RESOLUTION NO. 88-98

A RESOLUTION

AUTHORIZING THE GENERAL MANAGER TO EXECUTE AND DELIVER A CONTRACT WITH THE TEXAS STATE DEPARTMENT OF HIGHWAYS AND PUBLIC TRANSPORTATION FOR DESIGN, CONSTRUCTION, OPERATION AND MAINTENANCE OF THE KATY FREEWAY TRANSITWAY EASTERN EXTENSION; AND MAKING FINDINGS AND PROVISIONS RELATIVE TO THE SUBJECT.

WHEREAS, the Board of Directors has approved of a project to extend the Katy Freeway Transitway east from its present terminus through the intersection of the Katy Freeway with Interstate Highway 610 (West Loop); and

WHEREAS, the General Manager has negotiated an agreement with the Texas State Department Highways and Public Transportation (SDH&PT) establishing the responsibilities and obligations of METRO and the SDH&PT for the design, construction, operation and maintenance of this extension of the Katy Freeway Transitway;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE METROPOLITAN TRANSIT AUTHORITY THAT:

Section 1. The General Manager be and he is hereby authorized and directed to execute and deliver an agreement with the Texas State Department of Highways and Public Transportation for the design, construction, operation and maintenance of the Katy Freeway Transitway Eastern Extension generally in the form and under the terms and conditions set out in the draft agreement attached hereto as Exhibit A.
Section 2. This resolution is effective immediately upon passage.

PASSED this 23rd day of June, 1988.
APPROVED this 23rd day of June, 1988.

ATTEST:

[Signatures]
Assistant Secretary

Robert C. Lanier
Chairman
INTERSTATE HIGHWAY 10 WEST
AGREEMENT FOR CONSTRUCTION OF
HIGH OCCUPANCY VEHICLE FACILITY
(KATY FREEWAY EASTERN EXTENSION)

This Agreement for construction of an extension to the Katy Freeway High Occupancy Vehicle Facility ("Agreement") by and between the Metropolitan Transit Authority of Harris County, Texas, acting by and through its General Manager (hereinafter designated as "METRO"), and the State of Texas, acting by and through the State Department of Highways and Public Transportation (hereinafter designated as the "State"), is made to become effective when fully executed by both parties:

WITNESSETH:

WHEREAS, the parties have heretofore executed a number of agreements for construction, operation and maintenance of a High Occupancy Vehicle Facility, also known as an Authorized Vehicle Lane or Transitway (hereinafter designated as the "Transitway") in the median of the Katy Freeway (IH-10) extending from the intersection of IH-10 with IH-610 to SH 6; and
WHEREAS, operating experience with the Transitway indicates that significant public benefit would be derived from extending the Transitway from its present eastern terminus through the IH-10 interchange at IH-610 to facilitate transitway vehicle movements (designated hereinafter as the "Katy Transitway Eastern Extension" or "Project"); and

WHEREAS, METRO is willing to design and fund the construction costs of the Project; and

WHEREAS, the State is willing to award and manage a contract for the construction of the Project;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties hereto to be by them respectively kept and performed as hereinafter set forth, METRO and the State do mutually agree as follows:

AGREEMENT

Project Scope

1. The Katy Transitway Eastern Extension Project shall consist of a single reversible flow lane in the median of Interstate Highway 10 beginning just east of the Silber Road intersection through the intersection with Interstate Highway 610 and ending with slip ramp access approximately one-half mile west of the Washington Avenue intersection. The total Project length is approximately 1.5 miles and is illustrated in Figure 1 attached hereto.
Allocation of Responsibilities

2. **Design.** METRO shall, at no cost to the State, design or provide for the design for all elements of the Project. The State and cognizant federal agencies shall have the right of review and approval of all designs for the Project.

3. **Right-of-Way.** It is anticipated that the Project can be constructed and operated within existing State-owned right-of-way. The State shall designate and make available for use, at no cost to METRO, such State-owned right-of-way as is necessary for the Project; provided, however, that the general highway use of the freeway is not adversely impacted. Should additional right-of-way be necessary, it shall be acquired by the State but at METRO’s sole expense.

4. **Construction.** The State shall be responsible for award and management of all construction contracts for the Project. The State shall advertise and award all construction to the lowest responsive and responsible bidders in accordance with its usual customs and practices; provided, however, that METRO shall have the right to review and approve all construction contract(s) prior to award and shall have the right to review and approve contract amendments or change orders prior to execution which individually or cumulatively with all previous change orders increase the contract price or the performance period by more than ten percent (10%). The State shall include in its bid documents and all construction contracts such provisions for participation by Disadvantaged Business Enterprises (DBE’s) as METRO shall specify. The State shall provide METRO with a list for review of the DBE firms to be used by the prime
contractor(s). In addition, the State shall provide METRO with a monthly report of the actual DBE participation on each contract to include percentage of DBE participation and dollar amounts paid to DBE's to date. Further, METRO and representatives of the Urban Mass Transportation Administration shall have the right of reasonable access to the construction site(s) to review construction and construction management activities; provided however, that the State shall have the sole authority to manage and direct the construction contractor(s).

