

INTERLOCAL COOPERATION AGREEMENT
Between
THE NORTH CENTRAL TEXAS COUNCIL OF GOVERNMENTS
and
THE CITY OF EULESS
for
OPERATION OF COMMUTER RAIL SERVICE FOR FY2014-2016

WHEREAS, the North Central Texas Council of Governments (NCTCOG) and the Regional Transportation Council (RTC) have actively worked to implement commuter rail service in the area and facilitate the contribution by cities that are not members of a Transportation Authority to the operational costs of commuter rail services; and,

WHEREAS, the Regional Transportation Council Trinity Railway Express (TRE) Monitoring Subcommittee was appointed by the RTC to meet on an as-needed basis to monitor policy issues related to the TRE service and the collection of operating funds for the service; and,

WHEREAS, it would be beneficial to the citizens of the City of Euless to have access to commuter rail service connecting the Cities of Dallas and Fort Worth with each other and with Dallas-Fort Worth International Airport to relieve traffic congestion, provide transportation opportunities, and aid in attaining federal air quality standards; and,

WHEREAS, pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code, Dallas Areas Rapid Transit (hereinafter referred to as "DART") and the Fort Worth Transportation Authority (hereinafter referred to as "the T"), both metropolitan transportation authorities created and existing pursuant to Chapter 452 of the Texas Government Code (hereinafter referred to jointly as the "Transportation Authorities"), may exercise jointly the power to provide governmental services for the public health, safety, and welfare; and,

WHEREAS, pursuant to Article 1182k, Texas Revised Civil Statutes, all railroad-related activities by public agencies, separately or jointly exercised, are public and governmental functions for the public purpose and necessity; and,

WHEREAS, the Transportation Authorities have entered into an Interlocal Cooperation Agreement to define their respective rights and responsibilities regarding the provision of commuter rail service along the Trinity Railway Express Corridor and have begun commuter rail service as the Trinity Railway Express; and,

WHEREAS, NCTCOG and the City of Euless have previously entered into agreements concerning the cost-sharing related to the Trinity Railway Express for Fiscal Years 2002 - 2013, which have since expired; and

WHEREAS, NCTCOG and the City of Euless now desire to enter into an agreement for Fiscal Years 2014-2016 to define their respective rights and responsibilities regarding cost sharing for the operation of the Trinity Railway Express; and

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

Article 1. DEFINITIONS:

- 1.1 "Commuter rail service" means operating passenger trains for commuters by, or under the control of, the Transportation Authorities.
- 1.2 "Capital improvement" means any addition to the asset base of either Transportation Authority (1) for the sole benefit of and utilization by the commuter rail service, or (2) representing the proportionate share of joint facilities benefiting, or utilized on behalf of, Commuter Rail Service.
- 1.3 "Maintenance of way" means the labor, material, tools, and equipment required to maintain all aspects of the railroad tracks, structures, signals, and communications in the TRE Corridor.
- 1.4 "Boards" means the Board of Directors of DART and the T.
- 1.5 "Best efforts" means one party's use of all reasonable exertions to fulfill the obligations of that party under this Agreement. It does not mean an obligation to attempt to fulfill the obligations of any other party.
- 1.6 "Capital costs" means the costs to plan, engineer, design, purchase, and construct the facilities, equipment, and systems for the commuter rail service that may be depreciated in accordance with standards set by the Federal Accounting Standards Board.
- 1.7 "Operational costs" means any cost of operating the TRE that is not a "capital cost."

Article 2. ORGANIZATIONAL RELATIONSHIPS:

2.1. North Central Texas Council of Governments and Regional Transportation Council:

The North Central Texas Council of Governments (hereinafter referred to as "NCTCOG") is the Metropolitan Planning Organization for the North Central Texas region including Dallas, Fort Worth, and the City of Euless. The North Central Texas Council of Governments is authorized by law to conduct coordinating and technical studies as may be required to guide the unified development of the area, eliminate duplication, and promote economy and efficiency through areawide planning. The Regional Transportation Council, comprised primarily of local elected officials, is the regional transportation policy body associated with the North Central Texas Council of Governments, and has been and continues to be a forum for cooperative decisions on transportation and is charged with the responsibility of preparing and maintaining the Metropolitan Transportation Plan and Transportation Improvement Program for the Dallas-Fort Worth Metropolitan Area in accordance with applicable federal regulations.

2.2 Trinity Railway Express Monitoring Subcommittee:

The Trinity Railway Express Monitoring Subcommittee (TREMS) was created by the RTC to monitor and advise on the provision of commuter rail services by TRE between the cities of Dallas and Fort Worth.

