

# A Resolution

NO. \_\_\_\_\_

## A RESOLUTION CALLING FOR EXECUTION OF A MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF FORT WORTH AND THE FORT WORTH TRANSPORTATION AUTHORITY TO PROVIDE IMPROVED PROGRAM ASSESSMENTS AND PUBLIC PARTICIPATION

**WHEREAS**, in 1983 voters in the City of Fort Worth confirmed the creation of the Fort Worth Transportation Authority (“The T”) and authorized the levy of a sales tax for the provision of public transportation; and

**WHEREAS**, in the three decades since The T was created, the population in Tarrant County has more than doubled – from 860,880, according to the 1980 Census, to 1,809,034, according to the 2010 Census; and

**WHEREAS**, because the Western Sub-Region of the D/FW Metroplex has experienced this growth and is expected to grow exponentially, it is critical that Fort Worth and Tarrant County have direct access to the regional interstate, national and international transportation system to include major employment centers and D/FW International Airport; and

**WHEREAS**, this tremendous growth combined with the aging infrastructure of the federal and state highway systems has resulted in increased congestion on area roadways and additional strain on limited tax dollars - emphasizing a growing need for rail-based transit alternatives that can help to alleviate congestion and thereby reduce wear on road infrastructure; and

**WHEREAS**, according to its records, the Texas Comptroller of Public Accounts has disbursed an estimated \$851,393,714.91 in sales tax to The T since its creation; and

**WHEREAS**, to date, The T’s efforts have been focused primarily on bus-based services with little progress made toward implementation of the types of rail-based transit available in other parts of the North Texas Region and the state; and

**WHEREAS**, The T’s development and execution of rail-based projects has been hampered by repeated delays and decisions that have not always conformed to expressed public preferences, leading to mounting frustration on the part of both public officials and private citizens; and

**WHEREAS**, state law requires that most transportation authorities and rapid transit entities undergo periodic performance audits to ensure efficient service delivery and engage in public hearings prior to making certain decisions to provide transparency and public input; and



**WHEREAS**, state law does not currently impose these same assessment and public-input requirements on The T as with other large city transit providers; and

**WHEREAS**, the City believes that implementation of these same processes at The T will lead to increased efficiency, improved performance, greater public satisfaction, and greater transparency of use of public funded resources; and

**WHEREAS**, the City has prepared and presented The T with a proposed Memorandum of Understanding (“MOU”) intended to provide for transit-delivery assessment and greater transparency and public input by mirroring requirements applicable to other transit entities under state law; and

**WHEREAS**, the Fort Worth City Council, as a body of elected officials, is responsible to the citizens of Fort Worth for the efficient and effective use of public resources in securing infrastructure, economic viability and quality of life to the citizens of Fort Worth; and

**WHEREAS**, the Fort Worth City Council confirms the necessity to implement the oversight imposed by the MOU and calls on the Board of Directors at The T to direct the agency’s staff to execute the document;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FORT WORTH, TEXAS:**

1. That the City Manager is hereby directed to execute the MOU with the Fort Worth Transportation Authority to provide improved program assessments and increased public participation; and
2. That the Board of Directors of the Fort Worth Transportation Authority is called upon to direct the agency’s Executive Director or other authorized representative to execute the MOU prepared and presented by the City.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_ 2013.

ATTEST:

By: \_\_\_\_\_

Mary Kayser, City Secretary



**MEMORANDUM OF UNDERSTANDING AND AGREEMENT BETWEEN THE CITY  
OF FORT WORTH AND THE FORT WORTH TRANSPORTATION AUTHORITY  
REGARDING IMPROVED PROGRAM ASSESSMENTS AND TRANSPARENCY**

This Memorandum of Understanding and Agreement (Agreement”) is entered into by and between the City of Fort Worth (the City), a home-rule municipal corporation of the State of Texas, acting by and through its duly authorized Assistant City Manager, and the Fort Worth Transportation Authority (“The T”), a regional transportation authority (“RTA”) consisting of one subregion, acting by and through its duly authorized Executive Director. The City and The T are each referred to individually herein as a “Party” and collectively as the “Parties.”

**RECITALS**

The City and The T agree that the following statements are true and correct and constitute the basis on which they have entered into this Agreement.

