



Kevin Flynn
Councilmember

Doc. #201401368

November 4, 2014

MOTION

WE MOVE that the City adopt the following Comprehensive Streetcar Operating Plan to establish an ongoing revenue stream to provide for streetcar operating costs without adversely affecting the General Operating Budget or core functions.

WE FURTHER MOVE that City Council adopt an Over-the-Rhine¹ (OTR)/Central Business District (CBD) Parking Plan that is implemented by January 1, 2015 that includes the following measures:

1. Increases the number of metered parking spaces south of Liberty Street to 600;
2. Sets the OTR/CBD parking meter hours of operation from 9:00 a.m. to 9:00 p.m. on Monday through Saturday, and from 2:00 p.m. to 9:00 p.m. on Sunday;
3. Uses dynamic pricing in OTR parking meters capped at a maximum rate of \$1.25/hr;
4. Uses dynamic pricing in CBD parking meters capped at a maximum rate of \$2.25/hr.

WE FURTHER MOVE that City Administration continue to consider the feasibility of adopting an Over-the-Rhine Residential Parking Permit Program by determining a number of factors including, but not limited to:

1. The appropriate number of residential spots;
2. The boundaries for the program;
3. The rate to be charged for both market rate and rent-subsidized parking permits.

WE FURTHER MOVE that the Administration deliver this report by the end of the calendar year and that in the event the City implements an Over-the-Rhine Residential Parking Permit Program, that any incremental revenue from that program will count towards the total amount the City will commit to streetcar operations funding.

¹ Except as otherwise specifically limited in this motion, any measures pertaining to OTR shall be applied to an area that is defined to include not only the boundaries provided by the existing plan in Council Item No. 201401274, but also the portion of OTR that extends north of Liberty Street to its traditional boundaries.



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WE FURTHER MOVE that City Council adopt a tax incentive policy to begin on January 1, 2015 in the neighborhoods of CBD and OTR that incentivizes applicants for real property tax abatements to contribute 7.5% of the real property taxes otherwise owed on the abated improvements to streetcar operations and other services that specially benefit those neighborhoods.

WE FURTHER MOVE that a new restricted fund for streetcar operating purposes be created, and that the level of streetcar operations and the resulting costs shall not exceed the amount of revenue generated from the following sources:

1. *Fares, Sponsorship, and Naming Rights:* All revenue collected from streetcar fares, sponsorships, advertising, and naming rights will be dedicated to streetcar operations. This is estimated to produce \$1.3 million per year and increase slightly each year thereafter.
2. *Federal Transit Authority Formula Funds:* Based on system ridership, the federal government provides grants for capitalized maintenance. This is estimated to initially produce \$100,000 after the first full year of operations and increase slightly each year thereafter.
3. *Over-the-Rhine/Central Business District Parking Plan and Over-the-Rhine Residential Parking Permit Program:* The City will dedicate \$1,500,000.00 from the incremental revenues generated by these programs.
4. *Tax Incentive Policy:* The City will dedicate the revenue from this program, which is estimated to produce in excess of \$2,000,000.00 a year by 2026.
5. *Limited Guaranty Agreement from the Carol Ann and Ralph V. Haile, Jr./U.S. Bank Foundation:* In the event that the revenues generated from the above five sources and any accumulated amounts in the restricted fund are insufficient to operate in accordance with the operating plan for that year, the Haile Foundation will provide funding up to \$900,000.00 per year (for the first ten years of streetcar operations) pursuant to the limited guaranty agreement accepted in Ordinance No. 0269-2014.

WE FURTHER MOVE that City Council shall adopt a City of Cincinnati/ Southwest Ohio Regional Transit Authority Streetcar Operating Agreement similar to the draft attached as Exhibit "A".

City of Cincinnati



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Web www.cincinnati-oh.gov

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WE FURTHER MOVE that City Council shall adopt an ordinance transferring \$1,000,000.00 from the non-capital restricted funds contained in the streetcar construction contingency fund to this new restricted operating fund to cover the streetcar operation startup costs in calendar years 2015 and 2016.

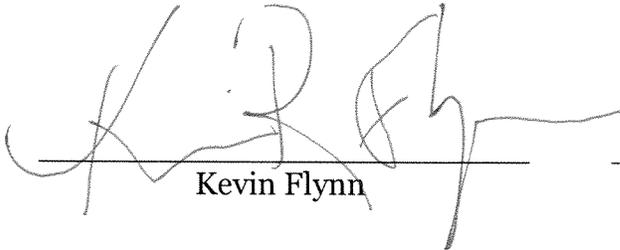
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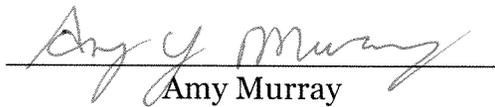
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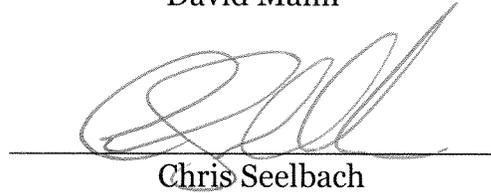
Kevin Flynn



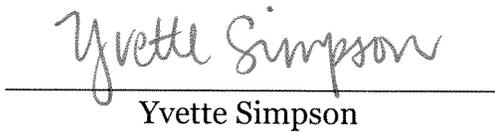
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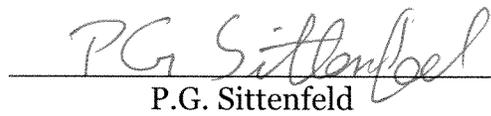
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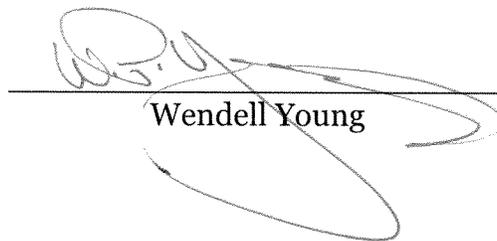
Yvette Simpson



P.G. Sittenfeld

Christopher Smitherman

Charlie Winburn



Wendell Young

EMERGENCY

City of Cincinnati

AWG/B
TAN/REG

An Ordinance No. _____

- 2014

APPROVING AND AUTHORIZING the City Manager to execute an Operations and Maintenance Intergovernmental Agreement between the City of Cincinnati and the Southwest Ohio Regional Transit Authority for the operations and maintenance of the Cincinnati Streetcar System.

WHEREAS, the City of Cincinnati is constructing a modern streetcar project in downtown Cincinnati (the "Cincinnati Streetcar") projected to begin Revenue Service in September of 2016; and

WHEREAS, the Southwest Ohio Regional Transit Authority ("SORTA") has been an active participant in the development and planning of the Cincinnati Streetcar operations; and

WHEREAS, the City and SORTA (collectively referred to as the "Parties") intend to enter into an Operations and Maintenance Intergovernmental Agreement, and as the operator of the Cincinnati Streetcar, SORTA will oversee the operation and maintenance of the Cincinnati Streetcar, a fixed rail, modern streetcar circulator extending throughout the Cincinnati Central Business District and Over the Rhine along 3.6 miles of track; and

WHEREAS, as the regional transit authority in Cincinnati, SORTA has and will continue to play a central role in the administration of federal grant funds for the Cincinnati Streetcar; and

WHEREAS, the Parties intend for the City to retain ownership and control over the Cincinnati Streetcar capital assets; and

WHEREAS, the Parties intend that SORTA submit an annual operating and maintenance budget for the Cincinnati Streetcar to be approved and appropriated by the City on an annual basis in a manner consistent with SORTA's existing budget authorization process; and

WHEREAS, the Parties desire to deliver efficient and cost-effective streetcar service to the public by integrating the Cincinnati Streetcar with SORTA's services as a regional transit service agency; and

WHEREAS, SORTA shall operate the Cincinnati Streetcar for the benefit of taxpayers of the City as part of the regional transit system; now, therefore,

BE IT ORDAINED by the Council of the City of Cincinnati, State of Ohio:

Section 1. That Council approves the execution of an Operations and Maintenance Intergovernmental Agreement with the Southwest Ohio Regional Transit Authority ("SORTA") for the operations and maintenance of the Cincinnati Streetcar System.

Section 2. That Council authorizes the City Manager:

- (i) to execute an Operations and Maintenance Intergovernmental Agreement on behalf of the City in substantially the form of Exhibit A to this ordinance (the "Agreement"); and
- (ii) to take all necessary and proper actions to fulfill the City's obligations under the Agreement.

Section 3. That this ordinance shall be an emergency measure necessary for the preservation of the public peace, health, safety and general welfare and shall, subject to the terms of Article II, Section 6 of the Charter, be effective immediately. The reason for the emergency is to allow SORTA and the City to meet the construction, vehicle delivery, and operation milestones for the Streetcar in a manner consistent with existing City contracts and federal grant requirements.

Passed: _____, 2014

Mayor

Attest: _____
Clerk

Exhibit A to Ordinance

Operations and Maintenance Intergovernmental Agreement

SEE ATTACHED

**OPERATIONS AND MAINTENANCE
INTERGOVERNMENTAL AGREEMENT**

This Operations and Maintenance Intergovernmental Agreement (this "Agreement") is entered into to be effective this _____ day of _____, 2014 (the "Effective Date"), by and between the City of Cincinnati (the "City"), an Ohio municipal corporation, and the Southwest Ohio Regional Transit Authority, a regional transit authority and political subdivision of the State of Ohio ("SORTA"). The City and SORTA may be referred to herein individually as a "Party" or jointly as the "Parties."

RECITALS

WHEREAS, the City is constructing the initial line of a modern streetcar project in downtown Cincinnati (the "Cincinnati Streetcar") projected to begin Revenue Service in September of 2016;

WHEREAS, SORTA has been an active participant in the development and planning of the Cincinnati Streetcar Transportation Maintenance and Operations Plan, as amended from time to time ("TMOP") (a copy of the TMOP is attached as Exhibit A to this Agreement);

WHEREAS, as the operator of the Cincinnati Streetcar, SORTA will oversee the operation and maintenance of the Cincinnati Streetcar, a fixed rail, modern streetcar circulator extending throughout the Cincinnati Central Business District and Over the Rhine along 3.6 miles of Revenue Service track;

WHEREAS, as the regional transit authority in Cincinnati, SORTA has and will continue to play a central role in the administration of federal grant funds for the Cincinnati Streetcar;

WHEREAS, the Parties intend for the City to retain ownership and control over the Cincinnati Streetcar capital assets; and

WHEREAS, the Parties intend that SORTA submit an annual operating and maintenance budget for the Cincinnati Streetcar to be approved and appropriated by the City on an annual basis in a manner consistent with SORTA's existing budget authorization process; and

WHEREAS, the Parties desire to deliver efficient and cost-effective streetcar service to the public by integrating the Streetcar with SORTA's services as a regional transit authority; and

WHEREAS, SORTA shall operate the Cincinnati Streetcar for the benefit of taxpayers of the City as part of the regional transit system;

NOW, THEREFORE, in consideration of the mutual rights, obligations and privileges granted and undertaken, the Parties enter into this Agreement subject to the following terms and conditions:

TERMS AND CONDITIONS

1.0 Purpose, Scope and Term of Agreement

1.1 Purpose, Scope and Term

A. The purpose of this Agreement, including its attached Exhibits, is to establish a formal structure governing the roles and responsibilities of the Parties in connection with the Cincinnati Streetcar. The Cincinnati Streetcar project, as described in the TMOP, includes management and implementation of all actions required to operate, maintain, and equip the Cincinnati Streetcar for safe and dependable on-going Revenue Service.