2.3 Trinity Railway Express Advisory Committee:

DART and the T created the Trinity Railway Express Advisory Committee (TREAC) to assist the Boards on policy, budget issues, and service levels for TRE. A non-voting representative from the Trinity Railway Express Monitoring Subcommittee shall be nominated by the subcommittee and appointed by the Regional Transportation Council to the Trinity Railway Express Advisory Committee. Notice of all TRE Advisory Committee meetings, agendas, and copies of supporting materials shall be provided to the TRE Monitoring Subcommittee representative appointed by the RTC to the TRE Advisory Committee.

2.4 Companion Agreements:

NCTCOG will enter into companion agreements with the cities identified in Attachment 1.

NCTCOG will also enter into a companion agreement with the Fort Worth Transportation Authority and Dallas Area Rapid Transit as may be necessary to disburse the funds collected by NCTCOG from the cities listed in Attachment 1, including the City of Euless.

Article 3. OPERATIONS AND MAINTENANCE:

3.1 Service Schedules:

Service levels shall be determined by the Transportation Authorities.

3.2 Service Quality:

The Transportation Authorities shall develop and establish the procedures to implement and ensure that the highest possible quality of service, consistent with the budget, is provided.

3.3 The City of Euless or TREMS may suggest or request changes or additions to the service schedules at any time, but such requests should be made during the formation of the annual TRE operating budget and should be addressed to the Director, TRE or brought to the TREAC by the representative appointed pursuant to paragraph 2.3 above.

Article 4. COST SHARING FOR CONTINUING OPERATIONS:

4.1 General:

The parties recognize that the commuter rail service contemplated under this Agreement will create ongoing costs for operation of the service and maintenance of the assets used in its provision, as well as other recurring expenses. Such costs include compensation of Trinity Railway Express staff employed or contracted by the Transportation Authorities.

4.2 At the request of the contributing Cities, NCTCOG conducted a license plate survey to determine what adjustments, if any, should be made to the contribution amount of the individual Cities. The previous and adjusted contribution amount for each City is identified in Attachment 1. The aggregate contribution amount of all Cities remains at \$793,089.

4.3 The parties agree that the City of Euless will contribute its share of the costs, in the amount of \$106,675 per year for FY2014-2016. The Parties agree to review the results of the license plate survey as part of discussions concerning any agreements beyond FY2016.

Notwithstanding the foregoing, the parties herein also recognize that the continuation of any contract or agreement after the close of any given fiscal year shall be subject to Euless City Council approval.

4.4 The City of Euless will make an annual payment at the end of each fiscal year (September 30), or as otherwise mutually agreed by the Parties.

Article 5. USE OF FUNDS:

5.1 The Parties agree that NCTCOG may use the funds, contributed by the cities as outlined in Attachment 1, to leverage federal funds available to the region to implement regional air quality projects and other RTC initiatives.

Article 6. TERM AND TERMINATION:

6.1 Effective Date:

The effective date of this Agreement shall be the date on which it is executed by the parties.

6.2 Term:

This agreement shall be in effect until September 30, 2016, and may be renewed by written agreement of the parties.

6.3 Mutual Termination:

The parties may terminate this Agreement by mutual agreement at any time.

6.4 New Transportation Authority:

In the event any city identified on Attachment 1 joins an existing transportation authority or becomes or forms a new transportation authority with a dedicated source of funding for transit, the obligations under this Agreement for that city shall cease on the day the funding begins. The City's obligation under this agreement shall be transferred to the existing or new transportation authority.

Article 7. MISCELLANEOUS PROVISIONS:

7.1 Force Majeure:

It is expressly understood and agreed by the parties to this Agreement that, if the performance of any provision of this Agreement is delayed by reason of war, civil commotion, act of terrorism, act of God, governmental restrictions, regulations or interferences, fire or other casualty, court injunction, or any circumstances which are reasonably beyond the control of the party obligated or permitted under the terms of this Agreement to do or perform the same, regardless of whether any such circumstance is similar to any of those enumerated herein, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the period of time applicable to such requirement shall be extended for a period of time equal to the period of time such party was delayed.

7.2 Contractual Relationship:

It is specifically understood and agreed that the relationship described in this Agreement between the parties is contractual in nature and is not to be construed to create a partnership or joint venture or agency relationship between the parties. Nor shall any party be liable for any debts incurred by the other party in the conduct of such other party's business or functions.

7.3 Counterparts:

This Agreement may be executed in multiple counterparts. Each such counterpart shall be deemed an original of this Agreement, so that in making proof of this Agreement, it shall only be necessary to produce or account for one such counterpart.

7.4 Complete Agreement:

This Agreement embodies all of the agreements of the parties relating to its subject matter, supersedes all prior understandings and agreements regarding such subject matter, and may be amended, modified, or supplemented only by an instrument or instruments in writing executed by all of the parties.

7.5 Captions:

The captions, headings, and arrangements used in this Agreement are for convenience only and shall not in any way affect, limit, amplify, or modify its terms and provisions.

