Quorum = 10

Agenda

Dallas Area Rapid Transit
6:00 P.M. BOARD OF DIRECTORS' MEETING
Tuesday, May 28, 2024 – Board Room
1401 Pacific Ave., Dallas, Texas 75202

General Items:

1. Pledge of Allegiance
2. Approval of Minutes: April 16, 2024 and May 14, 2024
3. This item will be discussed at the Committee-of-the-Whole meeting only.
4. Public Comments

Consent Items:

Administration

5. Approval of Contract for Onsite Drug Testing Services (Mark C. Enoch/Donna Johnson)
6. Approval of Contract Renewal for Enterprise Data Integration Tool Maintenance (Mark C. Enoch/Elizabeth Reich)
7. Approval of Contract for DART Consolidated Dispatch and Command Center Audio-Video Systems – Activu Components (Mark C. Enoch/Elizabeth Reich)
8. Approval of Contract for DART Consolidated Dispatch and Command Center Audio-Video Systems (Mark C. Enoch/Elizabeth Reich)

Budget and Finance

9. Approval of Contract for Ticket Vending Machine Cashbox Bill Mechanism Rebuilds (Paul N. Wageman/Elizabeth Reich)

Operations

10. Approval of Contract for Light Rail Vehicle Axle Journal Bearing Removal and Installation Services (Flora M. Hernandez/Bernard Jackson)
11. Approval of Contract Modification to Exercise Option Year and Increase Funding for Bus Tire Leasing and Services (Flora M. Hernandez/Dee Leggett)
12. Approval of Contract for Traction Power Controller Retrofit for the Light Rail Starter System (Flora M. Hernandez/Bernard Jackson)

Development

13. Approval to Increase the Contract Value for the Design-Build Contract for the Silver Line Regional Rail Project to Include Design Services for Revisions to the Aesthetic Arch Enhancement for the Bridge Across U.S. Highway 75 (Patrick J. Kennedy/Dee Leggett)
14. Approval of a Construction and Maintenance Agreement with BNSF Railway Company for a One-Way Low-Speed Crossing Diamond in Carrollton, Texas (Patrick J. Kennedy/Dee Leggett)

Agenda

15. Approval of a Lease of Land for Construction/Rehabilitation of Track with BNSF Railway Company for One-Way Low-Speed Crossing Diamond in Carrollton, Texas (Patrick J. Kennedy/Dee Leggett)
16. Approval of a Lease with PSF I Knoll Trail Crossing, LLC Providing for Kiss-and-Ride Parking, Handicapped Parking, and Office Space at the Silver Line Knoll Trail Station (Patrick J. Kennedy/Dee Leggett)

Individual Items:

Administration

17. +Approval of Employment Agreement for DART Board Administrator (Gary Slagel)
18. This item will be discussed at Committee-of-the-Whole meeting only.

Budget and Finance

19. This item will be discussed at Committee-of-the-Whole meeting only.
20. Approval of Additional Amendments to the Financial Standards for FY 2025 Budget and 20-Year Financial Plan (Paul N. Wageman/Elizabeth Reich)

Development

21. +Approval of the Dallas/Fort Worth International Airport Site-Specific Shuttle Funding Agreement (Patrick J. Kennedy/Dee Leggett)
22. +Approval of the Declaration and Sale of Surplus Property Located at 2225 Cesar Chavez, in the City of Dallas, to Skybridge Homes, LLC (Patrick J. Kennedy/Dee Leggett)
23. +Approval of Interlocal Agreement for Cooperative Purchasing Program Between Dallas Area Rapid Transit and Washington State Department of Enterprise Services (Patrick J. Kennedy/Dee Leggett)
24. Approval of Amendments to DART Service Standards and Service Changes (Patrick J. Kennedy/Dee Leggett)
25. Approval of DART Strategic Plan Goals and Objectives and Updated Vision Statement and Mission Statement (Patrick J. Kennedy/Dee Leggett)

Other Items:

26. Public Comments
27. This item will be discussed at the Committee-of-the-Whole meeting only.
28. Adjournment

+Same Date Item Only

The Board of Directors may go into Closed Session under the Texas Open Meetings Act, Section 551.071, Consultation with Attorney, for any legal issues, under Section 551.072, Deliberation Regarding Real Property for real estate issues. or under Section 551.074 for Personnel matters, or under Section 551.076 or 551.089, for Deliberation Regarding deployment or implementation of Security Personnel or devices, arising or regarding any item listed on this Agenda.

This facility is wheelchair accessible. For accommodations for the hearing impaired, sign interpretation is available. Please contact Community Affairs at 214-749-2799, 48 hours in advance.

MINUTES
DALLAS AREA RAPID TRANSIT
BOARD OF DIRECTORS'
April 16, 2024

The Dallas Area Rapid Transit **Board of Directors'** meeting came to order on Tuesday, April 16, 2024, at 6:05 p.m., at DART Headquarters, 1401 Pacific Avenue, Dallas, Texas, with Chair Gary Slagel presiding. These minutes provide a brief overview and are not a transcript. For complete details, please visit the following link: https://www.dart.org/about/public-access-information/board-meetings-information/dart-board-meeting-video.

City of Dallas

- ☐ D'Andrala Alexander
- ☐ Randall Bryant
- ☐ Carmen Garcia
- ☐ Flora M. Hernandez –**Assistant Secretary**
- ☐ Patrick J. Kennedy
- ☐ Michele Wong Krause
- ☐ Rodney Schlosser – **Board Vice Chair**

City of Garland

- ☒ Marc C. Abraham

City of Irving

- ☐ Rick H. Stopfer

City of Plano

- ☒ Paul N. Wageman

Cities of Carrollton and Irving

- ☐ Doug Hrbacek

Cities of Cockrell Hill and Dallas

- ☐ Enrique MacGregor

Cities of Farmers Branch and Plano

- ☐ M. Nathan Barbera – **Secretary**

Cities of Garland, Rowlett, and Glenn Heights

- ☐ Mark C. Enoch

Cities of Richardson and University Park; Towns of Addison and Highland Park

- ☐ Gary A. Slagel **– Board Chair**

☒ = not present

General Items

1. **Pledge of Allegiance**

2. **Approval of Minutes: March 26, 2024**

   Mr. Schlosser moved to accept the March 26, 2024, Board of Directors' meeting Minutes into the record as written.

   Ms. Hernandez seconded, and the Minutes were accepted as written unanimously.

3. **This item will be discussed at the Committee-of-the-Whole meeting only.**

4. **Public Comments**

   There were no public comments.

Consent Items 5-9

Mr. MacGregor requested that Items 5 and 6 be pulled from the Consent Agenda and considered individually.

Ms. Wong Krause made a motion to approve Consent Agenda Items 7-9

Administration

7. **Approval of Contract Award for General Contractor Pre-Construction Phase and Construction Phase Services for Silver Line Equipment Maintenance Facility Project**

   Moved to approve Resolution 240041 to the Board of Directors, stating the President & Chief Executive Officer, or her designee, is authorized to award a contract for General Contractor Pre-Construction Phase and Construction Phase Services for Silver Line Equipment Maintenance Facility (EMF) Project to Stacy and Witbeck, Inc., in the amount of $823,914 to include Pre-Construction Phase Services only, plus a contingency for unanticipated costs in the amount of $76,086 for a total authorized amount not to exceed $900,000.

8. **Approval to Increase the Contract Value for the Silver Line Design-Build Contract to Include Procurement of Track Material and Special Trackwork for the Silver Line Equipment Maintenance Facility Project**

   Moved to approve Resolution 240042 to the Board of Directors, stating the President & Chief Executive Officer, or her designee, is authorized to execute a contract modification for design-build services with Archer Western Herzog 4.0, Joint Venture [Contract No. C-2033270-01], to include procurement of track material and special trackwork for the Silver Line Equipment Maintenance Facility (EMF) Project for an amount not to exceed $3,272,642, to be funded from contingency, for a new contract value of $1,476,109,908 without change to the total Board-authorized amount not to exceed $1,535,144,644.

9. **Approval to Authorize the Dallas Area Rapid Transit Mobility Service, Local Government Corporation, to Pay FY 2024 and FY 2025 Membership Dues for the Inland Port Transportation Management Association**

   Moved to approve Resolution 240043 to the Board of Directors, stating the President & Chief Executive Officer, or her designee, is authorized to pay $20,000 for FY 2024 and $20,000 for FY 2025 Inland Port Transportation Management Association (IPTMA) dues totaling $40,000 to fund public transportation from LGC net income received during FY 2023, as shown in Exhibit 1 to the Resolution.

Mr. Schlosser seconded, and the Consent Agenda items 7 through 9 were approved unanimously.

Individual Items 10-15

Administration

5. Approval of Contract for Candidate Background Investigation Services

Mr. MacGregor asked what it meant that Sterling Infosystems is committed to meeting minority and women-owned business goals. He also asked how DART would know that they would meet this goal. Ms. Kathy Bridwell, Associate Vice President of Procurement Services assured Mr. MacGregor that DART would be holding monthly meetings to confirm the goals were being met.