5. Costs. METRO shall be responsible for all costs of construction including the actual costs incurred by the State for performance of construction management services. Estimated construction cost of the Project is $4,680,000.00. The estimated construction management cost is $327,600.00. The estimated costs for contingencies including construction change orders, construction engineering, and other construction contingencies is $468,000.00. The total estimated project cost is $5,475,600.00. Within thirty (30) days after execution of this Agreement by both parties, METRO shall transmit to the State its check in the amount of $1,368,900.00. Additional payments in the amount of $1,368,900.00 shall be made quarterly thereafter until the full estimated cost is paid. All funds delivered to the State by METRO shall be held in trust by the State until withdrawn by the State to pay for the Project costs. The State may withdraw funds to pay for Project costs on such a schedule and in such amounts as it deems necessary and proper. Upon completion of construction the State shall perform or cause to be
performed an accounting of actual project costs. Should the actual Project costs exceed the estimate stated herein and paid by METRO, the State shall so notify METRO in writing and METRO shall, within thirty (30) days of receipt of such notice, pay such additional sum to the State. Should the actual Project costs be less than the estimate stated herein and paid by METRO, the State shall promptly refund to METRO the excess amount.

Safety

6. The State and METRO acknowledge that safety is a major consideration in the performance of the construction activities envisioned by this Agreement. The parties agree that they will require and monitor safety programs of the contractor(s) performing work on the Project.

Completion of Construction

7. Upon satisfactory completion of construction of the Project the State agrees to issue to METRO a Certificate of Final Completion showing the date of final completion and certifying that the facilities have been constructed according to approved plans and specifications. It is also agreed that at the earliest possible date thereafter the State will deliver to METRO a copy of the final sets of plans and specifications (the As-Built Plans) based upon field notes maintained by the State. A copy of said plans shall be attached to and become part of this Agreement as Exhibit "A".
Maintenance and Operation of the Project Facilities

8. Maintenance and operation of the Project facilities shall be in accordance with the terms and conditions of that certain agreement executed by the State and METRO dated _____________, 198__, entitled "Master Operation and Maintenance Agreement."

Audit and Inspection of Records

9. The State shall maintain adequate books, records, documents and other data to support all costs claimed under this Agreement. Authorized representatives of METRO, the United States Department of Transportation and Comptroller General of the United States shall have the right to examine and audit all such books, records, documents and other data relating to this Agreement. The State shall maintain such records and the audit rights described herein shall continue for three (3) years after final payment to the State is made under this Agreement.

Parties in Interest

10. This Agreement shall bind, and shall be for the sole and exclusive benefit of the respective parties and their legal successors.

Assignment

11. METRO shall not assign, sublet or transfer its interest in this Agreement without the prior written consent of the State.
Prohibited Interests

12. No member of or delegate to the Congress of the United States of America shall be admitted to any share or part of this Agreement or to any benefit arising therefrom.

13. No member, officer or employee of the parties (State of Texas and Metropolitan Transit Authority of Harris County), or of a local public body during his tenure or one year thereafter shall have any interest, direct or indirect, in this Agreement or the benefits/proceeds thereof.

Equal Employment Opportunity

14. In connection with the carrying out of this Project, the parties shall not discriminate against any employee or applicant for employment because of race, color, age, creed, sex or national origin. The parties shall comply with all applicable statutes and regulations regarding equal employment opportunity.

Legal Compliance

15. If any provision of this Agreement, or the application thereof to any person or circumstance, is rendered or declared illegal for any reason and shall be invalid or unenforceable, the remainder of the Agreement and the application of such provision to other persons or circumstances shall not be affected thereby but shall be enforced to the greatest extent permitted by the applicable law.
Amendments

16. Execution of any amendment to this Agreement shall be subject to the written approval of the State and METRO.

Default and Remedies

17. Default shall occur only in the event either party fails to adhere to its respective obligations hereunder. In such event, the non-defaulting party shall give the defaulting party written notice of the condition of default. The defaulting party may cure such default within ten (10) days from and after date of receipt of notice of default. In the event of continued failure to cure or continued absence of efforts to cure such default, the non-defaulting party may thereafter notify the defaulting party of its intent to terminate this Agreement. This Agreement shall not be considered as specifying the exclusive remedy for any default, but all remedies existing at law and in equity may be availed of by either party and shall be cumulative.

Notices

18. All notices to either party by the other required under this Agreement shall be delivered personally or sent by certified or registered U.S. Mail, postage prepaid, addressed to such party at the following respective addresses:
and shall be deemed given on the date so delivered or so deposited in the mail, unless otherwise provided herein. Either party hereto may change the above address by sending written notice of such change to the other in the manner provided for above.

IN WITNESS WHEREOF, the State of Texas and the Metropolitan Transit Authority of Harris County, Texas, have executed this Agreement in duplicate on the dates shown hereinbelow, effective on the date last executed.
STATE OF TEXAS

Certified as being executed for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the State Highway and Public Transportation Commission.

APPROVED:

By: ______________________
   Deputy Engineer - Director

Date: ______________________

Executed and approved for the State Highway and Public Transportation Commission under authority of Commission Minute Order No. 82513, dated ________ , 198__. 

