

THE ATTACHED AGREEMENT HAS BEEN REVIEWED
AND APPROVED AS TO FORM BY THE CITY
ATTORNEY'S OFFICE AND WILL BE
FORMALLY SIGNED UPON APPROVAL BY
THE CITY COUNCIL



Glen R. Googins
City Attorney

Dated: January 6, 2015

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE CITY OF CHULA VISTA AND
THE SAN DIEGO METROPOLITAN TRANSIT SYSTEM
REGARDING
CHULA VISTA'S DIVESTMENT
OF
PUBLIC TRANSPORTATION SERVICES

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE CITY OF CHULA VISTA
AND THE SAN DIEGO METROPOLITAN TRANSIT SYSTEM
REGARDING CHULA VISTA'S DIVESTMENT OF PUBLIC TRANSPORTATION SERVICES

This agreement (Agreement), dated _____, 2015, for the purposes of reference only and effective as of the date last executed, is between the City of Chula Vista (City), a municipal chartered corporation of the State of California, whose business address and telephone number are as follows:

City of Chula Vista
276 Fourth Avenue
Chula Vista, CA 91910
(619) 691-5037 - Telephone

and the San Diego Metropolitan Transit System (MTS), a California public agency whose business address and telephone number are as follows:

1255 Imperial Avenue, Suite 1000
San Diego, CA 92101
(619) 231-1466 - Telephone

The Agreement is made with reference to the following facts:

WHEREAS, the state legislature declared its intent to improve existing public transportation services and encourage regional public transportation coordination; and

WHEREAS, pursuant to Public Utilities Code sections 120000, et seq., MTS is the public agency responsible for the coordination and provision of public transit services within certain portions of the County of San Diego, including the City; and

WHEREAS, City's public transit operator Chula Vista Transit (CVT) is an independent municipal transit system with the City Council as its governing board, which operates public transit services within the City; and

WHEREAS, funding for CVT is allocated and approved each year by the MTS Board of Directors through the MTS annual budget; and

WHEREAS, the City has been providing public transit service under CVT in the City since 1971; and

WHEREAS, the City Of Chula Vista City Council would like MTS to assume CVT services; and

WHEREAS, the City is a member of MTS Board; and

WHEREAS, the parties to this Agreement have determined that it would be in their best interests to enter into an agreement that sets forth the consolidation of transit services to one transit yard; and

WHEREAS, the benefits to be gained by the riders who use the transit services provided by parties to this Agreement will include more economical, efficient, effective, continuous, cooperative,

comprehensive coordination of local, inter-jurisdictional, and regional public transportation service in the San Diego South Bay community; and

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

A. GENERAL OBLIGATIONS

1. City shall participate in the management of MTS through its appointed MTS Board member and alternate.
2. The City's City Manager and MTS's Chief Executive Officer are authorized to execute appropriate personnel and inter-agency reimbursements to implement transition. This includes items such as use of agency vehicles, assignment of work location, office equipment, office space and computers. Vehicles and office equipment may transition to MTS.
3. City shall make all records, relative to this Agreement, available to MTS for such audit, review, inspection, and copying, as MTS may from time to time desire to conduct. MTS shall provide the City with advanced written notice of such inspections and audits and shall reasonably adjust such times to conform to the availability of City personnel so long as the inspections and audits are not unreasonably delayed.

B. MTS OBLIGATIONS

1. Provision of Services. MTS shall continue to provide transit services in the City as part of the "San Diego Metropolitan Transit System". The level of service shall be determined by MTS Board policy. City shall have no obligation to pay for any of the transit services provided by MTS within the City.
2. Scope. MTS Board of Directors, with input from the City's MTS Board representative, shall approve the types and levels of service provided by MTS in the City, consistent with MTS policies and service planning, regarding the provision of public transportation services. City and MTS shall work together to maximize transit service infrastructure provided in the City, such as: bus stops, bus stop amenities, red curbs, signal priority and queue jumpers for transit vehicles, signal timing coordination efforts, concrete bus pads, traffic engineering, street maintenance and general transit service efficiency measures.
3. Bus Stop Facilities. Responsibilities for general bus stop maintenance shall be transferred to MTS. Services shall include installation of red curb (with City consultation), installation and removal of bus stop signs, minor graffiti removal from bus stop structures and minor tree trims. MTS will conduct ongoing field checks for these facilities by way of its Bus Operators, Supervisors and Contract Management Staff. MTS shall work closely with City graffiti abatement teams to coordinate graffiti removal and report incidents via the regional Graffiti Tracker programs.

The City shall continue to be responsible for City contracted waste management, street lighting, City-owned benches and shelters, and landscaping in the City right of way. All bus stop facility installations or relocations shall be coordinated with the City's Public Works Department.

4. Additional Bus Stop Amenities. MTS shall work with the City to coordinate potential improvements in bus stop furniture and amenities. There may be opportunities for the City to

join one or more of MTS's regional bench and shelter contracts in the future, which would require a separate agreement between the parties.