Mr. MacGregor moved to approve Resolution 240039 to the Board of Directors, stating the President & Chief Executive Officer, or her designee, is authorized to award a four-year contract with one, one-year option for background investigation services to Sterling Info Systems, Inc., for a total authorized amount not to exceed $384,860.

Operations

6. Approval of Contract for Replacement of Non-Revenue Pickup Trucks

If DART was getting a volume discount, Mr. MacGregor asked if $49K per truck was the best deal. He further inquired if DART was obligated to buy from the dealer since they were far away or if DART could select a local dealer. Mr. Bernard Jackson, Senior Executive Vice President and Chief Operations Officer responded that DART uses the state cooperative purchasing agreement to reduce lead times for vehicle orders. He explained pricing is already set by the agreement. Mr. Jackson stated that Caldwell Chevrolet was selected as the vendor, noting that DART cannot select a different local dealer since it has to go through the dealer in the state contract.

Mr. MacGregor moved to approve Resolution 240040 to the Board of Directors, stating that:

Section 1: The President & Chief Executive Officer or her designee is authorized to award an 18-month contract with no options for 28 non-revenue pickup trucks [Contract No. C-2083159-01] to Caldwell Country Chevrolet for a total authorized amount not to exceed $1,378,285.

Section 2: The DART vehicles have printed on each side of the vehicle the name and logo of DART, title of the department or office that has custody of the vehicle, the inscription be plainly legible in a color sufficiently different from the body and be seen at a distance of not less than 100 feet.

Ms. Wong Krause seconded, and the items were approved unanimously.

Budget and Finance

10. Approval of Financial Standards for FY 2025 Budget and 20-Year Financial Plan

Ms. Hernandez moved to approve Resolution 240044 to the Board of Directors, stating that that the Financial Standards for the FY 2025 Budget and 20-Year Financial Plan process as shown in Exhibit 1 to this Resolution are approved.

Mr. Bryant asked for clarification on the new language in Section D4 about long-term debt being "may be included" in the 20-year financial plan. Ms. Jamie Adelman, Vice President of Finance responded that any long-term debt plans would be included in the financial plan.

Mr. Bryant also asked why the language in Section D4 changed from restrictive to broader. Ms. Adelman explained that DART has a strong cash position and credit rating, so they don't want to restrict themselves to being required to hold reserve funds for debt that can't be touched, as that would tie up over $200M that could be used for other projects.

Mr. Barbera seconded, and the item was approved unanimously.

11. Approval of Additional Amendments to the Financial Standards for FY 2025 Budget and 20-Year Financial Plan

This item was not discussed.

Development

12. This item will be discussed at the Committee-of-the-Whole meeting only.

13. This item will be discussed at the Committee-of-the-Whole meeting only.

14. +Approval to Increase the Contract Value for the Design-Build Contract for the Silver Line Regional Rail Project to Include a Continuous Vapor Barrier near Property Formerly Owned by Zurn Pex, Inc.

Mr. Kennedy moved to approve resolution 240045 to the Board of Directors, stating the President & Chief Executive Officer, or her designee, is authorized to execute a contract modification for design-build services with Archer Western Herzog 4.0, Joint Venture [Contract No. C-2033270-01], for the Silver Line Regional Rail Project to include installation of continuous vapor barrier protection through DART-owned right-of-way in an amount not to exceed $293,723, to be funded by Zurn Pex, Inc., and with no change to contingency, therefore increasing the contract amount by $293,723 and increasing the total authorized amount by $293,723.

The total value of the approved resolution will be added to both the current not-to-exceed contract amount and the current Board authorized amount.

Ms. Garcia seconded, and the item was approved unanimously.

15. This item will be discussed at the Committee-of-the-Whole meeting only.

OTHER ITEMS

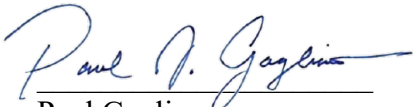
16. Public Comments

There were no public comments.

17. This Item will be discussed at Committee-of-the-Whole only

18. Adjournment

There being no further business, the meeting adjourned at 6:21 p.m.



Paul Gagliano
Secretary of the Board
/pg

MINUTES
DALLAS AREA RAPID TRANSIT
SPECIAL BOARD OF DIRECTORS'
May 14, 2024

The Dallas Area Rapid Transit **Board of Directors'** meeting came to order on Tuesday, May 14, 2024, at 6:52 p.m., at DART Headquarters, 1401 Pacific Avenue, Dallas, Texas, with Chair Gary Slagel presiding. These minutes provide a brief overview and are not a transcript. For complete details, please visit the following link: https://www.dart.org/about/public-access-information/board-meetings-information/dart-board-meeting-video.

City of Dallas

- ☐ D'Andrala Alexander
- ☐ Randall Bryant
- ☐ Carmen Garcia
- ☐ Flora M. Hernandez –**Assistant Secretary**
- ☐ Patrick J. Kennedy
- ☐ Michele Wong Krause
- ☐ Rodney Schlosser – **Board Vice Chair**

City of Garland

- ☐ Marc C. Abraham

City of Irving

- ☐ Rick H. Stopfer

City of Plano

- ☐ Paul N. Wageman

Cities of Carrollton and Irving

- ☐ Doug Hrbacek

Cities of Cockrell Hill and Dallas

- ☐ Enrique MacGregor

Cities of Farmers Branch and Plano

- ☐ M. Nathan Barbera – **Secretary**

Cities of Garland, Rowlett, and Glenn Heights

- ☐ Mark C. Enoch

Cities of Richardson and University Park; Towns of Addison and Highland Park

- ☐ Gary A. Slagel **– Board Chair**

☒ = not present

General Items

1. Public Comments

There were no public comments.

2. +Authorization to Negotiate Employment Agreement with DART Board Administrator Candidate

Mr. Schlosser moved to approve resolution 240046 to the Board of Directors, stating that the Board Chair is authorized to negotiate an employment agreement with Candidate B, _____, including salary, substantially in the form shown in Exhibit 1 to this Resolution, for the position of DART Board Administrator, subject to final approval by the DART Board of Directors.

Mr. Enoch seconded, and the item was approved unanimously.

3. Adjournment

There being no further business, the meeting adjourned at 6:53 p.m.

Paul Gagliano
Secretary of the Board
/pg

Agenda Report

Committee-of-the-Whole ☒
Board Meeting ☒

Attachments:	Voting Requirements:
1. Contract Award Analysis 2. D/M/WBE Details	Majority

DATE: May 28, 2024

SUBJECT: Approval of Contract for Onsite Drug Testing Services

RECOMMENDATION

Approval of a resolution authorizing the President & Chief Executive Officer or her designee to award a five-year contract with two, one-year options to Chem Chek Co., Inc., for Onsite Drug Testing Services [Contract No. C-2078122-01], for a total authorized amount not to exceed $1,754,100.

COMMITTEE CONSIDERATIONS

. On May 14, 2024, the Committee-of-the-Whole unanimously moved this item to the May 28, 2024, Board of Directors meeting.

FINANCIAL CONSIDERATIONS

- This contract for Onsite Drug Testing Services is included in the Safety & Compliance Department's FY 2024 operating budget.
- Sufficient funding for this contract in the amount of $1,754,100 is included in the Agency Safety & Compliance Department's FY 2024 Operating Budget and the Total Operating Expense line item of the FY 2024 20-Year Financial Plan.

BUSINESS PURPOSE

- As a condition of Federal Transit Administration (FTA) funding, the Omnibus Transportation Employee Testing Act of 1991 requires recipients of Federal Transit funds to establish alcohol and drug testing programs. The act requires recipients to follow the FTA's drug and alcohol testing regulations (49 CFR Part 655) and the Department of Transportation's (DOT) workplace testing procedures (49 CFR Part 40).
- The contract scope includes performing random, post-accident, reasonable suspicion, and follow-up urine collections and breath testing onsite at DART facilities, contractor's facility, and area hospitals. The contractor must be available 24 hours/7 days a week in order to perform both scheduled and emergency (post-accident, reasonable suspicion) tests.
- Random tests must be unannounced and unpredictable. They must be spread reasonably throughout the calendar year and must be conducted at all times of day when safety-sensitive functions are performed so that employees have a reasonable expectation that they could be

tested on any day while at work, including nights, weekends, and holidays.

- Providing these services helps achieve Board Strategic Priority 1: Enhance the safety and service experience through customer-focused initiatives.

PROCUREMENT CONSIDERATIONS

- On January 2, 2024, a Request for Proposals (RFP) notification was sent to 4,272 firms for Onsite Drug Testing Services contract.
- This will be an Indefinite Delivery/Indefinite Quantity, with firm fixed rates for a term of five-years, with two, one-year options.
- The contract award analysis is provided as Attachment 1.

D/M/WBE CONSIDERATIONS

- The goal for this contract was established in October 2023 at 10% M/WBE participation.
- Chem Chek Co., Inc., the prime contractor, is a certified WBE firm; therefore, the goal is met.
- The M/WBE analysis and Equal Employment Opportunity (EEO-1) information are included in Attachment 2. The prime contractor's actual EEO-1 report is available upon request.

LEGAL CONSIDERATIONS

- Section 452.055 of the Texas Transportation Code authorizes DART to contract for the provision of goods and services.