RECOMMENDED FOR APPROVAL:

Deputy - Director

Director, Finance

District Engineer, District 12

METROPOLITAN TRANSIT AUTHORITY OF HARRIS COUNTY, TEXAS

By: ______________________
   General Manager

Date: ______________________

Executed for and on behalf of the Metropolitan Transit Authority of Harris County, pursuant to Resolution No. 88-___ of the Board of Directors, passed on the ___ day of __________, 1988, and on file in the Office of the Assistant Secretary of METRO.

ATTEST:

Assistant Secretary

APPROVED (FORM):

Staff Counsel

APPROVED (FUNDS AVAILABLE):

Assistant General Manager, Finance

APPROVED (SUBSTANCE):

Assistant General Manager, Engineering, Construction and Real Estate
Figure 1
Katy Transitway - Eastern Extension
RESOLUTION NO. 88-99

A RESOLUTION

AMENDING RESOLUTION NUMBER 88-48 WITH RESPECT TO PROCEDURES FOR DISTRIBUTION OF EXPANDED SALES TAX REVENUES TO SUBURBAN CITIES; AND MAKING FINDINGS AND PROVISIONS RELATIVE TO THE SUBJECT.

WHEREAS, by way of Resolution No. 86-28 the Board of Directors adopted a policy to improve the Street Network throughout the METRO region by allocating revenues derived from the 1987 addition of items subject to METRO's one percent sales and use tax to certain other governmental entities within the METRO region; and

WHEREAS, by way of Resolution No. 88-48 the Board of Directors amended Resolution No. 88-29 to provide that the manner for distribution of Expanded Sales Tax Revenues to the suburban cities should be the same as that for the city of Houston and Harris County; and

WHEREAS, after consulting with officials from a number of the suburban cities, the Board of Directors is of the opinion that it is appropriate to further amend the procedure for distribution of Expanded Sales Tax Revenues to the suburban cities to provide flexibility in the procedure to meet the requirements of the individual suburban cities;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE METROPOLITAN TRANSIT AUTHORITY THAT:
RESOLUTION 88-99 (Page 2)

Section 1. The procedure for distribution of Expanded Sales Tax Revenues to suburban cities as set out in Section 1 of Resolution No. 88-48 is hereby amended to read as follows:

"Procedure for Distribution of Expanded Sales Tax Revenues to Suburban Cities and Identification and Certification of Eligible Projects. The share of Expanded Sales Tax Revenues for each suburban city shall be determined by the formula established by Resolution No. 88-54. Each suburban city may elect to receive its share of Expanded Sales Tax Revenues in the manner provided by Resolution No. 88-29 for the city of Houston and Harris County, that is by way of quarterly payments, or it may allow its share to accumulate in a METRO-maintained account from which it may withdraw all or a portion of the funds allocated to it at such time as it wishes. Earned interest attributable to the METRO-maintained funds shall be credited to the respective suburban cities. Prerequisites for quarterly distribution or withdrawal from a METRO-maintained account shall be execution of an appropriate agreement between METRO and each suburban city as contemplated by Resolution No. 88-29 and certification by the METRO Board of Directors of an eligible project or projects."

Section 2. The June 1, 1988 deadline for application for advance payment of Expanded Sales Tax Revenues set out in Section 4 of Resolution No. 88-48 is hereby repealed.
Section 3. This resolution is effective immediately upon passage.

PASSED this 23rd day of June, 1988.
APPROVED this 23rd day of June, 1988.

ATTEST:

[Signature]
Assistant Secretary

[Signature]
Robert C. Lanier
Chairman
RESOLUTION NO. 88-100

A RESOLUTION

AUTHORIZING THE GENERAL MANAGER TO EXECUTE AND DELIVER A MASTER SUBSTITUTION AGREEMENT WITH THE FIRST CITY LEASING CORPORATION OF HOUSTON FOR SUBSTITUTION EXCHANGE OF CERTAIN VEHICLES SUBJECT TO SAFE HARBOR LEASE AGREEMENTS; AND MAKING FINDINGS AND PROVISIONS RELATIVE TO THE SUBJECT.

WHEREAS, the Board of Directors has from time to time authorized METRO's entry into safe harbor lease agreements undertaken pursuant to the provisions of the Federal Internal Revenue Code permitting the sale of tax depreciation benefits not otherwise usable by a public, tax-exempt entity; and

WHEREAS, the safe harbor lease agreements create a "lease" for tax purposes only; and

WHEREAS, METRO from time to time wishes to dispose of vehicles subject to safe harbor lease agreements; and

WHEREAS, First City Leasing Corporation has expressed a willingness to enter into an agreement with METRO to provide for substitution of vehicles subject to safe harbor lease agreements as may be desired by METRO;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE METROPOLITAN TRANSIT AUTHORITY THAT:

Section 1. The General Manager be and he is hereby authorized and directed to execute and deliver a master substitution agreement with First City Leasing Corporation of Houston to establish a procedure to enable METRO to substitute and exchange certain mass commuting vehicles owned by METRO for certain of the vehicles subject to safe harbor lease agreements.
Section 2. This resolution is effective immediately upon passage.

PASSED this 23rd day of June, 1988.
APPROVED this 23rd day of June, 1988.

ATTEST:

[Signature]
Assistant Secretary

[Signature]
Robert C. Lanier
Chairman
MASTER SUBSTITUTION AGREEMENT

This Master Substitution Agreement ("Agreement"), dated ______, 1988 is by and between Metropolitan Transit Authority of Harris County, Texas, a public body corporate and politic duly organized and validly existing under the Constitution and laws of the State of Texas, ("Metro"), and First City Leasing Corporation, a Delaware corporation ("First City").