**WHEREAS**, in two separate elections in 1983, voters in the North Texas area authorized the creation of two RTAs, each consisting of a single subregion – the Dallas Area Rapid Transit System (DART) for the Dallas subregion and The T for the Tarrant subregion – under the statutory predecessor to Chapter 452 of the Texas Transportation Code and authorized each RTA to collect a designated percentage sales tax for provision of public transportation; and

**WHEREAS**, in the nearly three decades since the creation of the two RTAs, the area has experienced explosive growth, with the combined population of Tarrant and Dallas Counties nearly doubling – from a little over 2.4 million in 1980 to almost 4.2 million in 2010; and

**WHEREAS**, the tremendous level of growth combined with the aging infrastructure of the federal and state highway systems has resulted in increased congestion on area roadways and additional strain on limited tax dollars; and

**WHEREAS**, these conditions have further emphasized the growing importance of providing viable public transportation alternatives in a manner that conforms to public demand and that is as efficient as possible; and

**WHEREAS**, the Texas Legislature has built into Chapter 452 a number of provisions that require on-going analysis and public input with respect to the transit operations provided by DART but has not provided corresponding requirements for The T; and

**WHEREAS**, the Parties agree that implementing processes to provide similar analysis and public input would constitute exercise of powers necessary and convenient in The T carrying out Chapter 452 and would be extremely beneficial in ensuring that the operations of The T are as efficient and responsive as possible and in assuring the public that its voice is being heard and that its tax dollars are being spent in the most efficient and effective manner possible; and

**WHEREAS**, the Parties wish to enter into the Agreement to provide for more beneficial operational analysis and public input in the operation of The T.

**NOW, THEREFORE**, for and in consideration of the premises outlined above and the mutual covenants herein contained, the City and The T do hereby agree as follows:

## **AGREEMENT**

### **1. PURPOSE AND SCOPE.**

The purpose of this Agreement is to set forth the terms and conditions under which the City and The T will cooperate to provide for additional operational analysis and public input with regards to The T's transit operations.

### **2. TERM.**

This Agreement shall commence on January 1, 2013 and will expire December 31, 2016 ("Initial Term"). Following the Initial Term, this Agreement will automatically renew for successive two-year periods unless either Party provides the other with written notice of intent not to renew at least 180 days prior to the expiration of the then-current term.

### **3. DUTIES OF THE PARTIES AND SERVICES PROVIDED.**

#### **3.1. The T will:**

- a. Within one week of The T staff submitting its initial annual budget proposal to The T board, provide a copy of the initial budget proposal to the City for review and comment;
- b. Within one week of The T board voting to approve the annual budget, provide a copy of the adopted budget to the City;
- c. At least 20 days before the date of a public hearing under subsection (h), provide notice to the governing body of each municipality and the commissioners court of each county affected by the subject of the public hearing by depositing properly addressed notice in the United States mail with postage paid.
- d. On or before July 1 of 2013 and of each fifth year thereafter, evaluate each distinct transportation service The T provides that generates revenue, including light rail, bus, van, taxicab, and other public transportation services, and determine whether The T should solicit competitive, sealed bids from other entities to provide these transportation services.

Before October 1 of the year in which the evaluation is conducted, deliver a copy of the evaluation results and of The T's response, if any, to the evaluation to: (i) the county judge of each county having territory in The T; and (ii) the presiding officer of the governing body of each municipality having territory in The T.

- e. Seek voter approval, in the manner provided for the issuance of bonds and notes under Subchapter H of Chapter 452 of the Texas Transportation

Code, for any lease or financing agreement secured wholly or partially by the assets of The T if the duration of the lease or financing agreement is longer than five years, provided however, that The T shall not be required to seek voter approval if the transaction meets the criteria established under Section 452.108(d) of the Texas Transportation Code.

- f. Document the reasons for the award of a contract for (i) professional services awarded to a person other than the person proposing to deliver the services at the lowest cost; or (ii) construction, services, or property awarded to a person other than the person recommended by the staff of The T, with such documentation to include all of the reasons for not selecting, as appropriate, the person proposing to deliver the services at the lowest cost or the person recommended by the staff.

Within one month of awarding a contract subject to the preceding paragraph, deliver a copy of the documentation of reasons to: (i) the county judge of each county having territory in The T; and (ii) the presiding officer of the governing body of each municipality having territory in The T.

- g. Require a two-thirds vote of The T board in order to (i) issue any debt allowed by law; (ii) enter a lease as lessee or financing agreement as obligor if the lease or agreement is secured by the other assets of The T; (iii) effect a major change in a service plan as described by Section 452.303 of the Texas Transportation Code; (iv) approve the financial plan for The T; or (v) enter an agreement with any municipality included in the area of The T for the distribution of The T's revenues.
- h. Hold a public hearing on (i) any fare change; (ii) a service change involving (A) 25 percent or more of the number of transit route miles of a transit route; or (B) 25 percent or more of the number of transit revenue vehicle miles of a transit route, computed daily, for the day of the week for which the change is made; or (iii) the establishment of a new transit route.