Dallas Area Rapid Transit Authority
CONTRACT AWARD ANALYSIS
(Request for Proposals)
RFP NO. P-2078122

Contract Information

A. Description: Onsite Drug Testing Services

B. Contractor: Chem Chek Co. Inc.

C. Contract Number: C-2078122-01

D. Contract Amount: Not to exceed $1,754,100

E. Contract Type: Indefinite Delivery/Indefinite Quantity

F. Performance Period/Term of Contract: Five years from the date of the Notice to Proceed.

G. Options Available: Two, one-year options

H. Bond Requirement: N/A

I. Liquidated Damages: N/A

J. Funding Source: Local

Solicitation Information

A. Issue Date: January 2, 2024

B. Notifications Sent to Registered Suppliers: Yes

C. Date and Time for Proposal Receipt: January 26, 2024 @ 2:00 PM

D. Proposals Received: Six

1. ARCpoint Labs of Grand Prairie
2. Chem Chek Co. Inc.
3. Chicas Development LLC
4. Curious Screening
5. Elite Specimen Collection
6. Fastest Labs of Duncanville

E. Discussion of Proposal Evaluation Process: This was a competitively negotiated procurement. A Source Evaluation Committee (SEC) was appointed to conduct proposal evaluations and the proposals were evaluated against the following criteria:

Qualification of the Firm	300 Maximum Points
Qualification of the Staff	200 Maximum Points
Work Plan/Project Approach	200 Maximum Points
Price	300 Maximum Points
Total Points	**1,000 Maximum Points**

F. Discussion of Unacceptable Proposals: The proposals submitted by Fastest Labs of Duncanville, Curious Screening and Elite Specimen Collection; proposals were determined to be technically unacceptable due to their low technical scores.

G. Proposal Scoring: The following three proposals represents the final scores, following evaluation of the Best and Final Offers.

Firm Name	Base Price 5 Years	Option Year 1	Option Year 2	Base + Option Pricing	Price Points (Max Points 300)	Technical Points (Max Points 700)	Total Points	Rank
Chem Chek Co. Inc.	**$1,240,500**	**$256,200**	**$257,400**	**$1,754,100**	**275**	**603**	**878**	**1**
Chicas Development LLC	$1,209,000	$190,200	$208,800	$1,608,000	300	533	833	2
ARCpoint Labs of Grand Prairie	$1,659,000	$69,840	$73,320	$1,802,160	267	519	786	3

H. Negotiation Memorandum: Available for review in the contract file.

I. Cost & Price Analysis: Prices are fair and reasonable based on historical pricing and comparison to the independent cost estimate (ICE).

J. Determination of Responsibility:
Bond Check: N/A
Reference Check: Satisfactory
Financial Responsibility Survey: Satisfactory
Insurance Check: Yes
On-Site Inspection: N/A
Arithmetic Check: Yes
Verification of Offer: Yes
Buy America Certification and/or Audit, if applicable: Yes
Debarred/Suspended list: Not on the debarred /suspended list.

K. Protests Received: None

L. Determinations Required: Competitive Sealed Procurement, Non-responsive Proposals, Failure to furnish items or information required to be submitted with the proposal.

Determination and Recommendation

Chem Chek Co. Inc. is a responsible offeror that achieved the highest score considering technical and price factors. They have the capacity to perform this contract and are recommended for award.

Approval of Contract for Onsite Drug Testing Services

M/WBE Considerations

The goal for this contract was established in October 2023 at 10% M/WBE participation. Chem Chek Co., Inc., the prime contractor, is a certified WBE firm; therefore, the M/WBE goal is met.

NOTE: The goal is based on the not to exceed amount of $1,754,100. If there are any changes to this amount, the original goal shall still apply.

Summary of EEO-1 Report

Chem Chek Co., Inc., is located in Richardson, TX and employs 11 individuals. The following is an analysis of their EEO-1 report:

	ASIAN	BLACK	HISPANIC	NATIVE AM.	WHITE	TOTAL	PERCENTAGE
MALES	0	0	3	0	1	4	**36.36%**
FEMALES	0	0	5	0	2	7	**63.64%**
TOTAL	0	0	8	0	3	11	**100%**
PERCENTAGE	**0.00%**	**0.00%**	**72.73%**	**0.00%**	**27.27%**	**100%**	

DRAFT

RESOLUTION

of the

DALLAS AREA RAPID TRANSIT BOARD

(Executive Committee)

Approval of Contract for Onsite Drug Testing Services

WHEREAS, it is necessary to obtain onsite substance abuse collection services in compliance with the Department of Transportation (DOT), Federal Transit Administration (FTA), and DART substance abuse regulations and policies; and

WHEREAS, a competitive sealed proposal procurement for a five-year contract with two, one-year options was conducted in accordance with the DART Procurement Regulations; and

WHEREAS, the proposed pricing is fair and reasonable; and

WHEREAS, funding for this contract is within current Budget and FY 2024 20-Year Financial Plan allocations.

NOW, THEREFORE, BE IT RESOLVED by the Dallas Area Rapid Transit Board of Directors that the President & Chief Executive Officer or her designee is authorized to award a five-year contract with two, one-year options for Onsite Drug Testing Services [Contract No. C-2078122-01] to Chem Chek Co., Inc., for a total authorized amount not to exceed $1,754,100.

Approval of Contract for Onsite Drug Testing Services

Prepared by:

/s/ Donna Johnson

Donna Johnson
Senior Vice President,
Chief Safety Officer

Approved as to form:

/s/ Gene Gamez

Gene Gamez
General Counsel

Approved by:

/s/ Nadine S. Lee

Nadine S. Lee
President & Chief Executive Officer

Agenda Report

Committee-of-the-Whole ☒
Board Meeting ☒

Attachments:	Voting Requirements:
1. Contract Award Analysis 2. M/WBE Details	Majority

DATE: **May 28, 2024**

SUBJECT: **Approval of Contract Renewal for Enterprise Data Integration Tool Maintenance**

RECOMMENDATION

Approval of a resolution authorizing the President & Chief Executive Officer or her designee to award a one-year contract for the Enterprise Data Integration Tool Maintenance Renewal to Dell Marketing, LP [Contract No. C-2083887-01], for a total authorized amount not to exceed $315,549.

COMMITTEE CONSIDERATIONS

. On May 14, 2024, the Committee-of-the-Whole unanimously moved this item to the May 28, 2024, Board of Directors meeting.

FINANCIAL CONSIDERATIONS

- This contract for Enterprise Data Integration Tool Annual Maintenance Renewal is included in the Information Technology Department's approved FY 2024 Operating Budget.
- Sufficient funding for this contract in the amount of $315,549 is included in both the Information Technology Department's operating budget and the Total Operating Expense line item of the FY 2024 20-Year Financial Plan.

BUSINESS PURPOSE

- The purpose of this contract is to renew the annual maintenance services for the Agency's Enterprise Data Integration Tool, which supports DART's critical business functions in Operations, Maintenance, Procurement, Human Resources, and Finance.
- The integration tool facilitates the publication of DART's fixed route service schedules to the public via GoPass, Trip Planning, and DART.org.
- The integration tool securely integrates data, connecting applications like Maximo EAM (Enterprise Asset Management), Workday (HR and Payroll), Lawson (Procurement and Finance), Kronos (Time and Attendance), INIT (Rail), and Trapeze (Bus).
- Approval of this contract supports Board Strategic Priority 1: Enhance the safety and service experience through customer-focused initiatives; Strategic Priority 2: Provide stewardship of the transit system, agency assets, and financial obligations; and Strategic Priority 3: Innovate to

enhance mobility options, business processes, and funding.

PROCUREMENT CONSIDERATIONS

- DART is using an approved cooperative agreement.
- This will be a firm-fixed price contract for a term of one year with no options.
- The contract award analysis is provided as Attachment 1.

D/M/WBE CONSIDERATIONS

- The State of Texas contracts will be utilized for this procurement.
- The State's goal for this type of procurement is 26.0%. The responsible State agency is the Texas Department of Information Resources (DIR).
- As this is a State contract, reports of M/WBE spend dollars will be to and through the State.

LEGAL CONSIDERATIONS

- Section 452.055 of the Texas Transportation Code authorizes DART to contract for the provision of goods and services.

Dallas Area Rapid Transit Authority
CONTRACT AWARD ANALYSIS
Cooperative DIR Contract No. DIR- TSO-3763
DART Contract No. C-2083887-01

Contract Information

A. Description: Enterprise Data Integration Tool Annual Maintenance Renewal

B. Contractor: Dell Marketing, LP

C. Contract Number: C-2083887-01

D. Contract Amount: $315,549

E. Contract Type: Firm-Fixed Pricing

F. Performance Period/Term of Contract: September 28, 2024, through September 27, 2025

G. Options Available: N/A

H. Funding Source: Local

I. Price Considerations: Pricing is fair and reasonable per State of Texas DIR Contract No. DIR-TSO-3763.

J. Determination of Responsibility:
Reference Check/ Financial Responsibility Survey: Provided via cooperative source.
Arithmetic Check: Yes
Buy America Certification and/or Audit, if applicable: N/A
Debarred/Suspended list: Not on the debarred /suspended list.