WHEREAS, Metro and First City have entered into safe harbor lease agreements regarding the sale and leaseback, for Federal income tax purposes only, of certain mass commuting vehicles (the "Safe Harbor Lease Agreements"); and

WHEREAS, the parties desire to establish a procedure to enable Metro to substitute and exchange certain mass commuting vehicles owned by Metro for certain of the vehicles subject to the Safe Harbor Lease Agreements.

NOW, THEREFORE, it is agreed:

1. **Old Vehicles.** The Safe Harbor Lease Agreements which are the subject of this Agreement are set forth on Exhibit A. Under the description of each Safe Harbor Lease Agreement is a list of the vehicles ("Old Vehicles") originally subject to said Safe Harbor Lease Agreement (excluding vehicles for which Termination Value (as that term is defined in the Safe Harbor Lease Agreements) has been paid or which have previously been the subject of a substitution and exchange). For Federal income tax purposes only, First City is the owner of the Old Vehicles. First City acquired the Federal income tax ownership of the Old Vehicles pursuant to the Safe Harbor Lease Agreements. For all purposes other than Federal income tax purposes, Metro is the owner of the Old Vehicles.

2. **Substitution and Exchange.** Metro is hereby granted the right to substitute vehicles purchased by Metro and which are not subject to any safe harbor lease agreement ("New Vehicles") in exchange for the Old Vehicles. The substitution will be effected by the procedure set forth in paragraph 3. The consequences of an exchange and substitution will be as follows:

   (a) First City shall be deemed to own the New Vehicles for Federal income tax purposes (and only for such purposes).

   (b) Except as otherwise provided herein, the New Vehicles will be subject to the applicable Safe Harbor Lease Agreement in the same manner as if the New Vehicles had been subject to the applicable Safe Harbor Lease Agreement from the date of such Safe Harbor Lease Agreement.
(c) The lease term for the New Vehicles will be equal to the remaining lease term for the Old Vehicles under the applicable Safe Harbor Lease Agreement as of the date of the substitution.

(d) The "Rent" and "Installment Loan Payments" (as such terms are defined in the applicable Safe Harbor Lease Agreement) for the New Vehicles will be equal to the remaining Rent and Installment Loan Payments attributable to the Old Vehicles as of the date of the substitution.

(e) Metro will acquire the Federal income tax ownership of the Old Vehicles and First City shall have no interest in the Old Vehicles.

(f) First City will not claim any cost recovery deductions attributable to the New Vehicles.

3. Procedure. (a) In order to effect a substitution and exchange as described in paragraph 2, Metro shall send a notice to First City which sets forth the following information:

   (i) Identification of the Old Vehicles for which the substitution is to be made and identification of the applicable Safe Harbor Lease Agreement for such Old Vehicles;

   (ii) The Termination Value as the Effective Date (as defined below) for each Old Vehicle for which the substitution is to be made;

   (iii) Identification of the New Vehicles, to be substituted; and

   (iv) Metro's adjusted basis for each New Vehicle, as determined under Temp. Reg. §5.168(f)(8)-6(b)(3)(ii). For each substitution notice, Metro's aggregate adjusted basis in the New Vehicles must equal or exceed Metro's adjusted basis in the Old Vehicles at the time Metro entered into the Safe Harbor Lease Agreement with respect to the Old Vehicle.

   (b) Five (5) days after receipt by First City of the notice described in paragraph 3(a) ("Effective Date"), the substitution and exchange shall be automatically effective without any further action by either party.

4. Termination Occurrence. The substitution and exchange of the Old Vehicles for the New Vehicles pursuant to this Agreement and any subsequent disposition of the Old Vehicles by Metro shall not constitute a Termination Occurrence (as that term is defined
in the Safe Harbor Lease Agreements) and shall not cause Metro to be obligated to make payment to First City of the Termination Value or return to First City any portion of the Cash Payment (as that term is defined in the Safe Harbor Lease Agreements) with respect to the Old Vehicles.

5. Indemnity. (a) General Indemnity. The general indemnity by Metro of First City as provided in Sections 10(a) and (b) of the Safe Harbor Lease Agreements shall be applicable with respect to the New Vehicles.