5. Bayfront Visitor Center. As to the Bayfront/E Street Trolley Station, MTS and City agree that:
 - a. Effective January 25, 2015, the Visitor Center building, any outstanding contracts with vendors, all utilities, facility maintenance and landscaping be transferred over to MTS to manage in its entirety. MTS will be responsible for what happens to the building and what uses occupy it. Any revenues generated from the Bayfront Visitor Center shall be the property of MTS. This agreement expressly supersedes the provisions of MTDB Doc. No. 00-87-517 (Agreement between the County of San Diego, the City of Chula Vista and the San Diego Metropolitan Transit Development Board for the Management, Operation and Maintenance of the Bayfront Trolley Station dated October 21, 1986), where City and County agreed to pay the costs to operate and maintain the Visitor Center and the City was given the right to administer all visitor information leases.
 - b. MTS and City acknowledge that the Bayfront/E Street Trolley Station is a site that has been identified for a future transit-oriented development project, either alone or assembled with neighboring properties. MTS and City agree to work cooperatively to identify a long-term use of the trolley station property that preserves all property rights necessary to operate public transit services at this location. It is anticipated that a future development will require the demolition of the Visitor Center building.
6. Assume Contracts/Agreements. MTS shall assume all City transit-related contracts related to operation and maintenance of transit facilities, e.g., Bayfront/E Street Transit Center, H Street Transit Center and Southwestern College Transit Center. MTS shall be obligated to perform the services identified in the Contracts in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions and in similar locations.
7. Transition Duration and Oversight. MTS elects to retain and fund the City's Transit Manager position to assist with the transition of CVT operations over to the South Bay facility, for an unspecified length of time. This is to ensure a seamless and efficient transition of internal / external records, services and equipment. MTS may stop funding this position at any time by providing 30 days advanced written notice to the City. Funding shall include the Transit Manager's base salary, fringe-related costs and overhead through the retention period. Accrued benefit balances are not included nor funded within this agreement. MTS and the City shall agree to a reimbursement method that shall be invoiced by the City as follows (post relocation of operations from the City to MTS's South Bay Maintenance Facility):
 - February 1, 2015 through June 30, 2015 activities (5 months): Invoice \$16,377 per month by July 31, 2015; and
 - Post June 30, 2015 activities: Invoice \$16,588 per month on a quarterly basis until the conclusion of the Transit Manager position.
8. MTS Owned Equipment. MTS shall be responsible for the removal and transfer of all Transit capital equipment purchased with MTS Federal funds and located at the Public Works Center. MTS may wish to transfer existing equipment ownership to the City if it is beneficial to both parties. This shall only happen with the consent of the City. City and MTS staff shall work together to determine which items, if any, get transferred to the City.

9. City Owned Equipment. MTS shall insure its Contractor transfer back all equipment and assets utilized in providing transit services in good condition, minus normal wear and tear, and in working condition.
10. Transition Compensation. MTS to compensate City for all operational and/or maintenance costs associated with the transition of transit operations conducted at the City's Public Works Center through the existing, approved MTS/CVT fiscal year 2015 budget. No additional MTS funding shall be provided for transition activities. MTS shall compensate City for any City owned equipment and/or asset turned over in non-working order and in need of repair.

C. DUTIES OF THE CITY

1. Consultation and Cooperation. City shall cooperate fully in the transition of its transit services. City shall regularly consult with MTS for the purpose of reviewing the transition process and to provide direction and guidance to achieve the objectives of this Agreement. City shall permit access to its office and maintenance facilities, files, and records by MTS throughout the duration of this transition.
2. Equipment Turn Over. City shall turn over all equipment purchased with Federal Transit Administration funds. This equipment shall aid in the provision of transit services in Chula Vista.
3. Facilities. City shall make available its CNG fuel station to MTS for emergency bus fueling. MTS shall reimburse City for all fuel used.
4. Financial Reporting and Audits. City shall complete necessary reporting and auditing requirements for the period up to the date of the transition. This shall include, but is not limited to, providing requested materials and information to complete external audits required by state and federal agencies, performing year end data reporting necessary to complete National Transit Database requirements and conducting independent audits relative to the Comprehensive Annual Financial Report and the Transportation Development Act.

D. TERM

This Agreement shall remain in effect during such time as MTS is providing public transportation services in the City unless mutually agreed upon by both parties.

E. FINANCIAL INTERESTS OF MTS

MTS is Not Designated as a Fair Political Practices Commission Filer. Nevertheless, MTS agrees it shall not make, participate in making, or in any way attempt to use MTS's position to influence a governmental decision in which MTS knows or has reason to know MTS has a financial interest other than the compensation promised by this Agreement.