B. The term of this Agreement is from the Effective Date (as defined on the signature page hereof) until December 31, 2045 (together with any extensions, the "Term"), unless otherwise terminated in accordance with the provisions of this Agreement. The Agreement will continue to automatically extend for additional five-year periods unless either Party provides notice no later than 16 months before the end of the Term of its intent to allow this Agreement to expire.

1.2 Definitions

Capitalized words, terms and abbreviations not defined in the body of this Agreement are defined in Exhibit C.

1.3 Exhibits

A. The following Exhibits to this Agreement are incorporated by this reference as if fully set forth:

- Exhibit A: Transportation Maintenance and Operations Plan
- Exhibit B: Responsibility Matrix
- Exhibit C: Acronyms and Definitions
- Exhibit D: Insurance Responsibilities
- Exhibit E: Asset Matrix
- Exhibit F: Primary Contact Information for Parties
- Exhibit G: 2011 Streetcar Intergovernmental Agreement
- Exhibit H: Maintenance and Operations Facility Lease

2.0 RESPONSIBILITIES

2.1 General

A. Matrix.

The Cincinnati Streetcar Responsibility Matrix attached as Exhibit B to this Agreement sets forth the Parties' roles and responsibilities in providing safe, economical, and efficient operation of the Cincinnati

Streetcar. The Terms and Conditions contained in this Agreement shall be read in conjunction with Exhibit B.

B. Service Plan

- i. Start of Revenue Service. SORTA, in consultation with the City and subject to Section 3.3 (*Streetcar Budget*), shall develop an initial Service Plan for the Cincinnati Streetcar at least six months prior to the start of Revenue Service. The Service Plan shall include hours of operation, headways, special operations, and other details of transit service.
- ii. Annual Update. SORTA shall submit an updated Service Plan to the City on an annual basis for review and approval by the City. The level of service set forth in the Service Plan shall be calculated so that the total costs of providing such service will not exceed the amount of Available Streetcar Funds (as defined in Section 3.3, *Streetcar Budget*).
- iii. SORTA shall operate the Streetcar in accordance with Service Plan standards, but may revise its Service Plan during the fiscal year as necessary to operate within the limits of available funding.
- iv. SORTA shall not be liable to the City for failure to comply with the Service Plan to the extent that such failure results from insufficient funding of the Service Plan under Section 2.1(b)(ii) or failure by the City to perform its duties as set forth in this Agreement including, but not limited to, the City's responsibilities over streetcar route maintenance.

C. Assignment and Express Third Party Beneficiary

- i. The City authorizes SORTA to subcontract any of its rights, duties or obligations under this Agreement to a third party contractor or contractors. SORTA is responsible for ensuring that each third party contractor meets or exceeds the operations and maintenance requirements set forth in this Agreement including, but not limited to Section 4.0 (*Liability Insurance and Defense of Claims*). SORTA shall include a contract provision identifying the City as an express third-party beneficiary in all SORTA contracts related to the operation and maintenance of the Cincinnati Streetcar.
- ii. SORTA agrees to include at least one City representative, as designated by the City Manager, on the evaluation or selection committee(s) for the procurement of the primary third-party operations and maintenance contractor(s), if any, for the Cincinnati Streetcar.

2.2 Startup

A. Testing

SORTA shall develop and submit to the City a Pre-Revenue Service Start-Up Plan. SORTA will provide staff and other support as necessary to perform the start-up testing and commissioning of the Cincinnati Streetcar and to assist the City in its responsibility to close out the Cincinnati Streetcar construction and vehicle contracts. The City and SORTA acknowledge that start-up testing and commissioning will overlap with training and other pre-Revenue Service activities. Notwithstanding the foregoing, the City is solely responsible for construction of the Cincinnati Streetcar.

B. Assets

- i. The City has procured or will procure spare parts and maintenance tooling equipment prior to the start of Revenue Service through the vehicle and civil construction contracts as described in Exhibit E (Asset Matrix) to this Agreement. The City shall retain ownership of spare parts and maintenance tooling equipment including items purchased after the start of Revenue Service. The City's spare parts and maintenance tooling equipment shall be made available to SORTA for use in the maintenance and operation of the Cincinnati Streetcar.
- ii. SORTA is responsible for the maintenance of Overhead Contact Systems ("OCS") poles, fixtures, foundations, and all other appurtenances thereto, except that the City shall be responsible for the maintenance and electrical power of light fixtures attached to OCS poles.
- iii. SORTA will be responsible for utility marking for streetcar-related utilities through the Ohio Utility Protection Service (specifically the ac and dc lines to the stations and traction power substations, respectively). The City shall retain utility marking responsibility for City-owned street lighting facilities, traffic signals and other City electrical facilities.
- iv. SORTA-owned dispatch equipment and radio systems will remain under SORTA ownership and shall be used for Cincinnati Streetcar operations in accordance with Section 1.J of the 2011 Streetcar Intergovernmental Agreement between SORTA and the City (the "2011 Streetcar IGA") and as may hereafter be amended from time to time. A copy of the current 2011 Streetcar IGA is attached as Exhibit G to this Agreement.

- v. The City hereby grants SORTA with a license for the term of this Agreement or until terminated pursuant to Section 6.2 to use City-owned Cincinnati Streetcar assets for the operating and maintenance activities described in this Agreement. SORTA shall maintain, at the City's cost, all City assets in a state of good repair consistent with industry best practices.
- vi. All equipment and assets purchased by SORTA using Cincinnati Streetcar funds will be maintained in a state of good repair by SORTA consistent with industry best practices or replaced as Capital Improvement funding allows. Related activities will be identified in the TMOP and Standard Operating Procedures. SORTA shall transfer title to all such assets to the City upon termination or expiration of this Agreement.

2.3 Fare Enforcement

SORTA is responsible for all fare collection activities and will perform such activities in a manner calculated to maximize fare revenue consistently with the Service Plan. Cincinnati Streetcar patrons will be expected to purchase tickets from the Cincinnati Streetcar ticket vending machines and/or other locations identified by SORTA. SORTA will collect fares from the machines and provide fare inspectors. SORTA will utilize a proof-of-payment (POP) system supported by fare inspection. SORTA will rely on the City of Cincinnati Police Department (the "City Police") for law enforcement support which will be provided as appropriate on a case-by-case basis. Subject to City Council passage of implementing legislation, the City agrees to deputize SORTA streetcar supervisors and fare inspectors for the purpose of issuing fare evasion penalty citations.

2.4 Emergency Response and Security

- A. Emergency response services will be provided in accordance with the Responsibility Matrix attached as Exhibit B. City and SORTA will work with appropriate emergency response personnel, including Cincinnati Police and Cincinnati Fire Departments, to develop and implement any standard operating procedures and emergency response protocols necessary for the provision of emergency response services to the Cincinnati Streetcar.
- B. The City and SORTA are responsible for Security responsibilities as identified in the Streetcar System Security and Emergency Preparedness Plan and all elements required for Safety and Security Certification.

2.5 Maintenance of Way

The intent of both parties is to coordinate, to the maximum extent possible, City maintenance activities in the right-of-way and SORTA streetcar operations in such a way as to minimize disruptions to each other. The City will be responsible for general street

maintenance along the streetcar route and, to the extent possible, will prioritize maintenance issues that have the potential to disrupt Cincinnati Streetcar service.

A. Traffic Signals

- i. The City shall have sole responsibility for the maintenance, repair and operation of traffic signals.
- ii. When feasible, the City shall provide reasonable notice to SORTA before any upgrade, modification and/or scheduled repair of traffic signals that will have a significant impact on the operation of the Cincinnati Streetcar.
- iii. The City will prioritize repairs of traffic signals along the streetcar route to the extent feasible. This prioritization, however, shall not be interpreted to create any obligation on the part of the City. City priorities are subject to the City's discretion to dispatch resources in the manner it determines necessary to protect the public health, safety, and general welfare in the public right-of-way.
- iv. The City and SORTA shall meet regularly, as necessary, to resolve operational conflicts and minimize negative impacts to streetcar and City operations.

B. Clearing Blockages on the Streetcar Track

SORTA shall immediately report to the City any blockages on the streetcar track that inhibit streetcar operations including, but not limited to, disabled or illegally parked automobiles. Upon receipt of notice from SORTA, the City shall promptly initiate the removal of unpermitted blockages on the streetcar track so that SORTA may continue Revenue Service operations.

C. Streets and Stops

As indicated in Exhibit B (*Responsibility Matrix*), SORTA shall be responsible for the maintenance, upkeep, cleaning, repair and renovation of all stops for the Cincinnati Streetcar and non-routine street maintenance (e.g., maintenance of switches/drains and non-routine street vacuuming, flangeway maintenance and cleaning, cleaning of track and switches drains and grates).

D. ROW Permitting and Track Access Authorization

The City and SORTA agree to coordinate construction work, utility access, and City maintenance activities in the public right-of-way along the streetcar route using the Track Access Authorization process set forth in Appendix I to the City's Street Restoration Handbook.

E. Stray Current Testing

SORTA agrees to develop a stray current testing program in consultation with the City. The City will manage stray current coordination with utilities and other interested Parties.

2.6 Disruption to Streetcar Service

The City may request bus service to supplement or replace Cincinnati Streetcar service in the event of trackway blockages or other disruptions to Revenue Service. SORTA shall determine whether to provide such service at its sole discretion. In all instances of supplemental or replacement service requested by the City, the City will pay for the additional costs of such services upon receipt of SORTA's invoice.