K. Determinations Required: None

Determination and Recommendation

Dell Marketing, LP, is a responsive and responsible contractor through an approved cooperative agreement, has the capacity to perform this contract, and is recommended for award.

Approval of Contract for Enterprise Data Integration Tool Annual Maintenance Renewal

M/WBE Considerations

The State of Texas contracts will be utilized for this procurement. The State's goal for this type of procurement is 26.0%. The responsible State agency is the Texas Department of Information Resources (DIR). As this is a State contract, reports of M/WBE spend dollars will be to and through the State.

DRAFT

RESOLUTION

of the

DALLAS AREA RAPID TRANSIT BOARD

(Executive Committee)

Approval of Contract Renewal for Enterprise Data Integration Tool Maintenance

WHEREAS, the purpose of this contract is to renew the annual maintenance services for the Agency's Enterprise Data Integration Tool, which supports DART's critical business functions in Operations, Maintenance, Procurement, Human Resources, and Finance; and

WHEREAS, the integration tool facilitates the publication of DART's fixed route service schedules to the public via GoPass, Trip Planning, and DART.org; and

WHEREAS, the integration tool securely integrates data, connecting applications like Maximo EAM (Enterprise Asset Management), Workday (HR and Payroll), Lawson (Procurement and Finance), Kronos (Time and Attendance), INIT (Rail), and Trapeze (Bus); and

WHEREAS, a procurement for a one-year contract with no options was conducted in accordance with the DART Procurement Regulations; and

WHEREAS, the proposed price for this contract is fair and reasonable; and

WHEREAS, funding for this contract is within current Budget and FY 2024 20-Year Financial Plan allocations.

NOW, THEREFORE, BE IT RESOLVED by the Dallas Area Rapid Transit Board of Directors that the President & Chief Executive Officer or her designee is authorized to award a one-year contract with no options for Enterprise Data Integration Tool Maintenance Renewal to Dell Marketing, LP [Contract No. C-2083887-01], for a total authorized amount not-to-exceed $315,549.

Approval of Contract Renewal for Enterprise Data Integration Tool Maintenance

Prepared by: /s/ Elizabeth Reich

M. Elizabeth Reich
Chief Financial Officer

Approved as to form: /s/ Gene Gamez

Gene Gamez
General Counsel

Approved by: /s/ Nadine S. Lee

Nadine S. Lee
President & Chief Executive Officer

Agenda Report

Committee-of-the-Whole ☒
Board Meeting ☒

Attachments:	Voting Requirements:
1. Contract Award Analysis 2. M/WBE Details	Majority

DATE: **May 28, 2024**

SUBJECT: **Approval of Contract for DART Consolidated Dispatch and Command Center Audio-Video Systems–Activu Components**

RECOMMENDATION

Approval of a resolution authorizing the President & Chief Executive Officer or her designee to award a three-year contract with no options to AVI Systems, Inc., for the DART Consolidated Dispatch and Command Center (CDCC) audio-video systems (Activu Components) [Contract No. C-2085002-02], for a total authorized amount not to exceed $874,461.

COMMITTEE CONSIDERATIONS

- On May 14, 2024, the Committee-of-the-Whole unanimously moved this item to the May 28, 2024, Board of Directors meeting.

FINANCIAL CONSIDERATIONS

- This contract for the Consolidated Dispatch and Command Center (CDCC) audio-video systems (Activu Components) is included in the Consolidated Dispatch Facility project budget of the approved FY 2024 Capital Budget.
- Sufficient funding for this contract in the amount of $874,461 is included in both the Consolidated Dispatch Facility project budget and the Agency-wide Capital line item of the FY 2024 20-Year Financial Plan.

BUSINESS PURPOSE

- The purpose of this contract is to purchase software to manage the audio-video systems for the new Consolidated Dispatch and Command Center (CDCC).
- On November 15, 2022 (Resolution No. 220173), the Board authorized the President & Chief Executive Officer or her designee to proceed with the development of a project to relocate the decentralized dispatch centers (Bus, Rail, and Police) into a consolidated emergency operations center, with other future contracts for this project to be presented to the Board for consideration and approval.
- On December 13, 2022 (Resolution No. 220186), the Board authorized the approval of the Contract for the Construction of the Consolidated Dispatch Command Center.

- DART is seeking to combine all dispatch functions for Police, Bus, Rail, and Emergency Operations into a single Consolidated Dispatch and Command Center (CDCC) located at the Northwest Rail Operating Facility (NWROF) at 9717 Abernathy Avenue in Dallas.
- The audio-video system is to provide centralized monitoring for the DART Police Dispatch, Bus Dispatch, Train Control Center, and Emergency Operation Center, which will allow for immediate response to crisis situations as they arise.
- Approval of this contract will help achieve Board Strategic Priority 1: Enhance the safety and service experience through customer-focused initiatives; Strategic Priority 2: Provide stewardship of the transit system, agency assets, and financial obligations; and Strategic Priority 5: Enhance DART's role as a recognized local, regional, and national transportation leader.

PROCUREMENT CONSIDERATIONS

- On April 11, 2024, a sole source solicitation was sent to one firm.
- This will be a requirements contract, with firm-fixed pricing for a term of three years.
- AVI Systems, Inc., is the sole provider for Activu Components.
- The contract award analysis is provided as Attachment 1.

D/M/WBE CONSIDERATIONS

- The State of Texas contracts will be utilized for this procurement.
- The State’s goal for this type of procurement is 26.0%. The responsible State agency is the Texas Department of Information Resources (DIR).
- As this is a State contract, reports of M/WBE spend dollars will be to and through the State.

LEGAL CONSIDERATIONS

- Section 452.055 of the Texas Transportation Code authorizes DART to contract for the provision of goods and services.

Dallas Area Rapid Transit Authority
CONTRACT AWARD ANALYSIS
(Sole Source)
Solicitation No. S-2085002

Contract Information

A. Description: Consolidated Dispatch & Command Center Audio-Video Systems – Activu Components

B. Contractor: AVI Systems, Inc.

C. Contract Number: C-2085002-02

D. Contract Amount: Not to exceed $874,461

E. Contract Type: Firm Fixed Price

F. Performance Period/Term of Contract: Three years from the date of the Notice to Proceed

G. Options Available: None

H. Bond Requirement: N/A

I. Liquidated Damages: N/A

J. Funding Source: Local

Solicitation Information

A. Determination of Responsibility
Bond Check: N/A
Reference Check: Satisfactory
Financial Responsibility Survey: Satisfactory
Insurance Check: Yes
On-Site Inspection: N/A
Arithmetic Check: Yes
Verification of Offer: Yes
Buy America Certification and/or Audit, if applicable:
Debarred/Suspended list: Not on the debarred /suspended list.

B. Negotiation Memorandum: Available for review in the contract file.

C. Cost & Price Considerations: Price is fair and reasonable based on comparison to ICE.

D. Protests Received: None

E. Determinations Required: Sole Source F&D

Determination and Recommendation

AVI Systems, Inc., is a responsible contractor, has the capacity to perform this contract, and is recommended for award.

Approval of Contract for DART Consolidated Dispatch and Command Center Audio-Video Systems – Activu Components

M/WBE Considerations

The State of Texas contract will be utilized for this procurement. The State's goal for this type of procurement is 26.0%. The responsible State agency is the Texas Department of Information Resources (DIR). As this is a State contract, reports of M/WBE spend dollars will be to and through the State.

DRAFT

RESOLUTION

of the

DALLAS AREA RAPID TRANSIT BOARD

(Executive Committee)

Approval of Contract for DART Consolidated Dispatch and Command Center Audio-Video Systems–Activu Components

WHEREAS, the purpose of this contract is to purchase Activu Components to manage the audio-video systems for the new Consolidated Dispatch and Command Center (CDCC); and

WHEREAS, on November 15, 2022 (Resolution No. 220173), the Board authorized the President & Chief Executive Officer or her designee to proceed with the development of a project to relocate the decentralized dispatch centers (Bus, Rail, and Police) into a consolidated emergency operations center, with other future contracts for this project to be presented to the Board for consideration and approval; and

WHEREAS, on December 13, 2022 (Resolution No. 220186), the Board authorized the approval of the Contract for the Construction of the Consolidated Dispatch Command Center: and

WHEREAS, this audio-video system is to provide centralized monitoring for the DART Police Dispatch, Bus Dispatch, Train Control Center, and Emergency Response teams, which will allow for immediate response to crisis situations as they arise; and

WHEREAS, a procurement for a three-year contract with no options was conducted in accordance with the DART Procurement Regulations; and

WHEREAS, the proposed price for this contract is fair and reasonable; and

WHEREAS, funding for this contract is within current Budget and FY 2024 20-Year Financial Plan allocations.

NOW, THEREFORE, BE IT RESOLVED by the Dallas Area Rapid Transit Board of Directors that the President & Chief Executive Officer or her designee is authorized to award a three-year contract with no options for the DART Consolidated Dispatch and Command Center (CDCC) audio-video systems (Activu Components) [Contract No. C-2085002-02] to AVI Systems, Inc., for a total authorized amount not to exceed $874,461.