7.6 Governing Law and Venue:

This Agreement and all agreements entered into in connection with the transactions contemplated by this Agreement are, and will be, executed and delivered, and are intended to be performed in the County of Dallas and the County of Tarrant, State of Texas, and the laws of Texas shall govern the validity, construction, enforcement, and interpretation of this Agreement. In the event of litigation between the parties hereto, their successors or assigns, with regard to this Agreement and any subsequent supplementary agreements or amendments, venue shall lie exclusively in either Tarrant County or Dallas County, Texas.

7.7 Severability:

In the event any one or more of the provisions contained in this Agreement shall be for any reason held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision(s) hereof, and this Agreement shall be revised so as to cure such invalid, illegal, or unenforceable provision(s) to carry out as near as possible the original intent of the parties.

7.8 Changed Circumstances:

If future federal, State, or local statute, ordinance, regulation, rule, or action render this Agreement, in whole or in part, illegal, invalid, unenforceable, or impractical, the parties agree to delete and/or to modify such portions of the Agreement as are necessary to render it valid, enforceable, and/or practical. Each section, paragraph, or provision of this Agreement shall be considered severable, and if, for any reason, any section, paragraph, or provision herein is determined to be invalid under current or future law, regulation, or rule, such invalidity shall not impair the operation of or otherwise affect the valid portions of this instrument.

7.9 Enforcement:

If any party initiates an action to enforce any provision of this Agreement or for damages by reason of an alleged breach of any provision hereof, the prevailing party shall be entitled to receive from the other parties all reasonable and necessary costs and expenses, including reasonable attorneys' fees and costs incurred in connection with such action.

7.10 Survival:

All of the terms, conditions, warranties, and representations contained in this Agreement shall survive, in accordance with their terms, and shall survive the execution hereof.

7.11 Incorporation of Exhibits and Schedules:

All Exhibits and Schedules attached hereto are by this reference incorporated herein and made a part hereof for all purposes as if fully set forth herein.

7.12 Reference:

The use of the words "hereof", "herein", "hereunder", and words similar import shall refer to this entire Agreement, and not to any particular section, subsection, clause, or paragraph of this Agreement, unless the context clearly indicates otherwise.

7.13 Further Assurances:

Each party agrees to perform any further acts and to sign and deliver any further documents which may be reasonably necessary to carry out the provision of this Agreement.

7.14 Notice:

Whenever this Agreement requires or permits any consent, approval, notice, request, proposal, or demand from one party to another, the consent, approval, notice, request, proposal, or demand must be in writing to be effective and shall be delivered to the party intended to receive it at the address(es) shown below:

If to NCTCOG: North Central Texas Council of Governments
 Michael Morris, P.E.
 Director of Transportation
 Post Office Box 5888
 Arlington, Texas 76005-5888

If to the City of Euless:

City of Euless
Loretta Getchell
City Manager
201 N. Ector Dr.
Euless, TX 76039

7.15 Indemnification:

To the extent allowed by Texas law, the City of Euless covenants and agrees to indemnify and hold harmless and defend and do hereby indemnify, hold harmless, and defend NCTCOG, from and against negligence claims or lawsuits for damages or injuries, including death, to persons or property, whether real or asserted, arising out of any negligent act or omission on the part of the City of Euless, their officers, employees, and contractors, related to the performance of this agreement.

To the extent allowed by Texas law, NCTCOG covenants and agrees to indemnify and hold harmless and defend and does hereby indemnify, hold harmless, and defend the City of Euless, their officers, employees, and contractors, from and against claims or lawsuits for damages arising out of the performance of this agreement as a result of any negligent act or omission on the part of the NCTCOG, their officers, and employees.

IN WITNESS HEREOF, the parties hereto have executed this Agreement in duplicate original on the _____ day of _____, 2015.

CITY OF EULESS

**NORTH CENTRAL TEXAS
COUNCIL OF GOVERNMENTS**

Loretta Getchell
City Manager

R. Michael Eastland
Executive Director

ATTACHMENT 1

ANNUAL COST SHARING ALLOCATION (FY2014-2016)

	<u>FY2011-2013</u>	<u>FY2014-2016*</u>	<u>DIFFERENCE</u>
Arlington	\$237,046	\$202,841	-\$34,205
Bedford	\$104,488	\$90,456	-\$14,032
Colleyville	\$12,935	\$17,360	+4,425
Eules	\$106,675	\$138,882	+32,207
Grand Prairie	\$69,764	\$120,607	+50,843
Grapevine	\$50,567	\$34,720	-\$15,847
Haltom City	\$38,705	\$31,979	-\$6,726
Hurst	\$98,168	\$90,456	-\$7,712
<u>North Richland Hills</u>	<u>\$74,741</u>	<u>\$65,786</u>	<u>-\$8,955</u>
Total	\$793,089	\$793,089	\$0

*FY2014-2016 contribution amounts were adjusted based on an NCTCOG license plate survey conducted in September 2014.