2.7 Special Events and Charters

- A. At the direction of the City, SORTA will provide supplemental Cincinnati Streetcar service for Special Events or for Charter Operations. This supplemental service will be contingent on availability of Cincinnati Streetcar vehicles to provide the service and the availability of qualified personnel. The City will pay for the additional costs of such services upon receipt of SORTA's invoice.
- B. The City can restrict Revenue Service for up to four Special Events per year. Each such Special Event may occur over the course of up to three consecutive days. City Council approval shall be required for all other Special Events having potential to restrict or halt Revenue Service. Upon City Council approval of a Special Event with potential to halt, close, delay, or otherwise disrupt Revenue Service, the City shall provide notice to SORTA, which notice shall be at least 60 days notice prior to the Special Event. Where possible, the City will facilitate discussions between Special Event staff and SORTA to mitigate the Special Event's impact on Revenue Service.
- C. The City will strive to prevent conflicts between Special Events and Cincinnati Streetcar operation so as to maintain reliable Revenue Service operation or provide supplemental service to support such events. Except as provided in 2.7.B, the City will locate Special Events in areas that do not impede Revenue Service.
- D. If a Special Event permitted by the City is projected to have a net adverse impact on SORTA's budget, SORTA may submit the anticipated budget impact to the City prior to City Council authorization of a Special Event. The City will strive to provide SORTA with at least 60-days advance notice prior to approving a Special Event. City Council may mitigate or recover such costs through Special Event permit fees and conditions.

- E. The Cincinnati Streetcar may have the opportunity from time to time to include operation of historic or special streetcar vehicles. SORTA will be responsible to review proposed historic streetcar operations, to evaluate proposed operating conditions and methodology, and to recommend them to the City as appropriate if such plans can be accomplished safely and in a manner complementary to existing passenger operations. SORTA shall obtain City Council approval prior to operating historic or special streetcar vehicles on Cincinnati Streetcar infrastructure.

2.8 Operators and Maintenance Workers

In accordance with Section 2.1, SORTA will be responsible for hiring the workforce to operate and maintain the Cincinnati Streetcar. SORTA is responsible for ensuring that personnel involved in the Operation and Maintenance of the Cincinnati Streetcar are properly trained and certified.

2.9 Customer Service and Information

SORTA will provide customer service and information for riders and potential users of the Cincinnati Streetcar, both in the time leading up to Revenue Service and once Revenue Service has begun. Customer service and information services shall be integrated into SORTA's existing public transit functions. SORTA will account for incremental costs attributable to the Cincinnati Streetcar, if any, in its O&M Costs.

SORTA shall provide the City with additional information on public interaction, community outreach, and a Marketing Plan to be delivered to the City prior to start of Revenue Service.

2.10 Federal Statutory Requirements

SORTA is responsible for compliance with all federal requirements pertaining to the operations and maintenance of the Cincinnati Streetcar. This includes but is not limited to:

- i. Procurement of parts and expertise not included in the Long-term Capital Improvement Plan
- ii. Certification and Assurances
- iii. Maintaining Satisfactory Continuing Control
- iv. Developing a Rail Fleet Management Plan

- v. Employee Protections Under the Federal Transit Law, 49 U.S.C. § 5333(b)
- vi. SORTA will be responsible for all Cincinnati Streetcar National Transit Database data collection and reporting as part of the compensation for differential activities.
- vii. SORTA is responsible for all regulatory compliance insofar as it relates to Cincinnati Streetcar operations and maintenance.
- viii. Service Standards
- ix. Providing Required Public Notices
- x. Title VI Assessments and Documentation
- xi. Americans with Disabilities Act Compliance Complementary Paratransit. The Cincinnati Streetcar, under the requirements of the Americans with Disabilities Act (“ADA”), may be required to provide ADA complementary paratransit service to the individuals deemed eligible through their inability to access the fixed route system, including the Cincinnati Streetcar. Should Cincinnati Streetcar operations require SORTA to expand its ADA complementary paratransit service coverage or reduce the fare beyond what is required for the SORTA fixed route bus system and Phase 1A Streetcar route as of the effective date of this Agreement, such costs shall qualify as O&M Costs under Section 3.3.B.

2.11 Maintenance and Operations Facility Responsibilities

The City shall grant SORTA a lease for access and use of the Maintenance and Operations Facility (“MOF”) to the extent necessary to perform SORTA’s responsibilities under this Agreement. The lease shall be substantially in the form attached as Exhibit H to this Agreement.

2.12 Audits and Records

A. Audits

SORTA and the City each agree to cooperate fully with any internal or independent auditor(s) retained to audit annual costs incurred in the operation, maintenance and administration of the Cincinnati Streetcar system.

B. Records Retention and Open Records Requests

The City and SORTA are both subject to the Ohio Open Records Act and will fulfill requests for records pursuant thereto (“Open Records

Requests”) in accordance with the law. Records pertaining to the Cincinnati Streetcar shall be retained by the Parties as specified by their respective record retention schedules and Open Records Request processes, or as required by the Ohio Department of Transportation (“ODOT”), the United States Department of Transportation (“USDOT”), or the FTA.

2.13 Capital Improvement Plan

A. In accordance with federal requirements, SORTA will be responsible for developing a Long-term Capital Improvement Plan (“CIP”) and updating the CIP on an annual basis to address Capital Renewal and Replacement for the Cincinnati Streetcar following the commencement of Revenue Service. The CIP will be utilized to anticipate asset replacements prior to the end of their useful life and to program available capital funds. The CIP will include recommended funding allocations for capital renewal, including expected long-term wear, vehicle overhauls, and other capital costs necessary to support ongoing Cincinnati Streetcar operations. The CIP shall be subject to review and approval by the City. The funding of the CIP by the City is outside the scope of the O&M Costs identified in this Agreement and shall be implemented only insofar as City Council has appropriated funding for such costs.

B. Unanticipated costs of Cincinnati Streetcar capital replacement, including unforeseen damages, loss, and accidents, will be addressed using in-stock parts and systems where possible. Other capital replacement and stock replenishment needs will be addressed through procurements by SORTA with prior funding approval by the City. The City’s actions with regard to funding capital costs under this section shall not modify the allocation of liabilities set forth in Section 4.1 of this Agreement.

C. For capital projects and construction services related to the Cincinnati Streetcar the City may provide engineering support at SORTA’s request or when the City determines it necessary to preserve its interests as the asset owner. The terms and conditions for engineering support from the City shall be negotiated by the City and SORTA on a case-by-case basis.

D. Additional information on compliance with federal requirements will be available in the Rail Fleet Management Plan and Rail Activation Plan.

2.14 Intellectual Property

SORTA acknowledges that patent rights, copyright, trade secret, trade name, trademark, service mark, or any other proprietary right arising out of the construction and operation of the Cincinnati Streetcar during the course of this Agreement shall be owned by the City. SORTA shall work with the City to maintain and enforce the City’s intellectual property rights as they relate to SORTA’s performance under this Agreement.

3.0 FUNDING AND PAYMENTS

3.1 Federal Grants

A. Current and Future Transit Federal Formula Funds

i. The Cincinnati Streetcar, through the reporting of its operating service statistics to the National Transit Database, may generate additional FTA §5307 Formula Funds, including fixed guideway funds, for the Cincinnati urbanized area. For formula grants, SORTA will be the primary interface with the OKI Regional Council of Governments and will be responsible for accounting for and sub-allocating any formula funds related to streetcar. FTA formula funding attributable to non-streetcar activities and allocated to the Metro system will not be used for the Cincinnati Streetcar without the consent of SORTA.

ii. If the Cincinnati Streetcar generates FTA §5309 fixed guideway modernization funding for future eligible capital expenditures (anticipated to occur seven years after start of Revenue Service), then SORTA, as the FTA §5307 Designated Recipient for the Cincinnati urbanized area, will work with the City and the Ohio Kentucky Indiana Council of Regional Governments to program these funds into the future long range transportation plans, short range transportation improvement programs and draw the funds down into grants on behalf of the Cincinnati Streetcar. SORTA, with prior-City approval, will apply for FTA grants for the Cincinnati Streetcar. The City will be liable for federal liabilities SORTA incurs as a result of entering into such FTA grants, except where such liabilities arise directly from SORTA's gross negligence or willful misconduct. SORTA shall obtain City approval prior to obligating itself or the City to any federal grant with a local match or future operating funding commitment (e.g. FTA State of Good Repair Formula Grants). The City will be responsible for obtaining funding for any local match requirements in connection with FTA Grants.

B. Loss or change of funding or funding timeline

With the exception of termination by the City under Section 6.2, any loss of or change in funding resulting from the City's determination to discontinue its involvement in the Cincinnati Streetcar or any other reason shall not absolve the City of its obligations to reimburse SORTA for costs incurred under this Agreement or the 2011 Streetcar IGA.

3.2 Revenue Distribution

A. Unless the City becomes an eligible recipient of FTA grant funding, SORTA shall serve as the primary grantee for any federal funds awarded to the Cincinnati Streetcar. The City shall have the right to approve and audit any grants for which SORTA shall serve as primary grantee for Streetcar.

B. Fare Policy and Revenue

1. Fare revenue generated solely from SORTA's bus transit service shall not be used to fund the Cincinnati Streetcar. If SORTA utilizes joint bus/streetcar fare practices that result in combined streetcar and bus transit trips on the same fare, the revenue attributable to the Cincinnati Streetcar portion of the fare may be applied to the Cincinnati Streetcar.

2. SORTA has primary responsibility for developing Cincinnati Streetcar fare policy and will apply all fare revenue generated by the Cincinnati Streetcar, including revenue attributable to the Cincinnati Streetcar generated from the sale of other Metro fare products and to offsetting O&M Costs (see Section 3.3, *Streetcar Budget*). SORTA shall make fare policy recommendations to the City as part of SORTA's annual Streetcar Funding Request for the year in which the fare policy is to become effective (see Section 3.3.A, *City Review and Approval of O&M Costs and Funding Sources*). SORTA shall obtain City Council approval prior to changes to fare policy except if the fare policy, adversely impacts bus fare policy or paratransit service requirements, in which case City Council approval shall not be required.

3. SORTA shall integrate Cincinnati Streetcar fare collection into the existing SORTA transit collection system to the extent SORTA deems feasible.

C. Indirect Revenue

SORTA shall retain all revenues it collects from the operation of the Cincinnati Streetcar system, including but not limited to revenues from agreements for advertising on vehicles and/or at passenger stops; sponsorships or naming rights of vehicles, stops, or any other element of the Cincinnati Streetcar system, including the system in its entirety or any part thereof ("Indirect Revenue"). All Indirect Revenues shall be deducted from the amount of the O&M Costs that the City pays to SORTA (see Section 3.3, *Streetcar Budget*).

3.3 Streetcar Budget

The City agrees to pay SORTA's Operations and Maintenance Costs for the Cincinnati Streetcar ("O&M Costs," as defined in Section 3.3.B) in accordance with the following budget process and funding limitations.