(b) Income Tax Indemnity. (i) If, (1) by reason of any misrepresentation or breach of any agreement contained herein by Metro or (2) by reason of the substitution of New Vehicles for Old Vehicles or the subsequent sale of the Old Vehicles by Metro, First City is required to recapture all or any portion of the "Cost Recovery Deductions" (as that term is defined in the Safe Harbor Lease Agreements) with respect to any Old Vehicles or shall be required to treat as income any amount with respect to the substitution and exchange under this Agreement or as a result of a good faith determination based upon the written advice of tax counsel selected by First City and reasonably acceptable to Metro, that First City is required to report as income any amount with respect to the substitution and exchange under this Agreement (any such event being hereinafter called a "Loss"), then Metro shall, subject to the conditions set forth herein, pay to First City, as an indemnity, on 60 days' written notice to First City by Metro of such Loss but not prior to the payment by First City of the additional Federal income tax which becomes due as a result of the Loss, such amount or amounts which, after deduction of the Federal income tax required to be paid by First City in respect of the receipt of such amounts, shall be equal to the sum of the aggregate additional Federal income taxes payable by First City from time to time as a result of such Loss plus the amount of any interest, penalties or additions to the tax payable directly as a result of such Loss. In no event, for any Old Vehicle shall the aggregate amount paid by Metro to First City as an indemnity under this Section 5(b) exceed the Termination Value for the Old Vehicle determined as of the Effective Date of the substitution and exchange for such Old Vehicle plus 7% of such Termination Value per annum computed on a simple interest basis from the Effective Date through the date on which payment is made by Metro to First City under this Section 5(b)(i). If, as a result of having a net operating loss or net operating loss carryover First City does not pay Federal income tax in the year in which a Loss occurs, First City shall be deemed to pay Federal income tax as a result of a Loss in the subsequent year or years in which it pays Federal income tax. The Federal income tax attributable to a Loss shall be calculated by determining the
amount of tax which First City owes by virtue of having incurred a Loss and the amount of tax which First City would have owed if it had not incurred a Loss.

(ii) If the Internal Revenue Service proposes an adjustment in the Federal income taxes of First City for which Metro would be required to indemnify First City pursuant to this section, First City will promptly notify Metro of such proposal forthwith (such notice to include all relevant information relating to such proposal known to First City). If the amount of the indemnity which Metro could be required to pay exceeds $50,000, then if requested by Metro in a written request within 30 days of receipt of such notice, First City shall obtain an opinion of tax counsel selected by First City and reasonably acceptable to Metro as to whether there is a realistic possibility of First City succeeding on the merits if the position of the Internal Revenue Service was challenged in litigation. If the opinion is that there is a realistic possibility of success and if Metro requests First City to do so within 30 days after receiving a copy of such opinion, First City shall contest the proposed adjustment; provided, however, that tax counsel to First City shall determine in its sole discretion the nature of all action to be taken to contest such proposed adjustment including (a) whether any such action shall proceed by way of judicial or administrative proceedings, or both, (B) whether any such proposed adjustment shall be contested by resisting payment thereof or by paying the same and seeking a refund thereof, and (C) if First City shall undertake judicial action with respect to such proposed adjustment, the court or other judicial body before which such action shall be commenced. First City shall have full control over any contest pursuant to this paragraph and shall not be obligated to appeal an adverse determination by any court. First City will, however, consider in good faith any request of Metro concerning the most appropriate method to proceed. At any time, whether before or after commencing to take any action required under this section, First City may decline to take any such required action by notifying Metro in writing that Metro is relieved of its obligation to indemnify First City with respect to the adjustment proposed by the Internal Revenue Service.

(iii) First City shall not be required to take any action pursuant to Section 5(b) hereof unless and until Metro has agreed to indemnify First City in a manner reasonably satisfactory to First City for all costs and expenses which First City may incur in connection with contesting the proposed adjustment (including reasonable fees and disbursements of counsel selected by First City). If First City determines to contest any adjustment by paying the additional tax and suing for a refund, Metro shall pay to First City an amount equal to the sum on an after-tax basis of
any tax, interest, penalties and additions to tax which are required to be paid and which are directly related to the trans-
actions contemplated by this Agreement, at the time such amounts are paid by First City. Upon receipt by First City of a refund of any amounts paid by it in respect of which it shall have been paid an amount by Metro pursuant to the foregoing sentence, First City shall pay to Metro the amount of such refund, together with any interest received by it on such amount. In the event of an adverse determination with respect to such refund, the amount paid by Metro to First City hereunder shall offset Metro’s obligation to indemnify First City pursuant to Section 5(b) hereof.

(iv) The amounts referred to in Section 5(b) shall not be payable by Metro if First City shall have been required to reca-
ture all or any portion of the Cost Recovery Deductions or shall be required to include any additional income as a result of the occurrence of any of the following events:

(a) First City reporting the substitution of New Vehicles for Old Vehicles and the subsequent disposition by Metro of the Old Vehicles as a taxable transaction or a transaction which otherwise results in the termination of the applicable Safe Harbor Lease Agreement with respect to the Old Vehicles unless First City has received written advice of tax counsel selected by First City and reasonably acceptable to Metro that First City is required to report such transactions as taxable transactions;

(b) the failure of First City to notify Metro of a claim made by the Internal Revenue Service or any other taxing authority which might lead to or result in the incurrence of a Loss in sufficient time to permit Metro to request First City to contest such claim;

(c) the reorganization, liquidation or change in corporate structure of First City, or the filing of a Section 338 election with respect to First City;

(d) the assignment by First City of its interest in this Agreement in a taxable transaction; or

(e) an act or failure to act of First City which is indepen-
dent of any act or failure to act of Metro, and Metro is otherwise in compliance with the terms of this Agreement.

(v) The determination of the amounts payable under this Section 5(b) shall be made in the first instance by First City, which shall furnish Metro with a notice setting forth in reason-
able detail the computations and methods used in computing such
amount and, if requested by Metro, such determination shall be verified by a firm of independent public accountants of nationally recognized standing selected by First City and reasonably acceptable to Metro, who may be the regular auditors of First City. The costs of such verification shall be borne by Metro.