When the number of changes of a type described in the preceding paragraph in a fiscal year would equal the percentage applicable in that paragraph, the public hearing must be held before the change that would equal or exceed the percentage.

For purposes of this subsection the following definitions and criteria shall apply:

- (i) "Transit route" means a route over which a transit vehicle travels and that is specifically labeled or numbered for the purpose of picking up or discharging passengers at regularly scheduled stops and intervals.

- (ii) "Transit route mile" means one mile along a transit route regularly traveled by transit vehicles while available for the general public to carry passengers.

(iii) “Transit revenue vehicle mile” means one mile traveled by a transit vehicle while the vehicle is available to the general public to carry passengers.

(iv) “Service change” means any addition or deletion resulting in the physical realignment of a transit route or a change in the type or frequency of service provided in a specific, regularly scheduled transit route.

(v) The length of a transit route is the distance traversed in traveling completely over the route and returning to the starting point to begin another circuit of the route. If a route is defined in one direction only, the one-directional distance is the route length.

- i. Hold a public hearing on a proposed change in the service plan that would:  
(i) change the location of a right-of-way of a fixed guideway system; (ii) change or add a width of a right-of-way of a fixed guideway system; (iii) change a grade separation or add a grade separation to a fixed guideway system; (iv) move the location of a station of a fixed guideway system; (v) reclassify the aerial, at-grade, or subgrade vertical alignment of a fixed guideway or establish the vertical alignment of a fixed guideway; (vi) move the location of: (A) a parking lot;(B) a maintenance facility; or(C) an off-street transfer center; (vii) add a facility listed in subsections (i)-(vi); or (viii) add a route for a fixed guideway system.

Before holding a public hearing required under the preceding paragraph The T board shall in writing notify: (i) each owner of real property located within 400 feet, including streets and alleys, of the boundary of the proposed right-of-way or the boundary of property on which the facility is proposed to be located; and (ii) the governing body of each municipality and the commissioners court of each county in which the changed or additional right-of-way or facility is to be located.

The notice required by this subsection shall be given to each governing body and to the property owners shown by the municipal or county tax roll at least 20 days before the date of the hearing by depositing the properly addressed notice in the United States mail with postage paid.

- j. After the public hearing under subsection (i), require a favorable vote of two-thirds of the members present to make a change in the service plan described by subsection (i).

Within one week of the vote to make a change in the service plan under this subsection, The T board shall give notice of the change to: (i) the commissioners court of each county in which the changed or additional right-of-way or facility is to be located if the change is located in an unincorporated area; and (ii) the governing body of each municipality in which the changed or additional right-of-way or facility is to be located.

- k. Within one month of completion of an audit prepared under Section 452.451 of the Texas Transportation Code, The T board shall deliver a copy of the audit to the City's internal auditor within one month of the date such audit is completed. The City's internal auditor may elect to file any comments about the audit with Fort Worth City Council and The T board, subject to a risk assessment performed by the City's internal auditor and to the Fort Worth City Council's approval of including the preparation of the comments in the internal auditor's annual audit plan. The T shall allow the City's internal auditor to (i) examine any work papers from The T's audit; or (ii) audit the financial transactions of The T if the City's internal auditor determines an audit is necessary.
  
- l. On or before April 1 of 2013 and of each fourth year thereafter, contract for a performance audit of The T to be conducted by a firm that has experience in reviewing the performance of transit agencies. The purposes of the performance audit are to provide: (i) evaluative information necessary for the performance of oversight functions by state and local officers; and (ii) information to The T to assist in making changes for the improvement of the efficiency and effectiveness of The T's operations.

Each performance audit must include an examination of:

(i) one or more of the following:

(A) the administration and management of The T;

(B) transit operations; or

(C) transit authority system maintenance;

(ii) The T's compliance with applicable state law, including Chapter 452 of the Texas Transportation Code; **and**

(iii) the following performance indicators:

(A) subsidy per passenger, operating cost per revenue mile, and operating cost per revenue hour, with

(I) the subsidy per passenger being computed by subtracting annual operating revenues from annual operating costs and dividing that amount by the total number of passengers for the same period;

(II) the operating cost per passenger being computed by dividing The T's annual operating cost by the passenger trips for the same period;

(III) the operating cost per revenue hour being computed by dividing the annual operating cost by the total of scheduled hours that The T's revenue vehicles are in revenue service for the same period; and