A. City Review and Approval of O&M Costs and Funding Sources. No later than two months before the end of the City's fiscal year, SORTA shall submit a request for funding for the following year's O&M Costs ("Streetcar Funding Request") to City Council for review and approval. The Streetcar Funding Request shall conform to the following requirements:

i. The amount of the Streetcar Funding Request shall not exceed the funding available to the Cincinnati Streetcar from the following sources ("Available Streetcar Funds"):

- a. Fare revenue. For year one of operations, SORTA and the City shall jointly establish a fare revenue estimate for budgeting purposes. In subsequent years, fare revenue shall be calculated based on the previous year's actual revenue.
- b. Parking revenue allocated by City Council to Cincinnati Streetcar operations. Sources of parking revenue may include new parking meters in Cincinnati's Over-The-Rhine neighborhood, residential parking fees in proximity to the Cincinnati Streetcar route, or parking meter surcharges authorized for Cincinnati Streetcar purposes. For budgeting purposes the City Manager's Office shall estimate parking revenue available to the Cincinnati Streetcar for the coming City fiscal year and provide the estimate to SORTA.
- c. Indirect Revenue defined in Section 3.2.C, above, which must either be (a) money that will be on hand at the start of the City fiscal year for which the Streetcar Funding request is presented or (b) funds reasonably anticipated to be received by the City or SORTA pursuant to binding contract obligations.
- d. Grant funding, including but not limited to federal dollars. Grant award must occur prior to the City fiscal year to qualify as Available Streetcar Funds.
- e. FTA formula operating funds resulting from Streetcar operations.
- f. Funds from any special improvement district (or other streetcar funding district) for Streetcar transit services, which funds must either be (a) money on hand at the start of the City's fiscal year or (b) funds reasonably anticipated to be received by the City or SORTA pursuant to binding contract obligations.
- g. Funds received (or under contract) from organizations, businesses, or individuals for the operations and maintenance of the Cincinnati Streetcar including, but not limited to, the Carol Ann and Ralph V. Haile, Jr./U.S. Bank Foundation Limited Guaranty Agreement, which funds must either be (a) money on hand at the start of the City's fiscal year or (b) funds reasonably anticipated to be received by the City or SORTA pursuant to binding contract obligations.

ii. The Streetcar Funding Request shall provide for funding of the Maintenance Plan using Available Streetcar Funds.

iii. The Streetcar Funding Request shall include a detailed accounting of SORTA's proposed O&M Costs, including an accounting of estimated expenditures in the categories of costs identified in Section 3.3.B (*Definition of O&M Costs*).

iv. The Streetcar Funding Request shall include a two-year forecast of projected costs and revenue sources in connection with SORTA's Maintenance Plan responsibilities and Long-term Capital Improvement Plan. This forecast shall include activities and costs beyond those anticipated to occur on an annual (recurring) basis.

v. SORTA shall provide regular reports (at least quarterly) to the City Manager regarding the operations and maintenance of the Cincinnati Streetcar and budget-related issues. In addition, SORTA shall promptly notify the City Manager of any budgetary or operating issues that have potential to affect SORTA's performance of the Service Plan.

B. Definition of O&M Costs

O&M Costs refers to the annual cost of SORTA providing level of service identified in the Service Plan and the work described in the Maintenance Plan, as adopted by the SORTA Board for each City fiscal year and approved by City Council. O&M Costs include the following costs incurred by SORTA in furtherance of this Agreement:

- i. either: (a) if SORTA utilizes a third-party turnkey operator, the costs of SORTA staff for carrying out work not performed by the third-party operator, which shall be calculated at the fixed rate of 8% of the amount of the Streetcar Funding Request for Sections 3.3(B)(iii & iv); or (b) in all other operating scenarios, the direct costs of SORTA staff for providing the operations and maintenance of the Cincinnati Streetcar.
- ii. staff materials, supplies, professional services, training, utilities, equipment leases, facility leases, license fees and maintenance fees, insofar as the costs are directly and solely attributable to the performance of SORTA's responsibilities under this Agreement;
- iii. payments to a third-party Cincinnati Streetcar operator;
- iv. cost of insurance required under this Agreement to the extent attributable to the Cincinnati Streetcar;
- v. costs of local, state, and federal compliance-related activities, insofar as such costs are directly and solely attributable to the operation and maintenance of the Cincinnati Streetcar;

- vi. costs of implementing the Maintenance Plan; and
- vii. costs of taxes incurred by SORTA in furtherance of this Agreement.

C. Pre-Revenue Service Payment

The City will reimburse SORTA for all Cincinnati Streetcar related expenses incurred by SORTA or its agents prior to Revenue Service as defined in the Rail Activation Plan. The Rail Activation Plan shall be reviewed and approved by the City and shall not exceed \$1.1 million in expenses without prior City approval. SORTA will serve as the grantee of any federal grant dollars for the Cincinnati Streetcar Pre-Revenue Service expenses and will net any Federal funds out of the Pre-Revenue Service expenses.

D. City Transit Fund

- i. The City maintains a City Income Tax Transit Fund (#759), into which the proceeds of a portion of the City's earnings tax are deposited. The City and SORTA are Parties to the 1973 City-SORTA Agreement (the "1973 Agreement"), which governs the Metro bus system's funding and operations. Section B, Article 8 of the 1973 Agreement provides for the application of "transit tax funds" collected by the City through its earnings tax.
- ii. The parties agree that no portion of the City Income Tax Transit Fund (#759) may be used for any Cincinnati Streetcar expenses incurred by SORTA under this Agreement, including, but not limited to, O&M Costs and Startup costs, unless both Parties agree in writing.

E. Limitation on SORTA Financial Responsibility

In no event will SORTA be expected or required to operate the Cincinnati Streetcar at a level of service or in any manner that exceeds the Available Streetcar Funds provided to SORTA, except that SORTA shall under no circumstances operate or maintain the Cincinnati Streetcar in a manner that compromises public safety.

F. Compensation for Additional Work

In the event the City requests that SORTA perform additional duties not set forth in the adopted Service Plan or Maintenance Plan, the City shall fully compensate SORTA for the reasonable costs incurred in performing such duties. Except in the case of emergency work required to take immediate action to ensure public safety or maintain continuity of service,

the scope, schedule and budget for such additional work shall be approved by the City prior to performance and paid on a task order basis. Until a task order is approved by both Parties, SORTA shall have no responsibility to perform any duties or activities, except for those established in the duly adopted Service Plan and duly adopted Maintenance Plan. In the event that emergency work is required immediately to maintain public safety and/or continuity of service, SORTA may undertake such additional duties without prior authorization by the City. SORTA may subsequently submit a revised budget request for consideration by the City to address the cost of emergency actions.

G. Taxes

SORTA will pay all property taxes, if any, and include them in the annual budget to the City. Taxes, including taxes related to the City's reimbursement of SORTA costs, are a reimbursable cost under this Agreement. The City shall indemnify SORTA from taxes, including business and occupational taxes, sales taxes, utility tax and miscellaneous taxes and levies arising from the taxing authority of the City, with regard to any payments made under this agreement.

4.0 LIABILITY INSURANCE AND DEFENSE OF CLAIMS

4.1 Allocation of Liabilities

A. No Indemnification

The City and SORTA recognize that, as public entities, Ohio law does not permit them to indemnify the other against claims, damages, suits or judgments. To the extent permitted under Ohio law, the City and SORTA have agreed upon allocation of liabilities in connection with the Cincinnati Streetcar as set forth below.

B. System Safety, Liability for Operations and Maintenance

SORTA shall be wholly responsible for the safe operation of the Cincinnati Streetcar upon commencement of Revenue Service. Subject to the exceptions set forth below, SORTA shall be solely responsible for any and all claims, demands, suits, penalties, losses, damages, judgments or costs of any kind whatsoever (hereinafter "O&M Claims") arising out of or in any way resulting from the negligent or other wrongful act or omission of SORTA, its agents and employees, in connection with the operation and maintenance of the Cincinnati Streetcar. Unless otherwise agreed to by the Parties, O&M claims will be paid and handled, including defense of litigation, by SORTA's Risk Management staff and defense counsel according to SORTA's established claims management practices. SORTA may employ or retain additional claims adjusters/personnel and

defense attorneys as may be necessary for the proper handling and defense of O&M claims. In the event that SORTA contracts with a third-party operator, SORTA shall require the operator to jointly indemnify both the City and SORTA for O&M Claims arising out of the acts or omissions of the contractor. The cost of such O&M claims, associated staff, and liability insurance, if any, will be included in SORTA's Cincinnati Streetcar Funding Requests.

C. Liability for Design and Construction

The City shall be solely responsible for any and all claims, demands, suits, penalties, losses, damages, judgments or costs of any kind whatsoever arising out of or in any way resulting from the design and/or construction of the Cincinnati Streetcar project, including but not limited to, acts or omissions caused by the City, its officers, employees, agents, consultants, vendors, suppliers, contractors and/or subcontractors of all tiers, and further including but not limited to claims involving Streetcar noise, vibration, collapse, subsidence and/or earth movement, except to the extent arising out of or relating to the negligence, gross negligence, or willful misconduct of SORTA.

D. Liability for Hazardous Substances and Environmental Claims

The City shall be solely responsible for any and all claims, demands, suits, penalties, losses, damages, judgments or costs of any kind whatsoever asserted against SORTA by a third party, including but not limited to, any agency or instrumentality of the federal government, state or local government, for bodily injury, including death of a person, physical damage to or loss of use of property, or clean-up activities (including but not limited to investigation, study, response, remedial action, or removal), fines or penalties arising out of or relating to the presence, release or threat of release of a hazardous substance existing or emanating from the Cincinnati Streetcar project, except to the extent arising out of or relating to the act or omission of SORTA. The obligations under this paragraph shall survive the expiration or other termination of this Agreement.

E. Liability for Streetcar Manufacturer's Liability

The City shall be solely responsible for any and all claims, demands, suits, penalties, losses, damages, judgments or costs of any kind whatsoever arising out of or in any way resulting from the design, construction, manufacture or modification of the streetcar vehicles provided for the Cincinnati Streetcar project, except to the extent arising out of or relating to the negligence, gross negligence, or willful misconduct of SORTA.

F. Liability for City Maintenance Responsibilities

The City shall be solely responsible for any and all claims, demands, suits, penalties, losses, damages, judgments or costs of any kind whatsoever arising out of or in any way resulting from the City's primary Maintenance Responsibilities as outlined in the attached Exhibit B (*Responsibility Matrix*), now or as hereinafter amended, except to the extent arising out of or relating to the negligence, gross negligence, or willful misconduct of SORTA.

G. Liability for SORTA Maintenance Responsibilities

Upon commencement of Revenue Service SORTA shall be solely responsible for any and all claims, demands, suits, penalties, losses, damages, judgments or costs of any kind whatsoever arising out of or in any way resulting from SORTA's primary Maintenance Responsibilities as outlined in the attached Exhibit B (*Responsibility Matrix*), now or as hereinafter amended, except to the extent arising out of or relating to the negligence, gross negligence, or willful misconduct of the City.