F. DEFENSE, INDEMNITY AND HOLD HARMLESS

1. General Requirement. To the maximum extent allowed by law, MTS shall defend, indemnify, protect and hold harmless the City, its elected and appointed officers, agents and employees from and against any and all claims, demands, causes of action, costs, expenses, (including reasonable attorney's fees and actual costs), liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any alleged acts, omissions, negligence, or willful misconduct of MTS, its officials, officers,

employees, agents and contractors, arising out of or in connection with the performance of MTS's Obligations, the results of such performance or this Agreement. This indemnity provision does not include any claims, damages, liability, costs and expenses arising from the sole negligence or sole willful misconduct of the City, its officers or employees. Also covered is liability arising from, connected with, caused by or claimed to be caused by, the active or passive negligent acts or omissions of the City, its agents, officers, or employees which may be in combination with the active or passive negligent acts or omissions of MTS, its employees, agents or officers, or any third party.

2. Costs of Defense and Award. Included in the foregoing obligations is MTS's obligation to defend, at MTS's own cost, expense and risk, any and all suits, actions or other legal proceedings, that may be brought or instituted against the City, its directors, officials, officers, employees, agents and/or volunteers, subject to the limitations in the General Requirement paragraph above. Subject to the limitations in the foregoing paragraph, MTS shall pay and satisfy any judgment, award or decree that may be rendered against City or its directors, officials, officers, employees, agents and/or volunteers, for any and all related legal expenses and costs incurred by each of them.
3. Insurance Proceeds. MTS's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City, its directors, officials, officers, employees, agents and/or volunteers.
4. Declarations. MTS's obligations under this section shall not be limited by any prior or subsequent declaration by MTS.
5. Enforcement Costs. MTS agrees to pay any and all costs City incurs enforcing the indemnity and defense provisions set forth in this section, paragraphs 1-7.
6. Survival. MTS's obligations under this section, paragraphs 1-7, shall survive the termination of this Agreement.
7. No Alteration of Other Obligations. This Section shall in no way alter, affect or modify any of MTS's other obligations and duties under this Agreement.

G. INDEPENDENT CONTRACTOR

MTS and any of MTS's agents, employees, or representatives, or the Contractor, are, for all purposes under this Agreement, independent contractors and shall not be deemed to be employees of City, and none of them shall be entitled to any benefits to which City employees are entitled, including, but not limited to, overtime, retirement benefits, workers' compensation benefits, injury leave or other leave benefits. Therefore, City will not withhold state or federal income tax, Social Security tax, or any other payroll tax, and MTS shall be solely responsible for the payment of same and shall hold the City harmless with regard to such benefits.

H. ATTORNEYS' FEES

Should a dispute arising out of this Agreement result in litigation, it is agreed that the prevailing party shall be entitled to a judgment against the other for an amount equal to reasonable attorneys' fees and court costs incurred. The "prevailing party" shall be deemed to be the party who is awarded substantially the relief sought.

I. MISCELLANEOUS

1. Neither Party Authorized to Represent the Other. Unless specifically authorized under this Agreement, MTS shall have no authority to act as City's agent to bind City to any contractual agreements whatsoever (See Duties of the City, Consultation and Cooperation, Section 2.1, first sentence). Unless specifically authorized under this Agreement, City shall have no authority to act as MTS's agent to bind MTS to any contractual agreements whatsoever.
2. Notices. All notices, demands or requests provided for or permitted to be given pursuant to this Agreement must be in writing. All notices, demands and requests to be sent to any party shall be deemed to have been properly given or served if personally served or deposited in the United States mail, addressed to such party, postage prepaid, at the addresses identified in page one of this Agreement as the places of business for each of the designated parties.
3. Entire Agreement. This Agreement, together with any other written document referred to or contemplated in this Agreement, embodies the entire Agreement and understanding between the parties relating to the subject matter of the Agreement. Neither this Agreement nor any provision of it may be amended, modified, waived or discharged except by an instrument in writing executed by the party against which enforcement of such amendment, waiver or discharge is sought.
4. Capacity of Parties. Each signatory and party to the Agreement warrants and represents to the other party that it has legal authority, capacity and direction from its principal to enter into this Agreement, and that all resolutions or other actions have been taken so as to enable it to enter into this Agreement.
5. Governing Law/Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Any action arising under or relating to this Agreement shall be brought only in the federal or state courts located in San Diego County, State of California. Venue for this Agreement and performance hereunder shall be the County of San Diego.

IN WITNESS WHEREOF, City and MTS have executed this Agreement thereby indicating that they have read and understood the same and indicate their full and complete consent to its terms:

CITY OF CHULA VISTA

SAN DIEGO METROPOLITAN TRANSIT SYSTEM

Mary Salas
Mayor



Paul C. Jablonski
Chief Executive Officer


Date: _____

Date: 12/30/14

APPROVED AS TO FORM

APPROVED AS TO FORM

Glen Googins
City Attorney



Karen Landers
General Counsel

Date: _____

Date: 12-29-14

ATTEST

Donna Norris
City Clerk

Date: _____