

**MEMORANDUM OF UNDERSTANDING
CONCERNING THE CREATION OF THE
REAGAN MASS TRANSIT DISTRICT**

This Memorandum of Understanding (“**MOU**”) is hereby entered into as of _____, 2022 (the “**Effective Date**”) by and between the COUNTY OF LEE, ILLINOIS (“**Lee County**”), COUNTY OF OGLE, ILLINOIS (“**Ogle County**” and together with Lee County, the “**Counties**”) and the REAGAN MASS TRANSIT DISTRICT (“**RMTD**”). Lee County, Ogle County and RMTD are hereinafter referred to, collectively, as the “**Parties**”.

WHEREAS, Lee County currently operates and maintains a local transportation system for the mutual benefit of the residents of Lee County and Ogle County, said transportation system being commonly known as the Lee-Ogle Transportation System (“**LOTS**”); and

WHEREAS, as of the Effective Date, the Counties have authorized the creation of the RMTD pursuant to the provisions of the Local Mass Transit District Act, 70 ILCS 3610/1 et. seq. (the “**Act**”), for purposes of providing continued and expanded public transportation services (the “**Services**”) in lieu of LOTS; and

WHEREAS, in connection with the creation of the RMTD, the Counties desire to transition substantially all of the assets and liabilities of LOTS to RMTD, so that RMTD may operate independently of the Counties under the Act and provide for the Services (all of the foregoing, the “**Transition**”); and

WHEREAS, the Parties desire to enter into this MOU in order to summarize the principal terms of the Transition in a non-binding manner, except with respect to the Binding Provision (as hereafter defined), which shall be binding upon and inure to the benefit of the Parties, so that all Parties will proceed toward the closing of the Transition in an effective and mutually beneficial fashion so as to provide for an orderly transition of the Services from LOTS to RMTD.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the Parties hereto agree as follows:

1. Recitals. The recitals contained in the preambles to this MOU are hereby incorporated into this Section 1 as if more fully set forth herein.

2. Transition of LOTS Assets RMTD. As part of the Transition, RMTD shall acquire substantially all of the assets of LOTS, including but not limited to all of the following (collectively, the “**Acquired Assets**”):

- (a) all equipment, vehicles, furnishings, office furniture, computers, printers, parts and accessories of LOTS utilized in connection with the provision of the Services (the “**Equipment**”);
- (b) all fuel and fuel supplies of LOTS utilized in connection with the provision of the Services (the “**Fuel**”);
- (c) to the extent assignable, all rights of LOTS under any contracts, licenses, franchise agreements and equipment leases utilized in connection with the

provision of the Services, including but not limited to software licensing and contracts for the provision of IT services (the “**Assigned Contracts**”);

- (d) all information, files, records, customer lists and supplier lists related to LOTS and the provision of the Services; all books and records of LOTS relating to the Acquired Assets; all marketing and sales plans and any other reports developed for or used by LOTS in connection with the provision of the Services; all operating reports and analysis, employee records and any other information used in connection with the provision of the Services; and all equipment maintenance records and operating records related to the Acquired Assets (the “**Books and Records**”);
- (e) to the extent assignable, all of LOTS’ rights relating to all telephone and fax numbers used in connection with the provision of the Services (the “**Telephone and Fax Numbers**”);
- (f) all customer deposits, if any, with respect to the Acquired Assets and the provision of the Services (the “**Deposits**”);
- (g) all prepaid charges and expenses of LOTS with respect to the Acquired Assets (the “**Prepaid Expenses**”);
- (h) to the extent assignable, all manufacturer’s or other warranties relating to the Acquired Assets (the “**Warranties**”);
- (i) to the extent assignable, all licenses, permits, authorizations, consents and approvals of LOTS necessary for RMTD to conduct the Services (the “**Licenses**”); and
- (j) all cash and cash equivalents of LOTS, and all other funds held by Lee County solely for the benefit of LOTS and the provision of the Services such as operating, capital improvement and reserve funds (the “**Cash**”).

3. Transition of LOTS Liabilities to RMTD. RMTD shall assume and agree to perform and discharge as and when due all liabilities and obligations (collectively, the “**Assumed Liabilities**”) arising out of the use or ownership of the Acquired Assets and the operation of the Services that accrue and are to be performed after the Closing, including but not limited to:

- (a) the Assigned Contracts;
- (b) the Deposits;
- (c) the Accounts Payable (as hereinafter defined);
- (d) all bills relating to utilities, building maintenance and similar obligations with respect to the Real Estate (as hereinafter defined); and
- (e) any and all liabilities with respect to any Assumed Employee or Employee Plan (as such terms are hereinafter defined).