4.2 Defense of Claims

A. Mutual Release

Except as provided for in Section 4.1 above and except as may arise as a breach under this Agreement, the City and SORTA each release, waive and forever discharge any and all causes of action against the other arising out of the operation and maintenance of the Cincinnati Streetcar.

B. Notice of Occurrence

Upon the happening of any occurrence or accident reasonably likely to involve liability on the part of the City, SORTA shall provide the City with written notice as soon as reasonably practicable. Upon the happening of any occurrence or accident reasonably likely to involve liability on the part of SORTA, the City shall provide SORTA with written notice as soon as reasonably practicable.

C. Assistance and Cooperation

The City and SORTA agree to fully cooperate in the enforcement of any right or claim against any person or entity which may be liable for the injury or damage arising out of the operation and maintenance of the Cincinnati Streetcar and/or damage or impairment to any Cincinnati Streetcar asset.

D. Joint Liability and Defense

The City and SORTA agree that the administration, handling, defense and disposition of all design, construction and/or manufacturers' liability claims arising out of the Cincinnati Streetcar project will be the responsibility of the City. Upon receipt of claims involving allegations of design, construction and/or manufacturers liability, the City shall accept tender of that portion of said claims attributable to the allegations of design, construction and/or manufacturers liability. SORTA and the City agree to associate in the defense and control of any claim, suit or proceeding relative to an occurrence where the claim or suit appears to involve allegations of design, construction and/or manufacturers liability and allegations arising out of the operations and maintenance of the Cincinnati Streetcar, in which event the City and SORTA shall cooperate in all things in the defense of such claim, suit or proceeding.

E. Preservation of Immunities and Defenses

Nothing in this Agreement shall constitute or be interpreted as a waiver by the City or SORTA of any sovereign or other immunities, protections or defenses it may have under law, including but not limited to Ohio Revised Code Chapter 2744.

F. Confidentiality

The City and SORTA hereby acknowledge and agree that materials and information, in document form and oral, may be generated by the claims management process that, under applicable law, may be kept confidential and privileged ("Confidential Materials"). Such Confidential Materials are presumed to include, but are not limited to, the following:

- Accident reports
- Legal advice, notes or memoranda of legal counsel
- Statements of potential witnesses
- Information assembled and reports prepared by consulting and potentially testifying experts
- Statements, documents, and information that are "trial preparation materials" and/or materials that are compiled or prepared in anticipation of claims or litigation, strategy, and tactics for litigation or other dispute resolution process
- Statements, documents, and information that are considered "Security Sensitive Information" (SSI) as defined in 49 Code of Federal Regulations (CFR) Parts 15 and 1520
- Statements, documents and information that are developed as part of SORTA and City compliance with State Safety Oversight (SSO)

requirements as defined by FTA and the Ohio Department of Transportation

The City and SORTA intend by this Agreement to protect the privileged and confidential nature of any Confidential Materials. The City and SORTA each agree that all oral and/or written Confidential Materials received from the other party shall be held in strictest confidence and shall not be given, shown, made available, communicated or otherwise disclosed in any way to anyone outside the City and SORTA without the express consent of the party from whom the Confidential Materials were received, except pursuant to judicial order. If either the City or SORTA receive a request from an outside party for Confidential Materials, the recipient of the request shall immediately notify the other party to this Agreement, who shall be entitled to oppose the request in court or other appropriate forum.

G. Defense and Settlement of Claims

The City and SORTA shall each have the right to defend, settle or cause to be settled all claims for loss and damage for which such party is liable under this Agreement, except that any settlement by SORTA for damages over \$25,000 shall be subject to City approval and City Solicitor review as to form.

4.3 Property and Liability Insurance

The City shall be responsible for insurance for pre-Revenue Service activities related in any way to the Cincinnati Streetcar. The City shall insure the Cincinnati Streetcar vehicles, spares, power equipment, platforms and the Cincinnati Streetcar maintenance facility under its property damage insurance coverage. In the event a Cincinnati Streetcar vehicle is so damaged that the City determines to replace it rather than have it repaired, such replacement vehicle shall be procured by the City at its expense. The City shall be solely responsible for its deductible and the prosecution and handling of all claims with its insurer. The City acknowledges and agrees that it will comply with any FTA requirements with respect to the application of insurance proceeds for damage to or replacement of a federally-funded asset.

SORTA shall procure liability insurance covering the operation and maintenance of the Cincinnati Streetcar, with such coverage(s), limits and deductibles/retentions as may be required by the City in consultation with SORTA. The City shall be named as an additional insured with respect to such liability insurance policies. The cost of such liability insurance shall be included in SORTA's Cincinnati Streetcar Funding Requests.

The City will comply with FTA insurance requirements as outlined in the 2013 FTA Master Agreement (Section 23) as updated annually.

5.0 SAFETY AND SECURITY

ODOT is the FTA designated State Safety Oversight agency for Ohio and is responsible for providing oversight of the safety and security planning and certification for the Cincinnati Streetcar. SORTA shall observe all safety rules and other requirements with regulatory bodies having jurisdiction over the service area of the Cincinnati Streetcar (the "Service Area") and shall operate the vehicles with the highest regard for all aspects of safety. This Agreement is not intended to conflict with any safety rules and other requirements with regulatory bodies having jurisdiction over the Service Area.

SORTA is responsible for and shall comply with all safety and security plans associated with the Cincinnati Streetcar including, without limitation, those currently required or that may be required in the future by the USDOT, FTA, ODOT, or the City. Additional information on the safety and security standards, policies, and certifications will be available in the safety and security plans currently being developed.

6.0 TERMINATION AND SEVERABILITY

6.1 Severability

In the event that any term, covenant, condition or provision of this Agreement, or the application of this Agreement to any person or circumstance, is found to be invalid or unenforceable in any respect, the remainder of this Agreement, and the application of such item or term to other persons or circumstances nevertheless will be binding with the same effect as if the invalid or unenforceable provision were originally deleted. The Parties agree to bargain in good faith to reform this Agreement or replace any invalid or unenforceable provision in a manner that comes as close as possible to the intention of the invalid or unenforceable provision.

6.2 Termination

Either Party may terminate this Agreement in accordance with the procedures provided in Section 6.3 upon a default as set forth herein. If for any cause either Party does not fulfill in a timely and proper manner its obligations under this Agreement, the aggrieved Party will give the other Party written notice of such failure or violation. The responsible Party will be given a minimum of 30 calendar days to correct the violation or failure. If the failure or violation is not corrected, this Agreement may be terminated five business days from the date the aggrieved Party provides written notice of intent to terminate.

A. Default by City

In the event of termination due to default by the City, the City will compensate SORTA for all contract closeout costs, the portion of any work that has been satisfactorily rendered to the date of cessation of service, and any executed contracts for services and supplies that cannot be cancelled.

B. Default by SORTA

In the event of termination due to SORTA default, SORTA will continue to provide the agreed-upon level of service at its own expense, until the City can arrange for service continuation by other parties, but in no event shall this requirement exceed 270 days. SORTA will also assign any long-term contracts for supplies and services to the City in accordance with the Section 6.3 termination procedure.

6.3 Procedures upon Termination

SORTA and the City agree to apply the following procedures upon termination of this Agreement by either Party, either for default or for convenience.

- A. The Parties shall seek a joint determination of the status of each cost component and contract related to the provision of service for the affected budget year at the initiation of termination procedures.
- B. The Parties shall seek consensus on the action to be taken on each component.
- C. The Parties may agree to arrange for the assignment and assumption of obligations of third party contracts for the performance of work under this Agreement.
- D. The Parties shall agree upon a cost estimate for terminating or assigning any third party contracts that have been executed under this Agreement.
- E. The terms and responsibilities of the Parties under this section will survive termination of this Agreement.

7.0 DISPUTE RESOLUTION MECHANISM AND CHOICE OF FORUM

7.1 Dispute Resolution.

SORTA and the City agree to negotiate in good faith to resolve any disputes arising under this Agreement so that the purpose of this Agreement is not frustrated. The Parties' Designated Representatives shall communicate regularly to discuss the status of the tasks and services to be performed and to prevent disputes from arising. Except as otherwise provided in this Agreement, the Parties shall use the following dispute resolution process.

A. First Step Resolution.

SORTA and the City shall confer to resolve disputes that arise under this Agreement as requested by either Party. The individuals identified in Exhibit F are the Designated Representatives for purposes of this first step.

B. Second Step Resolution.

In the event the Designated Representatives are unable to resolve the dispute within ten business days, the General Manager and CEO of SORTA and the City Manager shall meet to confer and resolve the dispute.

C. **Third Step Resolution.**

If the parties cannot resolve the dispute utilizing the process in Section 7.1B within ten business days, the parties may elect to enter binding arbitration using the American Arbitration Association rules. Each Party will choose a designated arbitrator, with the two arbitrators selecting a third. The parties have the option of entering into non-binding mediation at any time. The Parties shall share equally in the cost of mediation. Funding and budget disputes are not subject to this third step resolution process.

7.2 Choice of Forum.

In the event that either Party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this Agreement, the Parties agree that any such action or proceedings will be brought in a court of competent jurisdiction in Cincinnati, Ohio.

8.0 LITIGATION/ LEGAL DEFENSE

8.1 Notice.

In the event a lawsuit is commenced against either Party, or a claim is asserted for loss or damage for which the other Party may be solely or jointly liable under this Section, the Party sued, or against whom the claim is asserted, promptly shall notify the other Party in writing of the pendency of the suit or claim, and thereupon such notice, the other Party shall assume or join in the defense of such suit or claim.

8.2 Payment of Legal Costs and Joint Defense

The City and SORTA each agree to bear their own legal costs in preparing this Agreement. Each party will bear its own legal expenses incurred under Section 7. The parties shall equally share the costs of hiring any arbitrators in accordance with Section 7.

8.3 Judgment and Settlement.

Neither Party will be conclusively bound by any judgment against the other Party.

8.4 Parties' Right to Contract Responsibilities

If either Party contracts some or all of its responsibility, it will still be held accountable for meeting its obligations under this Agreement.

8.5 Transfer/Assignment

Except as otherwise set forth in this Agreement, neither Party may assign any interest, obligation or benefit in this Agreement or transfer any interest in the same, whether by assignment or novation, without prior written consent by the other Party. This Agreement is binding upon, and inures to the benefit of, the Parties and their respective successors and assigns.

8.6 Benefits

This Agreement is intended for the sole benefit of the Parties to this Agreement. Nothing in this Agreement is intended to give any person or entity, other than the Parties, any legal or equitable right, remedy, or claim under this Agreement.