Approval of Contract for DART Consolidated Dispatch and Command Center Audio-Video Systems–Activu Components

Prepared by: /s/ Elizabeth Reich

M. Elizabeth Reich
Chief Financial Officer

/s/ Gene Gamez

Approved as to form: Gene Gamez
General Counsel

/s/ Nadine S. Lee

Approved by: Nadine S. Lee
President & Chief Executive Officer

Agenda Report

Committee-of-the-Whole ☒
Board Meeting ☒

Attachments:	Voting Requirements:
1. Contract Award Analysis 2. M/WBE Details	Majority

DATE: **May 28, 2024**

SUBJECT: **Approval of Contract for DART Consolidated Dispatch and Command Center Audio-Video Systems**

RECOMMENDATION

Approval of a resolution authorizing the President & Chief Executive Officer or her designee to award a three-year contract with no options to AVI Systems, Inc., for the DART Consolidated Dispatch and Command Center (CDCC) and supporting facilities audio-video systems [Contract No. C-2085002-01], for a total authorized amount not to exceed $3,815,629.

COMMITTEE CONSIDERATIONS

. On May 14, 2024, the Committee-of-the-Whole unanimously moved this item to the May 28, 2024, Board of Directors meeting.

FINANCIAL CONSIDERATIONS

- This contract for the Consolidated Dispatch and Command Center (CDCC) and supporting facilities audio-video systems is included in the Consolidated Dispatch Facility project budget of the approved FY 2024 Capital Budget.
- Sufficient funding for this contract in the amount of $3,815,629 is included in both the Consolidated Dispatch Facility project budget and the Agency-wide Capital line item of the FY 2024 20-Year Financial Plan.

BUSINESS PURPOSE

- The purpose of this contract is to install audio-video systems for the new Consolidated Dispatch and Command Center (CDCC) and supporting facilities. This includes a variety of displays of different sizes, backend hardware, and related accessories.
- On November 15, 2022 (Resolution No. 220173), the Board authorized the President & Chief Executive Officer or her designee to proceed with the development of a project to relocate the decentralized dispatch centers (Bus, Rail, and Police) into a consolidated emergency operations center, with other future contracts for this project to be presented to the Board for consideration and approval.
- On December 13, 2022 (Resolution No. 220186), the Board authorized the approval of the Contract for the Construction of the Consolidated Dispatch Command Center.

- DART is seeking to combine all dispatch functions for Police, Bus, Rail, and Emergency Operations into a single Consolidated Dispatch and Command Center (CDCC) located at the Northwest Rail Operating Facility (NWROF) at 9717 Abernathy Avenue in Dallas.
- The audio-video system will provide centralized monitoring for the DART Police Dispatch, Bus Dispatch, Train Control Center, and Emergency Operation Center, which will allow for immediate response to crisis situations as they arise.
- Approval of this contract will help achieve Board Strategic Priority 1: Enhance the safety and service experience through customer-focused initiatives; Strategic Priority 2: Provide stewardship of the transit system, agency assets, and financial obligations; and Strategic Priority 5: Enhance DART's role as a recognized local, regional, and national transportation leader.

PROCUREMENT CONSIDERATIONS

- DART is using an approved cooperative agreement.
- This will be a requirements contract, with firm-fixed pricing for a term of three years.
- The contract award analysis is provided as Attachment 1

D/M/WBE CONSIDERATIONS

- The State of Texas contracts will be utilized for this procurement.
- The State’s goal for this type of procurement is 26.0%. The responsible State agency is the Texas Department of Information Resources (DIR).
- As this is a State contract, reports of M/WBE spend dollars will be to and through the State.

LEGAL CONSIDERATIONS

- Section 452.055 of the Texas Transportation Code authorizes DART to contract for the provision of goods and services.

Dallas Area Rapid Transit Authority
CONTRACT AWARD ANALYSIS
Cooperative DIR Contract No. DIR-CPO-4459, DIR-CPO-5084
DART Contract No. C-2085002-01

Contract Information

A. Description: Consolidated Dispatch and Command Center Audio-Video Systems

B. Contractor: AVI Systems, Inc.

C. Contract Number: C-2085002-01

D. Contract Amount: Not to exceed $3,815,629

E. Contract Type: Firm Fixed Price

F. Performance Period/Term of Contract: Three years from the date of the Notice to Proceed

G. Options Available: None

H. Funding Source: Local

I. Price Considerations: Price is fair and reasonable based on discount of MSRP listed in Appendix C of DIR-CPO-4459 and Appendix C of DIR-CPO-5084.

J. Determination of Responsibility:
Reference Check/ Financial Responsibility Survey: Provided via cooperative source.
Arithmetic Check: Yes
Buy America Certification and/or Audit, if applicable: N/A
Debarred/Suspended list: Not on the debarred /suspended list.

K. Determinations Required: None

Determination and Recommendation

AVI Systems, Inc., is determined to be a responsive and responsible contractor through an approved cooperative agreement, has the capacity to perform this contract, and is recommended for award.

Approval of Contract for DART Consolidated Dispatch and Command Center Audio-Video Systems

M/WBE Considerations

The State of Texas contract will be utilized for this procurement. The State's goal for this type of procurement is 26.0%. The responsible State agency is the Texas Department of Information Resources (DIR). As this is a State contract, reports of M/WBE spend dollars will be to and through the State.

DRAFT

RESOLUTION

of the

DALLAS AREA RAPID TRANSIT BOARD

(Executive Committee)

Approval of Contract for DART Consolidated Dispatch and Command Center Audio-Video Systems

WHEREAS, the purpose of this contract is to install audio-video systems for the new Consolidated Dispatch and Command Center (CDCC) and supporting facilities. This includes a variety of displays of different sizes, backend hardware, and related accessories; and

WHEREAS, on November 15, 2022 (Resolution No. 220173), the Board authorized the President & Chief Executive Officer or her designee to proceed with the development of a project to relocate the decentralized dispatch centers (Bus, Rail, and Police) into a consolidated emergency operations center, with other future contracts for this project to be presented to the Board for consideration and approval; and

WHEREA, on December 13, 2022 (Resolution No. 220186), the Board authorized the approval of the Contract for the Construction of the Consolidated Dispatch Command Center; and

WHEREAS, this audio-video system is to provide centralized monitoring for the DART Police Dispatch, Bus Dispatch, Train Control Center, and Emergency Response teams, which will allow for immediate response to crisis situations as they arise, and

WHEREAS, a procurement for a three-year contract with no options was conducted in accordance with the DART Procurement Regulations; and

WHEREAS, the proposed price for this contract is fair and reasonable; and

WHEREAS, funding for this contract is within current Budget and FY 2024 20-Year Financial Plan allocations.

NOW, THEREFORE, BE IT RESOLVED by the Dallas Area Rapid Transit Board of Directors that the President & Chief Executive Officer or her designee is authorized to award a three-year contract with no options to AVI Systems, Inc., for the DART Consolidated Dispatch and Command Center (CDCC) and supporting facilities audio-video systems [Contract No. C-2085002-01], for a total authorized amount not to exceed $3,815,629.

Approval of Contract for DART Consolidated Dispatch and Command Center Audio-Video Systems

Prepared by:	/s/ Elizabeth Reich
	M. Elizabeth Reich Chief Financial Officer
	/s/ Gene Gamez
Approved as to form:	Gene Gamez General Counsel
	/s/ Nadine S. Lee
Approved by:	Nadine S. Lee President & Chief Executive Officer

Agenda Report

Committee-of-the-Whole ☒
Board Meeting ☒

Attachments:	Voting Requirements:
1. Contract Award Analysis 2. M/WBE Details	Majority

DATE: **May 28, 2024**

SUBJECT: **Approval of Contract for Ticket Vending Machine Cashbox Bill Mechanism Rebuilds**

RECOMMENDATION

Approval of a resolution authorizing the President & Chief Executive Officer or her designee to award a two-year contract with no options to Genfare, LLC, for ticket vending machine cashbox bill mechanism rebuilds [C-2066272-01], for a total authorized amount not to exceed $829,350.

COMMITTEE CONSIDERATIONS

. On May 14, 2024, the Committee-of-the-Whole unanimously moved this item to the May 28, 2024, Board of Directors meeting.

FINANCIAL CONSIDERATIONS

- This contract for Ticket Vending Machine (TVM) Cashbox Bill Mechanism Rebuilds is included in the Finance Department's approved FY 2024 operating budget.
- Sufficient funding for this contract in the amount of $829,350 is included in both the Finance Department's operating budget and the total operating expense line item of the FY 2024 20-Year Financial Plan.

BUSINESS PURPOSE

- DART has approximately 190 TVMs throughout the system, manufactured by Genfare, LLC (Genfare). A large number of the credit card pin pads on these TVMs are inoperable, making cash the only form of accepted payment. The ability to accept cash is essential for riders without smartphones or other methods of payment.
- Bill Tech Packs (BTPs) are the mechanism within the TVM that accepts and dispenses bills. BTPs are in high demand to keep the current TVMs operational for our cash-paying customers. Since June 2022, average monthly cash transactions have exceeded $250,000.
- This contract will allow DART to ship BTPs to Genfare that are beyond repair in our facilities so we can place them back into revenue service. The Genfare-repaired BTPs will also be warrantied for a limited period.
- Based on historical trends, ten BTPs require repairs per month on average, some of which can be

repaired in-house. The not-to-exceed amount allows Genfare to repair up to 190 BTPs in the two-year period, but in-house rebuilds and continued preventive maintenance may reduce this number.