4. Accounts Payable and Accounts Receivable. RMTD shall assume all liability of LOTS with respect to all accounts payable (the “**Accounts Payable**”), and shall be entitled to all accounts receivable of LOTS, as of the Closing Date (as hereinafter defined), whether or not incurred prior to or after the same. The Parties shall cooperate with one another following the Closing Date to ensure that all accounts payable and accounts receivable are properly allocated and paid in accordance with the preceding sentence.

5. Employment Arrangements. On the Closing Date, RMTD will offer employment to all employees associated with LOTS on substantially equivalent terms and conditions of employment (each, an “**Assumed Employee**”). RMTD will endeavor to assume and discharge all obligations with respect to any Employee Plans (as hereafter defined) maintained by LOTS on behalf of each Assumed Employee. An “**Employee Plan**” as referred to herein means any salary, bonus, vacation, deferred compensation, severance pay, death and disability benefits, medical, life or other insurance, pension or retirement plan, and each other employee compensation or benefit plan or arrangement sponsored, maintained, contributed to or required to be contributed to for the benefit of any Assumed Employee, including but not limited to any applicable IMRF plans.

6. Real Estate. RMTD shall be permitted to lease the real estate (“**Real Estate**”) currently in use by LOTS. Lee County and RMTD shall enter into an intergovernmental agreement providing for a long-term lease of the Real Estate to RMTD for nominal consideration, provided that such Real Estate is continuously utilized by RMTD for the Services (the “**RMTD Lease**”). The specific terms and conditions of the RMTD Lease shall be mutually agreed upon by Lee County and RMTD and reviewed by the Parties prior to or on the Closing Date and shall be subject to the prior confirmation from the Illinois Department of Transportation that the RMTD Lease will not disqualify RMTD from any grants now received by LOTS or from grants reasonably anticipated to be necessary for the provision of the Services.

7. Qualified Expenditures; Requisition Procedure. The Parties acknowledge that the Transition will require RMTD to make certain necessary expenditures and preparations during the Transition Period (as hereinafter defined), but prior to the Closing Date (all of the foregoing being referred to as “**Qualified Expenditures**”), for which RMTD will not have sufficient funds to pay such expenses until after the Closing Date. In furtherance of the Transition, Lee County agrees that it will advance such funds to RMTD, from available Cash, for Qualified Expenditures in accordance with the following requisition procedure:

- (a) Between the Effective Date and the Closing Date (the “**Transition Period**”), RMTD may submit to Lee County, on a monthly basis, a request for funding for Qualified Expenditures incurred during the Transition Period.
- (b) The request for funding for each Qualified Expenditure shall, at a minimum:
 - (i) specify the amount requested to be paid;
 - (ii) identify the name of the person, firm or corporation to whom payment thereof is or will become due;

- (iii) state the purpose for which the Qualified Expenditure is or will be incurred;
 - (iv) be accompanied by all other information and items necessary to substantiate the Qualified Expenditure, including but not limited to quotes, invoices and other related documentation; and
 - (v) contain such other and further information and documentation as may be reasonably requested by Lee County.
- (c) Each request for funding shall be signed by an authorized representative of RMTD.
 - (d) No disbursement for any Qualified Expenditure shall be made unless first approved by a majority vote of the Claims Committee members of Lee County.

For purposes of clarification, all attorney's fees and costs incurred by RMTD in pursuance of the Transition shall be considered Qualified Expenditures.

8. Current Employees of LOTS. During the Transition Period, certain employees of Lee County and LOTS may, from time to time, be required to assist RMTD, LOTS, or both with the preparation of the Transition. Lee County will continue to pay the salaries, wages, insurance and other benefits of said employees during such Transition Period in accordance with past practices. Notwithstanding the foregoing, until the Closing Date, it is expressly understood that all employees of Lee County and/or LOTS shall continue to devote substantially all of their time toward the continued operation of Lee County and/or LOTS, which shall at all times take priority over their assistance with the Transition.

9. Due Diligence. From and after the date of this MOU, Counties will grant RMTD access to such reasonable information, materials, documents and agreements as are requested by RMTD regarding the Services, the Acquired Assets and the Assumed Liabilities, and will authorize LOTS' management to allow RMTD and its advisors full access to LOTS' facilities, records, employees and advisors for the sole purpose of assisting RMTD with the Transition. RMTD will complete as much due diligence as possible remotely, however, Counties acknowledge that certain due diligence will need to be completed on-site at such times as may be agreed upon by the Parties. The due diligence investigation will include, among other things, a complete review of LOTS' financial, legal, tax, environmental, intellectual property and employment records and agreements, and any other matters or documents as RMTD or RMTD's accountants, tax and legal counsel and other advisors deem relevant, which the Counties agree to allow RMTD to review.