8.7 Preparation

The Parties and their legal counsel have cooperated in the drafting of this Agreement. Accordingly, the Parties intend this Agreement to be the joint work product of the Parties. The Parties do not intend for any provision of this Agreement to be construed against a Party on the basis of authorship.

8.8 Counterparts

This Agreement may be simultaneously executed in duplicate counterparts, each of which will be deemed to be an original, and such counterparts together shall constitute one and the same instrument.

9.0 GENERAL

9.1 Entire Agreement

This Agreement, the attached exhibits and the other referenced documents herein constitute the entire agreement and understanding between SORTA and the City relating to the Operation and Maintenance of the Cincinnati Streetcar. There are no restrictions, promises, representations, warranties, covenants or undertakings, oral or otherwise, except those expressly set forth or referenced in this Agreement and the 2011 Streetcar IGA between SORTA and the City, as amended.

9.2 Amendments

Waivers, modifications, additions, or amendments to this Agreement must be in writing and approved in the same manner as this Agreement. All such approvals shall be submitted to the parties' respective law departments for a determination as to whether the change requires additional approval by City Council or the SORTA Board of Directors.

If at any time a Party determines that amendments or additions to this Agreement are necessary, it will contact the other Party in writing with any proposed changes. Parties shall negotiate a resolution and, in the absence of such resolution, Parties shall begin the dispute resolution process as set forth in Section 8.

9.3 Notices

Except as otherwise expressly provided in this Agreement, all requests, notices, demands, authorizations, directions, consents, waivers or other communications required or permitted under this Agreement must be in writing and either: (i) delivered in person, (ii) deposited, postage prepaid, in the certified mails of the United States, with return receipt requested, (iii) delivered by a nationally recognized overnight or same-day courier service that obtains receipts, or (iv) delivered electronically to the other Party's primary contact as listed in Exhibit F. However, notice of termination under Section 6.2 must be delivered in person or by certified mail, with return receipt requested.

9.4 Rights and Remedies

The duties and obligations imposed by this Agreement and the rights and remedies available hereunder do not limit or waive any duties, obligations, rights or remedies otherwise available by law. Waiver by either Party of any default will not affect or impair any right arising from any subsequent default. The failure of either Party to insist at any time upon the strict observance or performance of any of the provisions of this Agreement or to exercise any right or remedy provided for in this Agreement will not impair any such right or remedy nor be construed as a waiver or relinquishment thereof.

9.5 Authority

The Parties each warrant they have the authority to enter into this Agreement and that the persons signing this Agreement for each Party have the authority to bind that Party.

9.6 No Agency or Employee Relationship.

No joint venture or partnership is formed as a result of this Agreement. No employees, agents or subcontractors of one Party shall be deemed, or represent themselves to be, employees of any other Party to this Agreement. In performing work and services pursuant to this Agreement, the City, its employees, consultants, agents and representatives shall be acting as agents of the City and shall not be construed to be employees or agents of SORTA in any manner whatsoever. The City shall not hold itself out, nor claim to be, an officer or employee of SORTA and will not make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of SORTA. The City shall be solely responsible for any claims to wages or compensation by City employees, consultants, agents and representatives, including sub-consultants.

In performing work and services pursuant to this agreement, SORTA, its employees, agents, consultants and representatives shall be acting as agents of SORTA and shall not be deemed or construed to be employees or agents of the City in any manner whatsoever. SORTA shall not hold itself out, nor claim to be, an officer or employee of the City and will not make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the City. SORTA shall be solely responsible for any claims for wages or compensation by SORTA employees, consultants, agents and representatives, including sub-consultants.

9.7 Certification of Funds; Budget and Fiscal Provisions.

This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only upon certification of available funds each fiscal year by the Finance Director, and the amount of the City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. Notwithstanding any language to the contrary in this Agreement, City budget decisions are subject to the discretion of City Council. In the event of non-appropriation of funds, the Agreement shall terminate in accordance with the process set forth in Section 6.3.

[Remainder of page intentionally left blank – signatures on following page]

11/17/2014

Executed by the parties on the dates indicated below. The Effective Date shall be the last date written below.

SOUTHWEST OHIO REGIONAL TRANSIT AUTHORITY

By: _____
Darryl Haley, Interim Chief Executive Officer/ General Manager

Recommended:

By: _____
Name: _____
Title: _____

CITY OF CINCINNATI

By: _____
Harry Black, City Manager

Date: _____, 2014

Recommended by:

Chris Eilerman, Streetcar Project Manager

Approved as to Form:

Assistant City Solicitor

Certified Date: _____

Fund/Code: _____

Amount: _____

By: _____
Reginald Zeno, City Finance Director

[Approval of Cincinnati Office of Contract Compliance Not Required]

Exhibit A: Transportation Maintenance and Operations Plan

TO BE ATTACHED

Exhibit B: Responsibility Matrix

TO BE ATTACHED

EXHIBIT B: CINCINNATI STREETCAR OPERATIONS & MAINTENANCE RESPONSIBILITY MATRIX

P = primary responsibility S = secondary responsibility

O&M Executive/Management	City	SORTA/ METRO	Notes
General Manager			
Operations Management		P	Streetcar O&M
Maintenance Management		P	
Financial Reporting and Analysis		P	
Financial and Budget Approval	S	P	City Council will approve budget (including fare policy) on a similar basis as existing METRO service
Discretionary Grants	P	P	
FTA Procurement, Budget Management and Accounting	S	P	City will participate in all FTA compliance reviews including Triennials, Procurement, etc.
Board of Directors	S	P	Existing SORTA Board
Operations, Supervision, Administration			
Operators Staffing		P	
Operator Check-in, Fitness-for-Duty Checks		P	
Operator Administration & Scheduling		P	
Streetcar Personnel (O&M) Payroll		P	
Supervision		P	
Control: SCADA and Power Control		P	
Control: Train Movement & Direction		P	
Scheduling and Run Cuts		P	
Special Events & Charter Service Approval	P	S	Section 2.7
Special Events & Charter Service Operation		P	Section 2.7
Recruitment and Training - Operations		P	
Rules Development		P	
Procedures Development		P	
Rules and Procedures Compliance Checks		P	
Track Access Authorization	S	P	Section 2.5.D.
Track Access Utility Mark outs/One-Call Coordination		P	Section 2.2 B. iii.

Track Access Training	S					Section 2.5 D.
Research & Analysis, Operating Data				P		
Ride Checks, Passenger Counts, & Usage Measures				P		
National Transit Database Reporting				P		FTA annual reporting, Section 2.10 vi.
Service Quality and Reporting				P		
On-going Revenue Service Marketing	S			P		
Media Relations	S			P		
Customer Service/Call Center				P		Integrated into existing METRO call center
Sponsorships	S			P		
Transit Advertising	S			P		
Maintenance						
Maintenance Staffing				P		
Computer-Aided Dispatch Equipment Provision				P		SORTA Transitmaster - Customer Furnished Equipment to Vehicle Manufacturer
Computer-Aided Dispatch Equipment Maintenance				P		SORTA Transitmaster
Track and Track Switch Insp., Preventive Mtc				P		
Track and Track Switch Repairs				P		
Traffic Signals: Streetcar-Specific in Right-of-Way	P			S		Section 2.5 A.
Signals/Traffic: Transmission to Case or House	P			S		Section 2.5 A.
Signals/Traffic: City Signals	P			S		Section 2.5 A.
Signals/Traffic: Streetcar Sensors & Transmission, Detection/Priority Equipment	P			S		Section 2.5 A.
Street Pavement in Right-of-Way	P			S		
Right-of-Way Maintenance: Signs and Pavement Markings Inspection & Maintenance	P					
Right-of-Way Maintenance: Related Signs, Bike Lanes, Inspection & Maintenance	P					
Right-of-Way Maintenance: Trees	P					
Right-of-Way Cleaning: Routine Street sweeping	P					Section 2.5 C.
Right-of-Way Cleaning: Flangeway maintenance and cleaning				P		accordingly
Right-of-Way Cleaning: Track and Switches Drains - Grates				P		NOTE: May need additional language in Section 2.5
Right-of-Way Cleaning: Snow Removal, Ice	P			S		system
Right-of-Way Cleaning: Tornado/Hurricane/Emergency Weather Issues	P			S		

	P	S	
Right-of-Way Cleaning: Special Events Trash			safe operations
"Corner Can" Trash Collection	P		on station stops
Right-of-Way Towing: Disabled and Double-Parked Autos	P	S	Section 2.5 B.
Right-of-Way Towing: Disabled Streetcars		P	
Station and Stop Cleaning		P	Section 2.5 C.
Station and Stop Repairs		P	Spare parts to be stored at MOF
Substations Testing and Preventive Maintenance		P	
Substations Repair		P	
OCS/Catenary Visual Inspection		P	
OCS/Catenary Repair and Hands-On Inspection		P	
OCS/Catenary Poles	S	P	Section 2.2 B. ii. NOTE: This section should be it's own section in the OMIGA
OCS/Catenary Span/Contact/Messenger Wires, Hardware, Insulators		P	
Radio System Provision		P	
Radio System Maintenance		P	
Fare Equipment Provision		P	
Fare Equipment Supplies		P	
Fare Equipment Maintenance		P	
Fare System Back-Office Functionality		P	
Fare Revenue Handling & Accounting		P	
Streetcar Vehicle Preventive Maintenance		P	
Streetcar Vehicle Corrective Maintenance		P	
Streetcar Vehicle Routine Cleaning		P	
Streetcar Vehicle Heavy Cleaning		P	
Maintenance Control, Scheduling, Records		P	
Tools Calibration & Testing		P	
Parts and Inventory		P	
Rules Development		P	
Procedures Development		P	
Recruitment and Training - Maintenance		P	
Rules and Procedures Compliance Checks		P	

Stray Current Testing	S	P	SORTA to develop a testing program in consultation with the City who will manage the relationships with utilities and other impacted Parties.
Facilities Maintenance: Maintenance and Operations Facility (MOF)		P	
Facilities Maintenance: (MOF) Telephone, Network, CCTV and Keycard Access		P	
Software Maintenance/Licenses		P	
Vehicle Cameras		P	
Real Time Signs		P	
APC Provision & Maintenance		P	
Facility Office Equipment (Computers/Copier/etc.)		P	
External Audits (Financial, etc. and other federal incl. triennial etc.)	P	P	Section 2.12 A.
Marketing (kick-off, promotion, media, agency, advertising, internal communications, newsletters, website, social media, customer communication, signage, detour info, branding, graphic design, uniforms, audio announcements, braille, promotions, fare sales/bulk fare contracts, fare media management, tours/photo ops/learned media, on-call crisis communication	S	P	Section 2.9
Capitalized Renewal & Maintenance, Overhaul			
Track Renewal		P	
OCS/Catenary Major Renewal		P	
Substation Overhaul		P	
Right-of-Way: Street Paving		P	
Right-of-Way: Track Slab		P	
Right-of-Way: Track Rail & Fixation		P	
Stations		P	
Fare Equipment		P	
Radio Systems		P	
Streetcar Vehicle Overhaul		P	
Computer-Aided Dispatch and Control Equipment		P	
Security			