- This contract is necessary for continued use of the current TVMs until DART procures replacements. New TVMs for the Silver Line platforms are on target for delivery in the summer or fall of 2025, and the remaining TVMs are scheduled for replacement in early 2026.

- Approval of this contract supports Board Strategic Priority 1: Enhance the safety and service experience through customer-focused initiatives; Strategic Priority 2: Provide stewardship of the transit system, agency assets, and financial obligations; and Strategic Priority 3: Innovate to enhance mobility options, business processes, and funding.

PROCUREMENT CONSIDERATIONS

- On, June 13, 2022, a sole source solicitation went to one firm.

- This will be a requirements type contract for a two-year base term with no options.

- Genfare, LLC, is the sole provider for the ticket vending machine cashbox bill mechanism rebuilds. They possess the financial capability to perform this contract.

- The prices are fair and reasonable, and this firm is recommended for award.

- The contract award analysis is provided as Attachment 1.

D/M/WBE CONSIDERATIONS

- The goal for this contract was established in October 2021 at 4% M/WBE participation.

- Genfare, LLC, the prime contractor, has no direct participation.

- The M/WBE analysis and Equal Employment Opportunity (EEO-1) information are included in Attachment 2. The prime contractor's actual EEO-1 report is available upon request.

LEGAL CONSIDERATIONS

- Section 452.055 of the Texas Transportation Code authorizes DART to contract for the provisions of goods and services.

Dallas Area Rapid Transit Authority
CONTRACT AWARD ANALYSIS
(Sole Source)
Solicitation No. S-2066272

Contract Information

A. Description: Genfare Ticket Vending Machine (TVM) Cashbox & Bill Mechanism Repair

B. Contractor: Genfare, LLC

C. Contract Number: C-2066272-01

D. Contract Amount: Not to exceed $829,350

E. Contract Type: Requirements

F. Term of Contract: Two years

G. Options Available: None

H. Bond Requirement: N/A

I. Liquidated Damages: N/A

J. Funding Source: Local

Solicitation Information

A. Determination of Responsibility
Bond Check: N/A
Reference Check: Satisfactory
Financial Responsibility Survey: Satisfactory
Insurance Check: Yes
On-Site Inspection: N/A
Arithmetic Check: Yes
Verification of Offer: Yes
Buy America Certification and/or Audit, if applicable: N/A
Debarred/Suspended list: Not on the debarred /suspended list.

B. Negotiation Memorandum: Available for review in the contract file.

C. Cost & Price Considerations: Pricing is fair and reasonable based on a comparison to historical prices escalated by the Producer Price Index (PPI) and current market pricing. The market analysis and historical data consider three or more sources for similar services. Genfare is 32.85% below market value.

The original equipment manufacturer (OEM), Genfare, LLC, is the only known source capable of providing the required rebuild and repair services for DART's ticket vending machine cashbox bill mechanism. The OEM does not utilize distributors but sells directly.

D. Protests Received: None

E. Determinations Required: Sole Source

Determination and Recommendation

Genfare, LLC, is a responsible contractor, has the capacity to perform this contract, and is recommended for award.

Approval of Contract for Ticket Vending Machine Cashbox Bill Mechanism Rebuilds

M/WBE Considerations

The goal for this contract was established in October 2021 at 4% M/WBE participation. Genfare, LLC, the prime contractor, has no direct participation for this project; however, Genfare, LLC does include minority and woman owned businesses within their business plans when viable opportunities are available. Listed below are the M/WBE firms Genfare, LLC utilized and paid to date for fiscal year 2023:

MBE PARTICIPATION

VENDOR	LOCATION	ETHNICITY	SERVICE	AMOUNT
J-Tec Metal Products	Itasca, IL	Hispanic Male	Sheet Metal Fabricating	$1,200,000
KLI, Inc.	Streamwood, IL	Asian Pacific Male	Electrical Services	$1,400,000
ESP Services	Houston, TX	Hispanic Male	Installation Services	$745,000

Summary of EEO-1 Report

Genfare, LLC is located in Elk Grove Village, IL and employs 135 individuals. The following is an analysis of their EEO-1 report:

	ASIAN	BLACK	HISPANIC	NATIVE AM.	WHITE	TOTAL	PERCENTAGE
MALES	23	7	17	0	42	89	**65.93%**
FEMALES	10	3	10	0	23	46	**34.07%**
TOTAL	33	10	27	0	65	135	**100%**
PERCENTAGE	**24.44%**	**7.41%**	**20.00%**	**0.00%**	**48.15%**	**100%**	

DRAFT

RESOLUTION

of the

DALLAS AREA RAPID TRANSIT BOARD

(Executive Committee)

Approval of Contract for Ticket Vending Machine Cashbox Bill Mechanism Rebuilds

WHEREAS, functional ticket vending machines (TVMs) are essential for serving DART's cash-dependent customers; and

WHEREAS, Bill Tech Packs (BTPs) are critical to keeping DART's current TVMs operational until they can be replaced; and

WHEREAS, this contract will allow DART to ship BTPs that are beyond in-house repair to the vendor for repair so we can place them back into revenue service; and

WHEREAS, the proposed price for this contract is fair and reasonable; and

WHEREAS, funding for this contract is within current Budget and FY 2024 20-Year Financial Plan allocations.

NOW, THEREFORE, BE IT RESOLVED by the Dallas Area Rapid Transit Board of Directors that the President & Chief Executive Officer or her designee is authorized to award a two-year contract with no options to Genfare, LLC, for ticket vending machine cashbox bill mechanism rebuilds [C-2066272-01], for a total authorized amount not to exceed $829,350.

Approval of Contract for Ticket Vending Machine Cashbox Bill Mechanism Rebuilds

Prepared by: /s/ Elizabeth Reich

M. Elizabeth Reich
Chief Financial Officer

Approved as to form: /s/ Gene Gamez

Gene Gamez
General Counsel

Approved by: /s/ Nadine S. Lee

Nadine S. Lee
President & Chief Executive Officer

Agenda Report

Committee-of-the-Whole ☒
Board Meeting ☒

Attachments:	Voting Requirements:
1. Contract Award Analysis 2. M/WBE Details	Majority

DATE: **May 28, 2024**

SUBJECT: **Approval of Contract for Light Rail Vehicle Axle Journal Bearing Removal and Installation Services**

RECOMMENDATION

Approval of a resolution authorizing the President & Chief Executive Officer or her designee to award a two-year contract to United Transportation Corporation Rail and Air Services (UTCRAS) [C-2081844-01] for Light Rail Vehicle (LRV) axle journal bearing removal and installation services for a total authorized amount not to exceed $1,690,389.

COMMITTEE CONSIDERATIONS

. On May 14, 2024, the Committee-of-the-Whole unanimously moved this item to the May 28, 2024, Board of Directors meeting.

FINANCIAL CONSIDERATIONS

- This contract for Light Rail Vehicle (LRV) axle journal bearing removal and installation services is included in LRV Capital Programs project budget of the approved FY 2024 Capital Budget.
- Sufficient funding for this contract in the amount of $1,690,389 is included in both LRV Capital Program project budget and the Light Rail Transit Capital line item of the FY 2024 20-Year Financial Plan.

BUSINESS PURPOSE

- Approval of this contract will help achieve Board Strategic Priority 2: Provide stewardship of the transit system, agency assets, and financial obligations.
- DART maintains 163 Light Rail Vehicles (LRV) that must be kept in a state of good repair to ensure adequate vehicle performance, service reliability, and passenger safety. Axle journal bearings are essential to the integrity of the axle system and ensure adequate vehicle performance, service reliability, and passenger safety. These journal bearings provide for the circular motion of the axle, allowing the train wheels to rotate. The parts are subject to wear and tear with use over time.
- The original equipment manufacturer (OEM) states the axle journal bearing life cycle is 600,000 miles, at which time they should be inspected and possibly replaced. Each LRV has a set of eight

axle journal bearings, two per axle, which need to be inspected and maintained as prescribed in DART's approved Capital Overhaul Work Program and consistent with the manufacturers' recommendations.

- The Capital Overhaul Work Program is a structured overhaul program for essential LRV sub-systems for DART's LRV fleet. DART has 163 LRVs in its fleet, and all LRVs have surpassed 1,000,000 miles. All LRVs are subject to the Capital Overhaul Work Program, including axle journal bearing inspections.

PROCUREMENT CONSIDERATIONS

- On February 5, 2024, an Invitation for Bid (IFB) was issued.
- This will be a Requirements type contract with a two-year base term with no options.
- By the closing date of February 29, 2024, three bids were received.
- United Transportation Corporation Rail and Air Services (UTCRAS) submitted the responsive and responsible bid. They possess the financial capability to perform this contract.

D/M/WBE CONSIDERATIONS

- The goal for this contract was established in November 2023 at 5% M/WBE participation.
- United Transportation Corporation Rail and Air Services (UTCRAS), the prime contractor, has committed to meet the goal.
- The M/WBE analysis and Equal Employment Opportunity (EEO-1) information are included in Attachment 2. The prime contractor's actual EEO-1 report is available upon request.