10. Conditions Precedent to Closing. The Parties' obligation to close the proposed Transition will be subject to customary conditions for similar transactions and any other conditions agreed to by the Parties in the Definitive Agreement (as hereinafter defined), including but not limited to:

- (a) RMTD's satisfactory completion of due diligence during the Transition Period;
- (b) approval of the Transition by the Board of Trustees of RMTD and the applicable Board of Commissioners of the Counties;
- (c) the Parties' execution of the Definitive Agreement and any ancillary agreements thereto;
- (d) the receipt of regulatory approvals and third-party consents, on terms satisfactory to the Parties;
- (e) RMTD's receipt of grant approval by the Illinois Department of Transportation; and
- (f) the absence of any material adverse change in LOTS, the Services, or their customer relationships, operations, results of operations, financial conditions, assets or prospects.

11. Closing Date. The closing date (“**Closing Date**”) of the Transition shall occur on or before the commencement of the Parties’ 2024 fiscal year. Any extensions of the Closing Date shall be contingent upon and subject to further approval from the applicable Board of Commissioners of the Counties.

12. Definitive Agreement. As soon as reasonably practicable after the Effective Date, the Parties shall commence to negotiate a definitive purchase agreement (the “**Definitive Agreement**”) relating to RMTD’s acquisition of substantially all of the assets and liabilities of LOTS, to be drafted by RMTD's legal counsel. The Definitive Agreement will include the terms summarized in this MOU and such other representations, warranties, conditions, covenants, indemnities and other terms that are customary for transactions of this kind and as are not inconsistent with this MOU. The Parties shall also commence to negotiate ancillary agreements to be drafted by RMTD's legal counsel, including but not limited to, the RMTD Lease, upon such terms as are set forth in Section 6 herein and as are mutually agreed upon by the Parties.

13. Binding Provisions With Respect to Certain Powers of RMTD. The Parties covenant and agree as follows with respect to certain powers of local mass transit districts that the Parties intend shall not be exercised or acted upon by RMTD:

- (a) Notwithstanding any provision in this MOU to the contrary, RMTD shall not, at any time now or in the future, exercise or take any action in furtherance of the taxing power set forth in Section 5(f)(10) of the Act or any subsequent or similar provision of law. Such covenant extends to and includes prohibiting RMTD from pursuing a referendum to levy taxes under Section 5.1 of the Act or from otherwise submitting any question as to the levying of real estate taxes for RMTD purposes to the voters of Ogle County or Lee County.
- (b) Notwithstanding any provision in this MOU to the contrary, RMTD shall not, at any time now or in the future, exercise or take any action in

furtherance of the power of eminent domain set forth in Section 5.4 of the Act or any subsequent or similar provision of law, including the Eminent Domain Act, 735 ILCS 30/1-1-1 et seq.

(c) The provisions set forth in subsection (a) and (b) above are hereinafter collectively referred to as the “**Binding Provisions.**”

(c) The Binding Provisions shall be specifically set forth in both the Definitive Agreement and the RMTD Lease as covenants and agreement of RMTD.

14. No Binding Agreement. This MOU reflects the intention of the Parties. With the exception of the Binding Provisions, neither this MOU nor its acceptance shall give rise to any legally binding or enforceable obligation on any Party. No contract or agreement providing for any transition involving LOTS or its assets and liabilities shall be deemed to exist between RMTD, Lee County, Ogle County unless and until a final Definitive Agreement has been executed and delivered by the Parties. Notwithstanding the foregoing, the Binding Provisions shall be binding upon and inure to the benefit of the Parties. The Parties acknowledge and agree that RMTD’s compliance with the Binding Provisions is a material inducement for Ogle County and Lee County to enter into this MOU and the Definitive Agreement and to consummate the transactions contemplated thereunder, including the RMTD Lease. Ogle County and Lee County shall each have the independent right to maintain a cause of action to specifically enforce the Binding Provisions or any other cause of action deemed appropriate for such purpose. Such right shall be set forth in both the Definitive Agreement and the RMTD Lease.

15. No Third-Party Beneficiaries. Except as specifically set forth or referred to herein, nothing herein is intended or shall be construed to confer upon any person or entity, other than the Parties and their successors or permitted assigns, any rights, benefits or remedies under or by reason of this MOU.

16. Miscellaneous. This MOU may be executed in counterparts and delivered electronically. Each counterpart shall be deemed to be an original and all of which together shall constitute one agreement. The headings of the various sections of this MOU have been inserted for reference only and shall not be deemed to be a part of this MOU.

LEE COUNTY, ILLINOIS:

By: _____
Chairman

ATTEST:

Secretary

OGLE COUNTY, ILLINOIS:

By: _____
Chairman

ATTEST:

Secretary

REAGAN MASS TRANSIT DISTRICT:

By: _____
Chairman

ATTEST:

Secretary