(IV) the operating cost per revenue mile being computed by dividing the annual operating cost by the number of miles traveled by The T's revenue vehicles while in revenue service;

(B) sales and use tax receipts per passenger, with the receipts per passenger being computed by dividing the annual receipts from The T's sales and use taxes by passenger trips for the same period;

(C) fare recovery rate, with the rate being computed by dividing the annual revenue (including fares, tokens, passes, tickets, and route guarantees) provided by passengers and sponsors of passengers of revenue vehicles by the operating cost for the same period but excluding from revenue provided by passengers and sponsors of passengers all charter revenue, interest income, advertising income, and other operating income;

(D) number of passengers per hour, with the number being computed by dividing the total number of annual passengers by the total number of revenue vehicle hours for the same period;

(E) on-time performance, with such performance being computed by determining an annual percentage of revenue vehicle trips of revenue vehicles that depart from selected locations at a time not earlier than the published departure time and not later than five minutes after that published time. On-time performance is computed only for fixed route revenue service;

(F) number of accidents per 100,000 miles, with the number being computed by multiplying the annual number of accidents by 100,000 and dividing the product by the number of miles for all service, including charter and nonrevenue service, for the same period. In this subsection, "accident" includes: (I) a collision that involves a T revenue vehicle, other than a lawfully parked revenue vehicle, and results in property damage, injury, or death; and (II) an operating incident resulting in the injury or death of a person on board or boarding or alighting from a T revenue vehicle; and



(G) number of miles between mechanical service calls, with the number being computed by dividing the annual number of miles for all service, including charter service and nonrevenue service, by the number of mechanical service calls for the same period. In this subsection, “mechanical service call” means an interruption in revenue service that is caused by revenue vehicle equipment failure that requires assistance from a person other than the vehicle operator before the vehicle can be operated normally.

A subject described under subsection (i) must be examined at least once in every third audit.

For purposes of this subsection the following definitions shall apply:

“Operating cost” means The T’s costs of providing public transit service, including purchased transit service not performed by The T, but excluding the costs of: (A) depreciation, amortization, and capitalized charges; (B) charter bus operations; and (C) coordination of carpool and vanpool activities.

“Passenger” or “passenger trips” means the number of all passenger boardings, including transfers, but excluding charter passengers and carpool and vanpool passengers whose trips are only coordinated by The T.

“Revenue service” means the time a T revenue vehicle is in service to carry passengers, other than charter passengers.

“Revenue vehicle” means a vehicle, or a combination of rail vehicles comprising a train, that is: (A) used to carry paying passengers; and (B) operated by The T or as a purchased service.

- m. Prepare a written response to the performance audit report. The response must include each proposal for action relating to recommendations included in the report, whether the proposal for action is pending, adopted, or rejected.

The T shall make copies of the report and the response available for public inspection at the offices of The T during normal business hours.

The T shall conduct a public hearing on each performance audit report and The T’s response to the audit. The T shall give notice of the hearing by publication of the notice in a newspaper of general circulation in the area included in The T at least 14 days before the date of the hearing.

- n. Before February 1 of the year after the year in which the performance audit is conducted, deliver a copy of each performance audit report and of The T’s response to the report to: (i) the county judge of each county having territory in The T; and (ii) the presiding officer of the governing body of each municipality having territory in The T.

- o. For any public hearing required under this section, post notice of the public hearing in the same manner in which The T posts notice for meetings that are subject to the Texas Open Meetings Act. Notice required under this subsection shall be in addition to any other notice required herein.

3.2 **The City will:**

- a. Perform, at its own expense, all tasks associated with considering matters under Section 3.2 that require City review, input, or approval.
- b. Through its internal auditor, provide, at the City's own expense, (i) review of The T's annual financial audit, including, when warranted, the filing of comments about the audit with Fort Worth City Council and The T board, subject to a risk assessment performed by the City's internal auditor and to the Fort Worth City Council's approval of including the preparation of the comments in the internal auditor's annual audit plan; (ii) examination, when warranted, of any work papers from The T's audit; and (iii) audit the financial transactions of The T if the City's internal auditor determines an audit is necessary.
- c. Assist in efforts to publicize The T's notices of changes and public hearings by posting notices that the City receives from The T on the City's website and by including information regarding such notices in water bill inserts and City page articles as resources allow.

4. **CONSIDERATION.**

By execution of this Agreement, the City and The T acknowledge and agree that performance by each Party of its respective obligations under Section 3 and the exchange of the other covenants and promises expressed herein serves as adequate consideration for entering into this Agreement and for binding the Parties hereto.