LEGAL CONSIDERATIONS

- Section 452.055 of the Texas Transportation Code authorizes DART to contract for the provision of goods and services.

Dallas Area Rapid Transit Authority
CONTRACT AWARD ANALYSIS
(Invitation for Bids)
IFB NO. B-2081844

Contract Information

A. Description: Light Rail Vehicle Axle Journal Bearing Removal and Installation Services

B. Contractor: United Transportation Corporation Rail and Air Services (UTCRAS)

C. Contract Number: C-2081844-01

D. Contract Amount: Not to exceed $1,690,389

E. Contract Type: Requirements

F. Term of Contract: Two years

G. Options Available: None

H. Bond Requirement: N/A

I. Liquidated Damages: N/A

J. Funding Source: Local

Solicitation Information

A. Issue Date: February 5, 2024

B. Notifications Sent to Registered Suppliers: Yes

C. Date and Time for Bid Receipt: February 29, 2024 @ 2:00 PM

D. Bids Received: Three

Firm Name	Base Price
1. UTCRAS	$1,690,389
2. Penn Machine Company, LLC	$1,997,076
3. Messiah Locomotive Service, LLC	$5,085,600

E. Discussion of Nonresponsive Bids: None

F. Bid Evaluation: UTCRAS is determined to be responsive.

G. Price Considerations: UTCRAS' pricing is found to be fair and reasonable based on current market pricing. This analysis takes in consideration historical data. UTCRAS' overall rate evaluation is considered 71.39% below market value pricing.

H. Determination of Responsibility:
Bond Check: N/A
Reference Check: Satisfactory
Financial Responsibility Survey: Satisfactory
Insurance Check: Yes
On-Site Inspection: N/A
Arithmetic Check: Yes
Verification of Bid: Yes
Buy America Certification and/or Audit, if applicable: N/A
Debarred/Suspended list: Not on the debarred /suspended list.

I. Protests received: None

J. Determinations Required: None

Determination and Recommendation

United Transportation Corporation Rail and Air Services (UTCRAS) is a responsive and responsible bidder that submitted the lowest price in full and open competition for light rail vehicle axle journal bearing removal and installation services. They have the capacity to perform this contract and is recommended for award.

Approval of Contract for Light Rail Vehicle Axle Journal Bearing Removal and Installation Services

M/WBE Considerations

The goal for this contract was established in November 2023 at 5% M/WBE participation. United Transportation Corporation Rail and Air Services (UTCRAS), the prime contractor, has committed to meet the goal through the utilization of the following certified firm:

VENDOR	LOCATION	ETHNICITY	SERVICE	AMOUNT	PERCENTAGE
Harris Trucking Services	Ore City, TX	Black Male	Trucking Services	$84,519	5.00%

TOTAL MBE PARTICIPATION: $84,519 5.00%*

NOTE: The goal is based on the not to exceed amount of $1,690,389. If there are any changes to this amount, the original goal shall still apply.

*The percentage and dollar amounts may remain level, increase or decrease depending on the circumstances.

Summary of EEO-1 Report

UTCRAS is located in Bakersfield, CA and employs 86 individuals. The following is an analysis of their EEO-1 report:

	ASIAN	BLACK	HISPANIC	NATIVE AM.	WHITE	TOTAL	PERCENTAGE
MALES	6	8	9	0	57	80	**93.02%**
FEMALES	0	0	0	0	6	6	**6.98%**
TOTAL	6	8	9	0	63	86	**100%**
PERCENTAGE	**6.98%**	**9.30%**	**10.46%**	**0.00%**	**73.26%**	**100%**	

DRAFT

RESOLUTION

of the

DALLAS AREA RAPID TRANSIT BOARD

(Executive Committee)

Approval of Contract for Light Rail Vehicle Axle Journal Bearing Removal and Installation Services

WHEREAS, DART maintains 163 Light Rail Vehicles (LRV) that must be kept in a state of good repair to ensure adequate vehicle performance, service reliability, and passenger safety; and

WHEREAS, journal bearings provide the circular motion of the axle allowing the wheels to rotate and need to be kept in a service-ready condition to maintain the integrity of the axle system; and

WHEREAS, DART maintains a structured overhaul program for essential LRV sub-systems, which includes journal bearings, as outlined in DART's approved Capital Overhaul Work Programs and is consistent with the manufacturers' recommendations; and

WHEREAS, the proposed price for this contract is fair and reasonable; and

WHEREAS, funding for this contract is within current Budget and FY 2024 20-Year Financial Plan allocations.

NOW, THEREFORE, BE IT RESOLVED by the Dallas Area Rapid Transit Board of Directors that the President & Chief Executive Officer or her designee is authorized to award a two-year contract to United Transportation Corporation Rail and Air Services (UTCRAS) [C-2081844-01] for light rail vehicle axle journal bearing removal and installation services for a total authorized amount not to exceed $1,690,389.

Approval of Contract for Light Rail Vehicle Axle Journal Bearing Removal and Installation Services

Prepared by: /s/ Bernard Jackson

Bernard Jackson
Sr. Executive Vice President
Chief Operating Officer

Approved as to form: /s/ Gene Gamez

Gene Gamez
General Counsel

Approved by: /s/ Nadine S. Lee

Nadine S. Lee
President & Chief Executive Officer

Agenda Report

Committee-of-the-Whole ☒
Board Meeting ☒

Attachments:	Voting Requirements:
1. Procurement Analysis 2. M/WBE Details	Majority

DATE: **May 28, 2024**

SUBJECT: **Approval of Contract Modification to Exercise Option Year and Increase Funding for Bus Tire Leasing and Services**

RECOMMENDATION

Approval of a resolution authorizing the President & Chief Executive Officer or her designee to execute a contract modification for Bus Tire Leasing and Services with Bridgestone Americas Tire Operations, LLC [Contract No. C-2051297-01], to: 1) exercise the final, one-year option; and 2) increase the not-to-exceed amount by $2,274,675, for a new total authorized amount not to exceed $11,019,152.

COMMITTEE CONSIDERATIONS

. On May 14, 2024, the Committee-of-the-Whole unanimously moved this item to the May 28, 2024, Board of Directors meeting.

FINANCIAL CONSIDERATIONS

- This contract modification to Exercise Option Year and Increase Funding for Bus Tire Leasing and Services is included in the Bus Operations Department's approved FY 2024 operating budget.
- Sufficient funding for this contract modification in the amount of $2,274,675 is included in both the Bus Operations Department's FY 2024 Operating budget and the Total Operating Expense line item of the FY 2024 20-Year Financial Plan.

BUSINESS PURPOSE

- On June 23, 2020 (Resolution No. 200057), the Board authorized the award of a three-year contract with two, one-year options for tire leasing and support services to Bridgestone Americas Tire Operations, LLC, for a total authorized amount not to exceed $4,888,706.
- On February 28, 2023 (Resolution No. 230012), the Board authorized a contract modification to increase funding of the final year of a three-year contract with Bridgestone Americas Tire Operations, LLC, for bus tire leasing and services in the amount of $1,420,771, for a new total authorized amount not to exceed $6,309,477.
- On June 13, 2023 (Resolution No. 230058), the Board authorized a contract modification to exercise the first, one-year option with Bridgestone Americas Tire Operations, LLC, for bus tire

leasing and services in the amount of $2,435,000, for a new total authorized amount not to exceed $8,744,477.

- The contract is currently in year four of the contract term. Exercising the final, one-year contract option and increasing the funding will ensure that DART has sufficient funds to maintain the DART bus fleet in a state of good repair.
- The scope requires the contractor to provide all personnel, tires, supplies, tools, and equipment to perform the assigned tasks safely and effectively. The contractor maintains a usable tires and wheels inventory level of four percent (4%) for each operating facility in accordance with the number of revenue-operating vehicles and tire specifications of the vehicles at each operating facility. The inventory level maintained at these operating facilities is subject to inspection and/or audit by the Authority at any time.
- Approval of this contract will help achieve Board Strategic Priority 2: Provide stewardship of the transit system, agency assets and financial obligations.

PROCUREMENT CONSIDERATIONS

- The base term of the contract is three years from the award date of September 1, 2020, and the contract provides for two, one-year options.
- The pricing for the exercise of the option year is fair and reasonable.
- Contractor performance is satisfactory.
- The procurement analysis is provided as Attachment 1.

D/M/WBE CONSIDERATIONS

- The goals for this contract were established in December 2019 at 15% MBE and 5% WBE participation.
- Bridgestone Americas Tire Operations, LLC, the prime contractor, has committed to exceed the MBE goal and meet the WBE goal.
- The M/WBE analysis and Equal Employment Opportunity (EEO-1) information are included in Attachment 2. The prime contractor's actual EEO-1 report is available upon request.

LEGAL CONSIDERATIONS

- Section 452.055 of the Texas Transportation Code authorizes DART to contract for the provision of goods and services.

