Parties shall work towards the assimilation of Transit Services to achieve singularity in brand name, fares, transfers, and operating procedures for the RTA, as practicable.
- K. The Parties shall retain and maintain control over those Transit Services funded through the Party within the Party's jurisdiction.

V. ASSETS

- A. In the sole discretion of each Party, that Party may lease its individually-owned capital assets to the Corporation for purposes of providing Transit Services. The lease of any capital assets to the Corporation shall be documented in a separate written lease agreement signed by all of the Parties, which shall provide that the Corporation shall, at its own expense, use, store, repair, maintain, and insure any capital assets leased from each Party, and that the Corporation shall be responsible for the settlement of any and all liabilities related to any capital assets leased from a Party.
- B. Upon dissolution or termination of the Corporation, or upon the withdrawal of any Party from this MOU, capital assets shall be returned to the applicable lessor Party, as appropriate, to the extent permitted by law.
- C. The Parties may sell or transfer capital assets to the Corporation subject to policies and procedures to be established by the Commission.
- D. Upon dissolution or termination of the Corporation and to the extent permitted by law, any assets allocated to the RTA by a specific Party shall be returned to that Party. All other assets not specifically allocated by a particular Party shall be returned to and divided among the Parties in proportion to each Party's total financial contribution to the Corporation.

VI. GENERAL PROVISIONS

- A. Term. This Agreement shall become effective as to each Party upon the date of signature by that Party ("Effective Date"). This Agreement shall remain in effect through June 30, 2014. The Party may renew this Agreement for two additional one-year terms on the same terms and conditions set forth herein. The term of this MOU coincides with the term of the Contract.

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- B. No Waiver of Sovereign Immunity. Nothing in this MOU, nor any action taken by any Party pursuant to this MOU, nor any document that arises out of this MOU shall constitute or be construed as a waiver of either the sovereign immunity or governmental immunity of the Parties.
- C. Obligations Contingent. All obligations of the Parties under this MOU are contingent on compliance with personnel, budgeting, purchasing, and expenditure laws, regulations and requirements governing laws of the respective Parties as applicable to each Party, including, but not limited to, all applicable county and/or city codes and charters.
- D. No Waiver, Etc. The failure or delay by any Partner to insist upon the strict performance of any term, condition or covenant of this MOU, or to exercise any right, power, or remedy consequent upon a breach thereof, shall not constitute a waiver of any such term, condition, or covenant or any such breach, or preclude any Party from exercising any such right, power, or remedy at any later time or times.
- E. Independent Contractor Status. Nothing contained in this MOU shall be construed to constitute any one Party as an agent, representative or employee of any other Party. Moreover, members of the Commission and Steering Committee shall be considered agents or representatives of the respective appointing Party only, and shall not be considered agents or representatives of any other Party or the Consortium. Nothing contained in this MOU shall be construed in any manner to create any relationship between the Parties other than what is expressly specified herein, and the Parties shall not be considered partners or co-venturers for any purpose on account of this MOU.
- F. Funding. All financial obligations of the Parties under this MOU, including all obligations that require the expenditure of funds, are contingent upon the availability of appropriated funds from which payment can be made.
- G. Dispute Resolution. Any dispute regarding or arising out of this MOU shall be governed by the rules and procedures established by the Steering Committee and approved by the Parties, as provided herein. In the event that the Parties are unable to resolve the dispute, the affected Party or Parties may submit the dispute to a mediator, acceptable to all affected Parties, for the purpose of facilitating discussion and receiving new perspectives on the issues and new proposals for compromise. The Parties involved in the mediation shall share the cost of the mediation equally. Such mediation shall not be binding on any Party. Each Party reserves all remedies available at law or in equity for violations of this MOU.
- H. Governing Law and Venue. This MOU shall be construed and enforced in accordance with the laws of the State of Maryland. The Parties agree that all disputes arising hereunder that cannot be resolved through mediation or other means shall be brought in a court of competent jurisdiction.
- I. Entire Agreement. This MOU contains and embodies the entire agreement of the Parties. No representations, inducements, or agreements, oral or otherwise, between the Parties

not contained herein shall be of any force and effect. This MOU may not be amended or modified in any manner other than by an agreement in writing approved by the Parties and duly signed by authorized persons on behalf of all the Parties. The Parties, through their respective authorized representatives, have executed this MOU on the dates indicated below.

- J. Severability. If any of the provisions in this Agreement are declared by a court or other lawful authority to be unenforceable or invalid for any reason the remaining provisions hereof shall not be affected thereby and shall remain enforceable to the full extent permitted by law.
- K. Assignment. No Party shall not assign, subcontract or transfer the rights it has or the obligations imposed on it by this MOU without the prior written consent of all the other Parties.
- L. Binding Effect. The terms of this MOU shall be binding on and enforceable against the Parties and their respective successors and assigns.
- M. Withdrawal. Any Party may withdraw from the RTA upon giving at least ninety (90) calendar days' written notice to the other Parties. The withdrawing Party shall pay its allocated share of all costs of the RTA through the date of withdrawal.
- N. Notice. Any notice required to be delivered shall be deemed to have been received when the notice has been sent by certified mail, return receipt, overnight carrier, or hand delivered to the following addresses and individuals or at such other addresses and/or individuals a Party may identify in writing to the other Parties:

FOR THE CITY OF ANNAPOLIS:

Ms. Ashley E. Hofmeister
Assistant City Attorney
Office of Law
160 Duke of Gloucester Street
Annapolis, MD 21401
Telephone: (410) 263-7954 Fax: (410) 268-3916
Email: AEHofmeister@annapolis.gov

FOR HOWARD COUNTY:

John W. Powell, Jr.,
Administrator,
Howard County Office of Transportation
3430 Court House Drive
Ellicott City, MD 21043,
Telephone: (410)313-0702 Fax: 410-313-3467
E-mail: jpowell@howardcountymd.gov

O. Recitals. The Recitals are hereby incorporated into this MOU.

MOU – CONSORTIUM

HOWARD COUNTY, MARYLAND

Lonnie R. Robbins
Chief Administrative Officer

By: _____
Ken Ulman
County Executive
Date: _____

John W. Powell, Jr.
Administrator, Office of Transportation

APPROVED FOR SUFFICIENCY OF FUNDS:

Stanley J. Milesky
Director of Finance

APPROVED FOR LEGAL SUFFICIENCY

this ____ day of _____, 2013.

Margaret Ann Nolan
County Solicitor

Reviewing Attorney:

Melissa S. Whipkey
Assistant County Solicitor

**EXHIBIT A
FUNDING SCHEDULE**