(vi) For the purposes of this Section 5(b), First City shall mean First City and any member of the affiliated group, within the meaning of Section 1504 of the Code, of which First City is a member which joins in the filing of Federal income tax returns on a consolidated basis.

6. Miscellaneous.

(a) To the extent not inconsistent with the provisions of this Agreement, the terms of the Safe Harbor Lease Agreements shall be applicable to the New Vehicles.

(b) This Agreement shall be binding on and inure to the benefit of any successors or assigns of the respective parties hereto.

(c) Each party agrees to pay itself all expenses incurred by it in connection with the preparation, execution and delivery of this Agreement and the consummation of the transactions contemplated herein.

(d) The obligations and liabilities of the parties arising under this Agreement shall continue in full force and effect, notwithstanding the expiration or other termination of this Agreement, until all such obligations have been met and such liabilities have been paid in full.

(e) First City and Metro each agree that it will promptly and duly execute and deliver to the other such further documents and assurances and take such further action (including without limitation any filing, recording and registration) as the other may from time to time reasonably request in order to more effectively carry out the intent and purpose of this Agreement and to establish and protect First City's ownership of the New Vehicles for Federal income tax purposes only and the rights and remedies created or intended to be created for the parties hereto.

(f) Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction
shall not invalidate or render unenforceable such provision in any other jurisdiction.

(g) The captions in this Agreement are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

(h) This Agreement may not be terminated or amended without the written consent of the parties hereto, and shall be governed by and construed under the laws of the State of Texas.

(i) All notices required or permitted hereunder shall be in writing and shall be delivered to the addressee at its address specified below:

For First City: First City Leasing Corporation 1111 Fannin Street, Suite 1000 Houston, Texas 77002 Attn: Brad McDonald

For Metro: Metropolitan Transit Authority of Harris County, Texas P.O. Box 61429 Houston, Texas 77208 Attn: Richard Tebo

All such notices may be delivered in person or sent by U.S. mail, postpaid, to the address set out above. Any party may change its address for receiving notices hereunder by written notice to the other party hereto. Notices hereunder shall be deemed properly given only when actually received by the addressee.

(j) This Agreement sets forth the entire agreement between the parties relating to the subject matter hereof, and there are no other understandings or agreements except as herein set forth.

(k) This Agreement may be executed in one or more counterparts each of which shall be deemed an original but all of which together shall constitute one document.
IN WITNESS WHEREOF, the parties have duly executed duplicate originals of this Agreement as of the date first above written.

FIRST CITY LEASING CORPORATION

By ________________________________

METROPOLITAN TRANSIT AUTHORITY
OF HARRIS COUNTY, TEXAS

By ________________________________

0188213
WPO842
EXHIBIT A
SAFE HARBOR LEASE AGREEMENTS


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18 First City Leasing IV Total $1,154,840.82
A RESOLUTION

ESTABLISHING A REVISED FARE STRUCTURE; DECLARING AN EFFECTIVE DATE FOR THE IMPLEMENTATION OF THE REVISED FARE STRUCTURE; AND MAKING FINDINGS AND PROVISIONS RELATIVE TO THE SUBJECT.

WHEREAS, in February of 1985, the Board adopted a fare policy calling for an annual review of METRO's fare structure; and

WHEREAS, the Board has reviewed a proposed revision to the fare structure presented by METRO staff which would adjust local, express and commuter fares consistent with the Board's policy to offset operating cost increases occasioned by inflation and to improve the ratio of farebox income to operating costs while providing incentives for use of multiple ride tickets and passes; and

WHEREAS, the Board has also considered the comments received at public hearings held on the issue of the proposed fare adjustments; and

WHEREAS, the Board is of the opinion that a modest fare adjustment in local, express and commuter fares is warranted;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE METROPOLITAN TRANSIT AUTHORITY THAT:

Section 1. A revised fare structure as set out in Exhibit I attached hereto is hereby adopted to be effective September 1, 1988.

Section 2. Effective on September 1, 1988 the fares, rates and charges for METRO transit services shall be as set out in Exhibit II attached hereto and incorporated herein.
Section 3. The General Manager be and he is hereby authorized to undertake all actions reasonable and necessary to implement the revised fare structure.

Section 4. Except as amended herein, the fare policies and practices established by Resolution No. 85-18 shall remain in full force and effect.

Section 5. This resolution is effective immediately upon passage.

PASSED this 23rd day of June, 1988.
APPROVED this 23rd day of June, 1988.

Assistant Secretary

Chairman
EXHIBIT I - FARE STRUCTURE

A. Local Fares

1. Base Fare - The base fare for all local routes shall be set at a flat rate.

2. Express Service - A premium fare equal to approximately 1.5 times the base fare shall be set for Express service routes. Express service is defined as those routes which run at least six miles of their route length in a non-stop, express mode. One end of the express portion of the route shall begin or end outside Highway (Loop) 610.

3. Pass Pricing - Monthly passes for local service shall be priced at an equivalent of 38 (rides) times the base fare.

4. Token Pricing - Ten-token packs shall be priced at approximately a 7% discount from cash. Individual discounts as identified in Section D will not apply to tokens.

B. Commuter Fares

1. Base Fare - The base fare for commuter service shall be set for premium (point-to-point) service, with a route length of up to 10 miles. The commuter base fare will start at approximately twice the local base fare.