5. **GENERAL PROVISIONS.**

- 5.1 **No Waiver.** The failure of either Party to insist upon the performance of any provision or condition of this Agreement or to exercise any right granted herein shall not constitute a waiver of that Party's right to insist upon appropriate performance or to assert any, such right on any future occasion.
- 5.2. **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.
- 5.3. **Force Majeure.** The Parties shall exercise their best efforts to meet their respective duties and obligations hereunder. However, if either Party is unable, either in whole or part, to fulfill its obligations under this Agreement due to acts of God; strikes, lockouts, or other industrial disturbances; acts of public enemies;

wars; blockades; insurrections; riots; epidemics; public health crises; earthquakes; fires; floods; restraints or prohibitions by any court, board, department, commission, or agency of the United States or of any state; declaration of a state of disaster or of emergency by the federal, state, county, or City government in accordance with applicable law; issuance of a Level Orange or Level Red Alert by the United States Department of Homeland Security; any arrests and restraints; civil disturbances; or explosions; or some other reason beyond the Party's reasonable control (collectively, "Force Majeure Event"), the obligations so affected by such Force Majeure Event will be suspended only during the continuance of such event..

- 5.4 **Venue and Jurisdiction.** This Agreement shall be construed in accordance with the laws of the State of Texas. Venue for any action brought on the basis of this Agreement shall lie exclusively in state courts located in Tarrant County, Texas.
- 5.5 **Compliance with Laws, Ordinances, Rules and Regulations.** This Agreement is subject to all applicable federal, state and local laws, ordinances, rules and regulations, including but not limited to all provisions of the City's charter.
- 5.6 **Independent Contractors.** Each Party shall operate hereunder as an independent contractor and not as an officer, agent, servant or employee of the other Party. Each Party shall have the exclusive control of and the exclusive right to control the work designated to be performed by that Party under the terms of this Agreement, and of all persons performing the same and shall be solely responsible for the acts and omissions of the Party's officers, members, agents and employees. Neither Party shall be responsible under the doctrine of *respondent superior* for the acts or omissions of the officers, members, agents, employees or officers of the other Party. Nothing herein shall be construed as creating a partnership or joint enterprise between the City and The T.
- 5.7 **Immunity and Third Parties.** It is expressly agreed that, in the execution and performance of this Agreement, neither the City nor The T waives, nor shall be deemed to waive, any immunity or defense that would otherwise be available to that Party with respect to third parties against claims arising in the exercise of the Party's respective powers and functions. Nothing in this Agreement shall be construed to benefit any third party who is not a signor to this Agreement. This Agreement may not be construed to expand the liability of the City or The T beyond the scope of Chapter 101 of the Texas Civil Practice and Remedies Code.
- 5.8 **Amendment.** No amendment, modification, or alteration of this Agreement shall be binding unless the same is in writing, dated subsequent to the date hereof, and executed by both Parties.
- 5.9 **Notices.** All notices required by this Agreement shall be addressed to the Parties at the following address, or at such other address as either Party designates in writing, by hand delivery or by United States first-class mail, postage prepaid:

**If to the City:**  
Fernando Costa, Asst. City Manager  
1000 Throckmorton St.  
Fort Worth, TX 76102

**If to The T:**  
Richard Ruddell, Executive Director  
1600 East Lancaster Avenue  
Fort Worth, Texas 76102

- 5.10 **Review of Counsel.** The Parties acknowledge that each Party and its counsel have had opportunity to review and revise this Agreement and that the normal rules of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any exhibits hereto.
- 5.11 **Entirety of Agreement.** This written instrument (together with any attachments, exhibits, and appendices) constitutes the entire understanding between the Parties concerning the subject matter addressed herein, and any prior or contemporaneous, oral or written agreement that purports to vary from the terms hereof shall be void.

EXECUTED in multiple originals as of the last date indicated below:

**CITY OF FORT WORTH**

**FORT WORTH TRANSPORTATION  
AUTHORITY:**

By: \_\_\_\_\_  
**Fernando Costa**  
Assistant City Manager

By: \_\_\_\_\_  
**Richard Ruddell**  
Executive Director

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**ATTEST:**  
By: \_\_\_\_\_  
**Mary Kayser**  
City Secretary

**ATTEST:**  
By: \_\_\_\_\_  
**Name:**  
**Title**

Date: \_\_\_\_\_

**APPROVED AS TO FORM AND LEGALITY:**

By: \_\_\_\_\_  
**Denis C. McElroy, Assistant City Attorney**