Security Certification		P	P	
Security Overall Responsibility/Plan Signatory(ies)		P	P	
Security Data, Reporting, and Tracking		S	P	Both City and SORTA will sign certification
Security & Emergency Preparedness Plan		P	S	Current option is to see if this can be jointly signed, but likely SORTA will do the actual writing of the plan
Emergency/First Response		P	S	
Crowd Control		P	S	
Detours & Traffic Control		P	S	
Fare Enforcement		S	P	City Police to respond to SORTA calls for assistance/City Response Protocol in IGA
Training for Security Personnel			P	
Training for Other First Responders			P	
Training for Non-Security Personnel			P	
TSA, DHS, Federal Interaction		S	P	
Internal Security Audits			P	
Safety				
Safety Certification				
Safety Overall Responsibility/Plan Signatory(ies)		P	P	
Safety Data, Reporting, and Tracking		P	P	Both City and SORTA will sign certification
System Safety Program Plan			P	
Internal Safety Audits			P	
Hazard Management			P	
Accident Investigation			P	
Corrective Action Plans			P	
Employee and Contractor Safety Oversight			P	
Change Management			P	
Drills and Exercises			P	
Training for Safety Personnel		P	P	
Training for Non-Safety Personnel			P	
State Safety Oversight/ODOT Triennials		S	P	
Construction Safety			P	
Employee / Workplace Safety (OSHA compliance)		P	S	Section 5.0
Passenger and Public Safety		S	P	Section 5.0
			P	Section 5.0

ADA Paratransit

Paratransit Service

P

Exhibit C: Acronyms and Definitions

“Asset Management Plan” means the long range plan developed by SORTA to manage the capital assets of the Cincinnati Streetcar.

“Capital Budget” means the budget for Capital Improvements, as contemplated in the Long-term Capital Improvement Plan.¹

“Capital Improvement” means any (i) purchase or improvement of a Cincinnati Streetcar asset, (ii) Capital Renewal or (iii) Capital Replacement, as contemplated in the Long-term Capital Improvement Plan.²

“Capital Renewal” has the meaning ascribed thereto in the Long-term Capital Improvement Plan.³ Capital renewal includes planned replacement or renewal of significant Cincinnati Streetcar assets, such as rail, overhead wire, stop shelters, and other systems and subsystems, and typically occurs based on the accumulation of longer-term wear, mileage, or time. It includes scheduled vehicle overhaul, such as time- and/or mileage-based vehicle renewal programs.

“Capital Replacement” has the meaning ascribed thereto in the Long-term Capital Improvement Plan.⁴ Capital Replacement includes unexpected replacement of subsystems or substantial components. Examples include unexpected replacement of overhead catenary systems and poles due to an automobile accident, unexpected failure of a traction power transformer, etc. Such capital replacement excludes normal wear items and expendable parts (e.g., brake pads, normal wheel wear, a foreseeable number of Overhead Contact System (“OCS”) parts, light bulbs, etc.) and component failures that result from negligent use or maintenance (e.g., a substation breaker that fails because it has not received preventive maintenance).

“Charter Operations” means any charter operations for transporting people and/or goods which are not available to the general public without prior arrangement.

“Cincinnati Streetcar” means streetcar vehicles, the streetcar track, the overhead contact system, the maintenance and operating facility located at __ Henry Street, and any supporting or ancillary equipment owned by the City or acquired by SORTA for use in delivering streetcar service in Cincinnati.

¹ To be confirmed.

² To be confirmed.

³ To be confirmed.

⁴ To be confirmed.

“City Representative” means the employee of the City who oversees the Cincinnati Streetcar project and is responsible for ensuring that SORTA complies with all aspects of this Agreement.

“Designated Representatives” means the individuals identified in Exhibit A.

“FTA §5307 Designated Recipient” means the entity appointed in accordance with the Urbanized Area Formula Grants Program, 49 U.S.C. §5307, to receive and apportion FTA §5307 Formula Funds.

“FTA §5307 Formula Funds” means Federal funds disbursed under the Urbanized Area Formula Grants Program, 49 U.S.C. §5307.

“Long-term Capital Improvement Plan” or “CIP” means the long-term plan for Capital Improvements that includes capital projects for the upcoming fiscal year plus the ensuing [five (5)] fiscal years.⁵

“Maintenance Plan” means the plan for the work to be done and the proper sequence of actions to be taken to maintain any component of the Cincinnati Streetcar.

“Marketing Plan” means the plan for marketing the Cincinnati Streetcar.

“National Transit Database” means the Federal Transportation Authority’s national database of statistics for the transit industry.

“Pre-Revenue Service” means the operation of streetcars under the proposed schedule used after the beginning of revenue service, but without passengers. The “Pre-Revenue Service” period is used to test the proposed schedule and to train personnel on the procedures to be used under normal and extraordinary conditions.⁶

“Project Management Plan” means the document prepared by SORTA that explicitly defines all the activities and tasks necessary to implement the Cincinnati Streetcar project.

“Rail Activation Plan” means the plan describing the tasks and activities required to be completed prior to the Cincinnati Streetcar’s commencement of passenger service.

“Rail Fleet Management Plan” means the plan relating to the Cincinnati Streetcar fleet utilization.

⁵ To be confirmed.

⁶ To be confirmed.

“Revenue Service” means the operation of streetcars to transport fare-paying passengers according to a Service Plan, or for Special Events and may include promotional service periods during which no fare is charged.⁷

“Right of Way” or “ROW” has the meaning ascribed thereto in the Streetcar Right-of-Way Manual.⁸

“Security” has the meaning ascribed thereto in the Streetcar System Security and Emergency Preparedness Plan.⁹

“Service Plan” means the document outlining the service to be provided by the Cincinnati Streetcar, subject to annual review for changes. The Service Plan sets forth hours of operation, headways, special operations, and other details of the service.

“SORTA Track Access Procedures” means the procedures relating to Cincinnati Streetcar track access.

“Special Events Permitting Guidelines” means the guidelines relating to the permitting of Special Events.

“Special Events” means any event that requires a deviation from the normal operating routine of the Cincinnati Streetcar. These may include extended hours of service for holidays, anticipated delays due to parades or construction work, and the opening of new streetcar lines.¹⁰

“Special Service” means Cincinnati Streetcar service provided for Special Events.

“Streetcar Right-of-Way Manual” means the manual that describes the Cincinnati Right of Way procedures.

“Streetcar System Security and Emergency Preparedness Plan” means the document describing the security policies, objectives, responsibilities and procedures to assure rapid, controlled, and predictable responses to various types of emergencies in connection with the Cincinnati Streetcar.

“Track Access Permit” has the meaning ascribed thereto in the SORTA Track Access Procedures.

“Transportation and Maintenance Operations Plan” or “TMOP” means [definition to come].

⁷ To be confirmed.

⁸ To be confirmed.

⁹ To be confirmed.

¹⁰ To be confirmed.

Exhibit D: Insurance Responsibilities

TO BE ATTACHED

Exhibit E: Asset Matrix

This matrix of assets reflects all elements funded by the Federal Transit Administration undertaking

Asset	Includes	Responsibility
Streetcar track (mainline and MOF site)	<ul style="list-style-type: none"> • Running Rails • Special Trackwork • Track Slab • Stray Current Protection 	SORTA
Streetcar Overhead Contact System (mainline and MOF site)	<ul style="list-style-type: none"> • Line Poles/Foundations • Bracket Arms • Running/Contact Wire • Suspension Wire • Overhead and Underground D.C. Feeder Conduits and Wire 	SORTA (street light fixtures on joint use poles City of Cincinnati responsibility)
Streetcar Traction Power System (mainline and MOF site)	<ul style="list-style-type: none"> • Traction Power Substations (TPSS) • SCADA System 	SORTA
Streetcar Maintenance and Operations Facility (MOF)	<ul style="list-style-type: none"> • MOF Site including but not limited to: <ul style="list-style-type: none"> ○ MOF Building Inclusive of all Systems ○ MOF security fencing and gates ○ MOF equipment ○ Wheel Truing Machine 	SORTA
Streetcar Vehicles	<ul style="list-style-type: none"> • Revenue Vehicles <ul style="list-style-type: none"> ○ Special Tools / Test Equipment ○ Spare Parts ○ Manuals ○ CAD/AVL/Radio Communications Equipment • Non-Revenue Vehicles 	SORTA
Streetcar Fare Collection System	<ul style="list-style-type: none"> • Ticket Vending Machines 	SORTA

Streetcar Station-Stops	<u>City of Cincinnati</u> <ul style="list-style-type: none"> • Passenger Shelters • Handrails / Fixtures • Pavement / Steps / Platforms <u>SORTA</u> <ul style="list-style-type: none"> • "Next Streetcar" Electronic Signage • Other Signage / Maps 	City of Cincinnati / SORTA Shared
Streetcar Street and Sidewalk Pavement		City of Cincinnati
Streetcar Traffic Signals		City of Cincinnati
Streetcar Traffic Signage / Pavement Markings		City of Cincinnati
Streetcar Relocated Utilities	The project funded only the relocation of third party utilities, no ownership interest	City of Cincinnati continues to coordinate / regulate third party utilities

Exhibit F: Primary Contact Information for Parties

<i>City of Cincinnati Project Manager</i>	<i>SORTA Project Manager</i>
<i>Name</i>	<i>Name</i>
<i>Address</i>	<i>Address</i>
<i>Office phone</i>	<i>Office phone</i>
<i>Mobile phone</i>	<i>Mobile phone</i>
<i>Date</i>	<i>Date</i>

The Parties may unilaterally amend this exhibit to change their respective primary contact by sending a copy of the amended exhibit to the other Party. The amendment becomes effective upon delivery.

Exhibit G: 2011 Streetcar Intergovernmental Agreement

TO BE ATTACHED

Exhibit H: Maintenance and Operations Facility Lease

TO BE ATTACHED

Contract no: _____

Property: Streetcar Maintenance and Operations Facility
_____ Henry Street

LEASE AGREEMENT

(30 years)

This Lease Agreement ("Lease") is entered into by and between the **City of Cincinnati**, an Ohio municipal corporation, 801 Plum Street, Cincinnati, Ohio 45202; Attention: Department of Transportation and Engineering (the "**City**"), and **Southwest Ohio Regional Transit Authority**, a political subdivision of the State of Ohio, 602 Main Street, #1100, Cincinnati, Ohio 45202 ("**Tenant**").