2. Incremental Fares - The fare for commuter routes over 10 miles in length shall be set according to the number of successive five-mile intervals over which the route length extends. Each five-mile length (beyond the first 10 miles) will add another increment to the commuter base fare. For those commuter routes servicing two major activity centers which are more than five miles apart, two sets of fares may be charged as appropriate to the distances traveled. (See Exhibit II for fare increment pricing).

3. Pass & Ticket Book Pricing - Monthly passes for commuter service shall be priced at an equivalent of 37 (rides) times the appropriate base cash fare. Forty-ride ticket books shall be the same price as monthly passes, with ten-ride ticket books priced at one-fourth of the monthly pass price.

C. Transfers

1. Free Transfers - All transfers from one METRO route to another of equal or lower fare shall be free. METRO drivers shall issue a transfer slip to any passenger upon receipt of cash, ticket or token fare payment. The driver will punch the fare payment (category) on the transfer slip which shall be valid only on date of issue and for two hours from time of issue.

2. Paid Transfers - A passenger with a valid transfer who boards a bus requiring a higher fare than the bus from which he transferred must deposit the fare difference at the time of boarding.
D. Individual Discounts

1. Senior Citizens & Disabled - The fare for senior citizens (persons over 62 years of age) and disabled persons presenting a valid identification shall be approximately 0.5 times the regular fare.

2. Students - The fare for students (junior high and high school) presenting a valid identification card shall be approximately 0.5 times the regular fare.

3. Children - Children between the ages of 5 and 11 shall ride for a rate of approximately 0.3 times the regular fare. Children under 5 years of age may ride free when accompanied by a fare-paying passenger.

E. Group Discounts

1. Ticket Outlets - Ticket outlets that sell a minimum of $500 of METRO fare scrip monthly will be provided a commission according to the table in E.2.

2. RideSponsors - RideSponsors (employers) who purchase quantities of at least 25 ticket books or 25 passes monthly will be allowed a discount according to the following table.

<table>
<thead>
<tr>
<th>Fare Scrip Transferred to Seller at:</th>
<th>METRO Office</th>
<th>Seller's Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>Seller pays when unused issue of fare scrip are returned</td>
<td>10%</td>
<td>7% (payment by check required)</td>
</tr>
<tr>
<td>Seller pays according to normal terms (10 days)</td>
<td>7%</td>
<td>5%</td>
</tr>
</tbody>
</table>

3. Community Service Agencies - Non-profit community service agencies who purchase at least 250 tokens, or 250 tickets, or 5 passes, or 5 ticket books monthly will be allowed a 10% discount. Payment must be made to METRO at the time the fare scrip is received.

F. Pricing - Fares calculated pursuant to this fare structure shall be rounded down to the nearest 5 cents increment.
<table>
<thead>
<tr>
<th>Fare Type</th>
<th>Prepaid Ticket Books &amp; Token Packs</th>
<th>Cash at Boarding or Single Prepaid Fare</th>
<th>Prepaid Monthly Pass</th>
</tr>
</thead>
<tbody>
<tr>
<td>Local</td>
<td>$.65</td>
<td>$.70</td>
<td>$27.00</td>
</tr>
<tr>
<td>Express</td>
<td>.95</td>
<td>1.00</td>
<td>38.00</td>
</tr>
<tr>
<td>P&amp;R Zone A (Purple)</td>
<td>1.25</td>
<td>1.35</td>
<td>50.00</td>
</tr>
<tr>
<td>P&amp;R Zone A (Blue)</td>
<td>1.40</td>
<td>1.50</td>
<td>56.00</td>
</tr>
<tr>
<td>P&amp;R Zone B (Green)</td>
<td>1.65</td>
<td>1.80</td>
<td>66.00</td>
</tr>
<tr>
<td>P&amp;R Zone C (Red)</td>
<td>1.90</td>
<td>2.10</td>
<td>76.00</td>
</tr>
<tr>
<td>P&amp;R Zone D (Orange)</td>
<td>2.20</td>
<td>2.40</td>
<td>88.00</td>
</tr>
<tr>
<td>P&amp;R Zone E (Yellow)</td>
<td>2.50</td>
<td>2.70</td>
<td>99.00</td>
</tr>
<tr>
<td>Senior Citizens</td>
<td>1.35</td>
<td>1.00</td>
<td>1.00</td>
</tr>
<tr>
<td>Students (Jr. and Sr. High)</td>
<td>1.35</td>
<td>1.00</td>
<td>1.00</td>
</tr>
<tr>
<td>Disabled</td>
<td>.35</td>
<td>.35</td>
<td>1.00</td>
</tr>
<tr>
<td>Youth (5 to 11 years old)</td>
<td>.20</td>
<td>.20</td>
<td></td>
</tr>
<tr>
<td>Texas Special</td>
<td>.25</td>
<td>.25</td>
<td></td>
</tr>
<tr>
<td>METROLift</td>
<td></td>
<td>1.00</td>
<td></td>
</tr>
</tbody>
</table>

1. Proposed local fare for seniors, students and disabled is 35¢ cash at boarding or 1/2 of the cost for express or Park & Ride service. Because they may be purchased and used by any patron, tokens are only available in packs of 10 for $6.50. No other discounts apply to tokens.
2. Purchase 10 tokens for $6.50, add 30¢ fare differential at time of each boarding.
3. Registered METROLift patrons purchase $1.00 METROLift coupons in advance.
4. Price shown illustrates the single fare when buying 10-token packs or Park & Ride ticket books with 5 round trip tickets (10 fares) or Park & Ride ticket books with 20 round trip tickets (40 fares).
5. Local fare or 30 % of the cost for express or Park & Ride service.
RESOLUTION NO. 88-102

A RESOLUTION

AUTHORIZING THE GENERAL MANAGER TO INVESTIGATE A CONTRACT WITH SOUTHWEST RESEARCH LABORATORIES FOR EVALUATION AND TESTING OF ALTERNATIVE FUEL TRANSIT VEHICLES; AND MAKING FINDINGS AND PROVISIONS RELATIVE TO THE SUBJECT.

WHEREAS, federal environmental legislation imposes severe restrictions on diesel engine exhaust emissions commencing with vehicles constructed in 1991; and

WHEREAS, at present there is no fully acceptable diesel engine exhaust emission system that will meet the upcoming federal requirements; and

WHEREAS, METRO could be seriously impacted in its future acquisition of transit vehicles by these federal emission regulations; and

WHEREAS, a transit industry consortium is negotiating with Southwest Research Laboratories to test and evaluate alternative fueled vehicles in an effort to identify the most satisfactory solution for transit vehicle exhaust emission compliance; and

WHEREAS, the Board of Directors is of the opinion that it is appropriate for METRO to participate in this test and evaluation program;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE METROPOLITAN TRANSIT AUTHORITY THAT:
Section 1. The General Manager be and he is hereby authorized to investigate METRO's participation in a transit industry consortium agreement with Southwest Research Laboratories for evaluation and test of alternative fueled mass transit vehicles.

Section 2. This resolution is effective immediately upon passage.

PASSED this 23rd day of June, 1988.
APPROVED this 23rd day of June, 1988.

ATTEST:

[Signature]
Assistant Secretary

[Signature]
Robert C. Lanier
Chairman
RESOLUTION NO. 88-103

A RESOLUTION

AMENDING RESOLUTION NO. 87-120 TO EXTEND THE EXISTENCE OF THE COMMITTEE FOR STUDY OF INNOVATIVE MEANS FOR DELIVERY OF PUBLIC MASS TRANSPORTATION SERVICES; AND MAKING FINDINGS AND PROVISIONS RELATIVE TO THE SUBJECT.

WHEREAS, Resolution No. 87-120 authorized appointment of a Committee to Study Innovative Means for Delivery of Public Mass Transportation Services; and

WHEREAS, Resolution No. 87-120 provided for the existence of the Committee until June 30, 1988; and

WHEREAS, because of other commitments on Board members' time, the Committee has not had an opportunity to thoroughly evaluate innovative means for delivery of public mass transportation services; and

WHEREAS, the Board of Directors is of the opinion that it is appropriate to continue the existence of the Committee indefinitely;

NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE METROPOLITAN TRANSIT AUTHORITY THAT:

Section 1. Section 4 of Resolution No. 87-120 is amended to extend the existence of the Committee to Study Innovative Means for Delivery of Public Mass Transportation Services.

Section 2. All other provisions of Resolution No. 87-120 remain in full force and effect.
Section 3. This resolution is effective immediately upon passage.

PASSED this 23rd day of June, 1988.
APPROVED this 23rd day of June, 1988.

ATTEST:

[Signature]
Assistant Secretary

[Signature]
Robert C. Lanier
Chairman
RESOLUTION NO. 88-104

A RESOLUTION

AUTHORIZING THE GENERAL MANAGER TO CONTRACT WITH THE CITY OF HOUSTON FOR THE ACQUISITION OF APPROXIMATELY 1.0556 ACRES OF ABANDONED RIGHT-OF-WAY OF OLD KATY ROAD AS A PORTION OF THE SITE FOR THE NORTHWEST TRANSIT CENTER; AND MAKING FINDINGS AND PROVISION RELATIVE TO THE SUBJECT.

WHEREAS, the Board of Directors has previously authorized the General Manager to negotiate with the city of Houston for acquisition of approximately 1.0556 acres of land adjacent to Old Katy Road as a portion of the site for the Northwest Transit Center; and

WHEREAS, the city of Houston has approved of abandonment of this property and its sale to METRO;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE METROPOLITAN TRANSIT AUTHORITY THAT:

Section 1. The General Manager be and he is hereby authorized and directed to execute and deliver a contract with the city of Houston for the acquisition of approximately 1.0556 acres of land from the city of Houston for use as a portion of the site for the Northwest Transit Center at a cost not to exceed $430,969. The General Manager is also authorized to dedicate a twenty-foot wide water line easement centered on the existing twenty-four inch water line located within the property to be acquired.

Section 2. The General Manager is authorized to undertake all administrative actions reasonable and necessary to consummate the subject transaction.
Section 3. This resolution is effective immediately upon passage.

PASSED this 23rd day of June, 1988.
APPROVED this 23rd day of June, 1988.

ATTEST:

[Signature]
Assistant Secretary

[Signature]
Robert C. Lanier
Chairman