Recitals:

A. The City is the owner of the property and building thereon located at _____ Henry Street, Cincinnati, Ohio, which is under the management of the City's Department of Transportation & Engineering ("**DOT**") (the City's property is shown on Exhibit A (Site Plan) hereto and is referred to herein as the "**Property**").

B. Tenant intends to use the Streetcar Maintenance and Operating Facility located on the Property in order to operate and maintain the Cincinnati Streetcar system pursuant to the Operations and Maintenance Intergovernmental Agreement ("**OMIGA**") between the parties.

C. The parties desire to memorialize their respective rights and obligations with respect to Tenant's use of the Property.

D. The annual fair market rental value of the Property, as determined by the City's Real Estate Services Division based upon the most recent appraisal by the Hamilton County Auditor, is approximately \$_____, however the City has determined that it is in the best interest of the public to lease the Property to Tenant for \$0.00 because Tenant's use of the Property enables Tenant to provide a valuable public service, at an affordable price, for the benefit of residents and visitors.

E. The City has determined that eliminating competitive bidding is in the best interest of the public because Tenant is presently in possession of the Property and plans to continue to use the Property for the long term in connection with its normal bus transit operations, for the benefit of the public.

F. The City Planning Commission authorized the use of the Property and associated right-of-way for the Streetcar Maintenance and Operating Facility on May 18, 2012.

G. The City Manager's execution of this Lease was authorized by Ordinance No. _____-2014, duly passed on _____, 2014.

NOW THEREFORE, the parties hereby agree as follows:

1. **Grant.** The City hereby leases the Property to Tenant, and Tenant hereby leases the Property from the City, on the terms and conditions hereinafter set forth. Tenant accepts the Property subject to any and all easements, covenants, restrictions and other matters of record affecting the Property and accepts the Property in "as is" condition.

2. **Term.** The term ("**Term**") of this Lease shall be **30 years** and shall commence on the Effective Date (as defined on the signature page hereof) and, unless sooner terminated, shall end on the 25th anniversary thereof. Subject to further approval by City Council and Tenant's governing board, the parties may mutually agree to extend the Term upon the expiration of the initial 30-year Term, each such extension to be memorialized in a written amendment to this Lease executed by both parties. Notwithstanding anything in this Lease to the contrary, if, at any time during the Term, Tenant vacates the Property, the City shall have the right to terminate this Lease by giving written notice thereof to Tenant. (For purposes of the preceding sentence,

Tenant's temporary vacation of the Property as needed in order to make alterations and repairs to the Property from time to time shall not trigger the City's termination right.) In addition, the City may at any time and for any reason terminate this contract upon one hundred eight (180) days written notice to Tenant.

3. **Base Rent.** \$0.00.

4. **Utilities and Other Expenses.** Throughout the Term, Tenant shall pay all utility charges, insurance costs, and all other expenses associated with the Property. Should the Property lose its tax exempt status at any time during the Term, Tenant shall pay all real estate taxes and assessments that come due and payable during the Term to the Hamilton County Treasurer. If the Property is not a separate tax parcel and is included with other property owned by the City, Tenant shall pay for the portion of each tax bill that is allocable to the Property as reasonably determined by the City. *The City shall have no obligation to pay for any operating or other expenses of any kind associated with the Property during the Term.*

5. **Permitted Use.**

(A) **Permitted Use.** Tenant shall continually use the Property as streetcar maintenance and operating facility as part of its normal public transit operations (the "**Permitted Use**") and for no other purpose unless approved in writing by the City. Tenant shall abide by all applicable laws, ordinances and governmental requirements with respect to its use of the Property and with such reasonable rules and regulations governing its use of the Property as the City may from time to time promulgate. Tenant shall not use the Property in such a manner as would cause a violation of any existing covenants, easements, restrictions or other matters of record affecting the Property. Tenant shall not bring or permit to be brought onto the Property any hazardous materials, or other contaminants or substances that are harmful to the public or to the environment. For purposes of this Lease, "hazardous materials" do not include fuel or other substances that are routinely used in operating motor vehicles or building or mechanical systems.

(B) **Reservation of Access by City Departments, Utility Companies and Others.** Tenant shall ensure continuous access to the Property (24 hours/day, 7 days/week, 52 weeks/year) by the City's Police and Fire Departments, MSD, Greater Cincinnati Water Works, Cincinnati Bell, Duke Energy, and any and all other utility companies that may have utility lines or other utility installations within or near the Property, for the maintenance, repair, modification and replacement thereof. Tenant shall not construct or install any structures or other improvements above or near any existing utility lines within the Property that would interfere with access to or the operation or maintenance thereof. If Tenant constructs any improvements or undertakes any other action that interferes with the access rights reserved to the City and third parties herein, the same shall constitute an immediate default of Tenant under this Lease, whereupon the City shall be permitted to take all actions reasonably necessary to eliminate such interference, and Tenant shall reimburse the City for all costs incurred by the City in connection therewith upon the City's demand. If Tenant's activities cause damage to existing utility lines or other utility facilities belonging to a utility provider, Tenant shall immediately notify the appropriate utility provider. All costs of repairing such damage, including without limitation, all costs of replacing any damaged utility lines and facilities that are not capable of being properly repaired as determined by the applicable utility provider in its sole discretion, shall be borne by Tenant and shall be payable by Tenant within 30 days after Tenant receives documentation substantiating such costs. The City shall not be responsible for any damage to the Property or improvements thereon resulting from the entry onto the Property by utility companies and others having the right to enter upon the Property during the Term. [This section may be adjusted based on results of the City's coordinated report for the Property.]

6. **Maintenance, Repairs and Capital Improvements.** Throughout the Term, Tenant, at Tenant's sole expense, shall keep the building and other improvements in good, safe, orderly, sanitary, and clean condition and repair, including without limitation making any and all necessary capital repairs or capital improvements. In the event of damage to the building and other improvements, Tenant shall promptly repair such damage at no expense to the City. *The City shall have no maintenance or repair obligations with respect to the Property during the Term.*

7. **Alterations.** Tenant shall not make any alterations to the building or Property without the City's prior written consent, not to be unreasonably withheld. All alterations approved by the City shall be made at Tenant's sole expense. Tenant shall submit professionally prepared plans and specifications to the City for all

proposed alterations, for review and approval by the City, and shall obtain all required permits prior to commencing any work. The City shall have the right to supervise all work undertaken at the Property. Tenant shall surrender all improvements at the end of the Term, at no cost to the City; provided that Tenant shall be permitted to remove its trade fixtures at the end of the Term so long as Tenant repairs any and all damage caused thereby. Tenant shall not permit any mechanics liens to attach to the Property in connection with work performed by or at the request of Tenant.

8. **Insurance.** Throughout the Term, the City shall maintain property and liability insurance for the Property, as set forth in the OMIGA.

9. **Damage by Fire, Other Casualty or Structural Failure.** If during the Term the building is damaged by fire or other casualty or suffers structural failure, Tenant shall promptly notify the City in writing and cooperate with the City for the repair of such damage and take such other actions as may be needed to restore the building to good condition.

10. **Surrender.** At the end of the Term, Tenant shall remove from all personal property belonging to Tenant and shall leave the building in "broom swept" condition. If Tenant fails to remove any items of personal property from the Property at the end of the Term, the City may deem such items to be abandoned, and the City may remove, store, destroy, sell or otherwise dispose of such items as the City sees fit, whereupon Tenant shall pay all costs incurred by the City in connection therewith within 30 days after receiving written notice from the City of the amount due.

11. **Notice.** All notices required or permitted to be given by either party to the other under this Lease shall be in writing and shall be personally delivered, or mailed by U.S. mail, to the parties at their addresses set forth in the introductory paragraph of this Lease. Notices shall be deemed given on the date of receipt. If Tenant sends a notice to the City alleging that the City is in default under this Lease, Tenant shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, 801 Plum Street, Suite 214, Cincinnati, OH 45202.

12. **Default.** If Tenant violates any provision of this Lease and fails to correct such violation to the satisfaction of the City within 30 days after receiving written notice thereof from the City, the City may (i) engage in "self help" by undertaking such actions as the City deems appropriate to correct or otherwise address such violation, whereupon Tenant shall pay all costs incurred by the City in doing so within 30 days after receiving written notice from the City of the amount due; (ii) terminate this Lease by giving written notice thereof to Tenant; and (iii) exercise any other right or remedy available at law or in equity. All rights of the City under this Lease are cumulative. Tenant shall pay, upon the City's demand, all costs, including without limitation reasonable attorneys fees, incurred by the City in connection with a default of Tenant under this Lease, including without limitation costs incurred in enforcing or terminating this Lease following a default. The City's waiver of any breach by Tenant of any provision of this Lease shall not constitute or operate as a waiver by the City of any other breach of such provision or of any other provisions, nor shall any failure or delay by the City to enforce any provision hereof operate as a waiver of such provision or of any other provision. Tenant hereby waives trial by jury with respect to any and all disputes arising under this Lease. All actions pertaining to this Lease shall follow the dispute resolution process set forth in the OMIGA.

13. **City's Right to Inspect.** The City and its agents, employees and others authorized by the City shall have the right to enter upon the Property from time to time to inspect the same and for any other reasonable purpose. Except in emergencies, the City shall give Tenant no less than 24 hours verbal notice prior to entering the building.

14. **General Provisions.** Tenant shall not assign its interests under this Lease, or sublet the Property or any portion thereof or otherwise permit any third party or parties to occupy the Property, without the prior written consent of the City. This Lease constitutes the entire agreement of the parties with respect to the subject matter hereof. This Lease may be amended only by a written amendment signed by the parties after the date hereof. If any provision of this Lease is determined by a court of competent jurisdiction to be illegal or unenforceable, such provision shall be severed from this Lease, and the remainder of this Lease shall remain in full force and effect. This Lease shall inure to the benefit of and be binding upon the parties and their respective

successors and permitted assigns. This Lease shall not be recorded in the Hamilton County Recorder's Office. This Lease shall be governed by the laws of the City of Cincinnati and State of Ohio.

- 15. **Exhibits.** The following exhibit is attached hereto and made a part hereof:
Exhibit A – Site Plan

This Lease is executed by the parties on the dates set forth below their respective signatures, effective as of the later of such dates (the "Effective Date").

City of Cincinnati

Southwest Ohio Regional Transit Authority

By: _____
Harry Black, City Manager

By: _____

Date: _____, 2014

Printed Name: _____

Title: _____

Recommended By:

Date: _____, 2014

Michael Moore, Director
Department of Transportation and Engineering

Reviewed for Zoning Code Compliance:

Charles C. Graves, III
Director, Department of City Planning and Buildings

Approved as to Form:

Assistant City Solicitor

Certified Date: _____

Fund/Code: _____

Amount: _____

By: _____
Reginald Zeno, City Finance Director