Dallas Area Rapid Transit Authority
PROCUREMENT ANALYSIS
Increase Funding/Exercise Option
Modification No. 4

Contract Information

A. Contract Description: Bus Tire Leasing and Services

B. Contractor: Bridgestone Americas Tire Operations, LLC

C. Contract Number: C-2051297-01

D. Contractual Action: Increase Funding/Exercise Option

E. Current Contract Amount: Not to exceed $8,744,477

F. Contract Modification Amount: Not to exceed $2,274,675

G. New Contract Amount: Not to exceed $11,019,152

H. Contract Type: Requirements

I. Current Term of Contract/Performance Period: Three years with two, one-year options

J. Remaining Options Available: None

K. Price Considerations: The initial contract award was based on full and open competition, and all proposals were evaluated inclusive of the option years pricing.

L Negotiation Memorandum: Available for review in the contract file.

M. Determinations Required: None

N. Funding: Local

O. Determination of Responsibility:
Bond Check: N/A
Reference Check: Satisfactory
Financial Responsibility Survey: Satisfactory
Insurance Check: Yes
On-Site Inspection: Yes
Arithmetic Check: Yes
Verification of Offer: Yes
Buy America Certification and/or Audit, if applicable: N/A
Debarred/Suspended list: Not on the debarred /suspended list.

Determination and Recommendation

Bridgestone Americas Tire Operations, LLC, is a responsible contractor for the modification described above. Therefore, execution of the contract modification is recommended for award.

Approval of Contract Modification to Exercise Option Year and Increase Funding for Bus Tire Leasing and Services

M/WBE Considerations

The goals for this contract were established in December 2019 at 15% MBE and 5% WBE participation. This contract modification of $2,274,675 will increase the contract amount to $11,019,152. Of the modification amount, $887,123 has been committed to the following firms:

MBE PARTICIPATION

VENDOR	LOCATION	ETHNICITY	SERVICE	AMOUNT
Leal Solutions, Inc.	Dallas, TX	Hispanic Female	Tire Maintenance, HR Services	$773,389

MBE PARTICIPATION (for this increase): $773,389

WBE PARTICIPATION

VENDOR	LOCATION	ETHNICITY	SERVICE	AMOUNT
CMS Uniforms and Equipment	Nashville, TN	White Female	Uniform Services	$113,734

WBE PARTICIPATION (for this increase): $113,734

For the entire contracting period, Bridgestone Americas Tire Operations, LLC, the prime contractor, has committed to exceed the MBE goal and meet the WBE goal through the utilization of the following certified firms:

MBE PARTICIPATION

VENDOR	LOCATION	ETHNICITY	SERVICE	AMOUNT	PERCENTAGE
Leal Solutions, Inc.	Dallas, TX	Hispanic Female	Tire Maintenance, HR Services	$3,746,512	34.00%

TOTAL MBE PARTICIPATION: $3,746,512 34.00%*

WBE PARTICIPATION

VENDOR	LOCATION	ETHNICITY	SERVICE	AMOUNT	PERCENTAGE
CMS Uniforms and Equipment	Nashville, TN	White Female	Uniform Services	$550,958	5.00%

TOTAL WBE PARTICIPATION: $550,958 5.00%*

TOTAL M/WBE PARTICIPATION: $4,297,470 39.00%*

NOTE: The goals are based on the not to exceed amount of $11,019,152. If there are any changes to this amount, the original goals shall still apply.

*The percentage and dollar amounts may remain level, increase or decrease depending on the circumstances.

Summary of EEO-1 Report

Bridgestone Americas Tire Operations, LLC is located in Nashville, TN and employs 104 individuals. The following is an analysis of their EEO-1 report:

	ASIAN	BLACK	HISPANIC	NATIVE AM.	WHITE	TOTAL	PERCENTAGE
MALES	4	25	35	1	38	103	**99.04%**
FEMALES	0	0	0	0	1	1	**00.96%**
TOTAL	4	25	35	1	39	104	**100.00%**
PERCENTAGE	**3.85%**	**24.04%**	**33.65%**	**0.96%**	**37.50%**	**100.00%**	

DRAFT

RESOLUTION

of the

DALLAS AREA RAPID TRANSIT BOARD

(Executive Committee)

Approval of Contract Modification to Exercise Option Year and Increase Funding for Bus Tire Leasing and Services

WHEREAS, on June 23, 2020 (Resolution No. 200057), the Board authorized the award of a three-year contract with two, one-year options for tire leasing and support services to Bridgestone Americas Tire Operations, LLC, for a total authorized amount not to exceed $4,888,706; and

WHEREAS, on February 28, 2023 (Resolution No. 230012), the Board authorized a contract modification to increase funding of the final year of a three-year contract with Bridgestone Americas Tire Operations, LLC, for bus tire leasing and services in the amount of $1,420,771, for a new total authorized amount not to exceed $6,309,477; and

WHEREAS, on June 13, 2023 (Resolution No. 230058), the Board authorized a contract modification to exercise the first, one-year option with Bridgestone Americas Tire Operations, LLC, for bus tire leasing and services in the amount of $2,435,000, for a new total authorized amount not to exceed $8,744,477; and

WHEREAS, the contract modification to exercise the final, one-year contract option and increasing the funding will ensure that DART has enough funds to ensure DART buses are in a safe, reliable, and service ready condition; and

WHEREAS, the contract scope requires contractor to provide all personnel, tools, and test equipment required to perform the work necessary for correct maintenance of all bus tires. All equipment utilized shall be maintained in proper working condition and calibrated when applicable; and

WHEREAS, the proposed price for this contract modification is fair and reasonable; and

WHEREAS, funding for this contract is within current Budget and FY 2024 20-Year Financial Plan allocations.

NOW, THEREFORE, BE IT RESOLVED by the Dallas Area Rapid Transit Board of Directors that the President & Chief Executive Officer or her designee is authorized to execute a contract modification for Bus Tire Leasing and Services with Bridgestone Americas Tire Operations, LLC [Contract No. C-2051297-01], to:

Section 1: Exercise the final, one-year option.
Section 2: Increase the not-to-exceed amount by $2,274,675, for a new total authorized amount not to exceed $11,019,152.

Approval of Contract Modification to Exercise Option Year and Increase Funding for Bus Tire Leasing and Services

	/s/ Dee Leggett
	Dee Leggett
Prepared by:	Executive Vice President Chief Development Officer
	/s/ Gene Gamez
Approved as to form:	Gene Gamez General Counsel
	/s/ Nadine S. Lee
Approved by:	Nadine S. Lee President & Chief Executive Officer

Agenda Report

Committee-of-the-Whole ☒
Board Meeting ☒

Attachments:	Voting Requirements:
1. Contract Award Analysis 2. D/M/WBE Details	Majority

DATE: May 28, 2024

SUBJECT: Approval of Contract for Traction Power Controller Retrofit for the Light Rail Starter System

RECOMMENDATION

Approval of a resolution authorizing the President & Chief Executive Officer or her designee to award a two-year contract with no options to VG Controls, Inc., for equipment and installation services to complete an upgrade of DART's Traction Thyristor Controlled Rectifier Assembly in the original starter system sections of the Red and Blue Lines [Contract No. C-2081846-01], for a total authorized amount not to exceed $3,534,000.

COMMITTEE CONSIDERATIONS

. On May 14, 2024, the Committee-of-the-Whole unanimously moved this item to the May 28, 2024, Board of Directors meeting.

FINANCIAL CONSIDERATIONS

- This contract for service and equipment is included in the Traction Electrification Systems (TES) Starter System Traction Power Substations (TPSS) Rectifier Replacement project budget of the approved FY 2024 Capital Budget.
- Sufficient funding for this contract in the amount of $3,534,000 is included in both the TES Starter System TPSS Rectifier Replacement project budget and the Light Rail Transit Capital line item of the FY 2024 20-Year Financial Plan.

BUSINESS PURPOSE

- Approval of this contract will help achieve Board Strategic Priority 2: Provide stewardship of the transit system, agency assets and financial obligations.
- The purpose of this contract is to ensure a reliable traction power network to power the Light Rail Vehicle (LRV) fleet. The traction power network is comprised of the Traction Power Substation (TPSS) and the Overhead Catenary System (OCS), which provide electrical power to the pantograph of an LRV as it moves through that section of the railroad.
- This action purchases a vital component, called a Traction Thyristor Controlled Rectifier Assembly, that rectifies the AC current in only one direction, thus generating DC power on which the LRVs run.

- The original starter systems' Traction Thyristor Controlled Rectifier Assembly needs an upgrade due to outdated obsolete equipment. The current Traction Thyristor Controlled Rectifier Assembly is over 20 years old and no longer supported by the vendor. In addition, spare parts are not available.

- Should a Traction Thyristor Controlled Rectifier Assembly fail along the starter section of the Red or Blue Line, DART does not have the parts available to fix the assembly; and therefore, the traction power network for that portion of the railroad will not have any power going to the OCS, and train movement in that area will cease.

- Upgrading to the newest Traction Thyristor Controlled Rectifier Assembly technology will allow for minimized power disruptions in rail service operations and therefore fewer service disruptions for customers.

PROCUREMENT CONSIDERATIONS

- On October 13, 2023, a sole source solicitation was sent to one firm.

- This will be a fixed-price contract with a two-year term with no options.

- VG Controls, Inc., is the sole provider for Traction Thyristor Controlled Rectifier Assembly.

- The contract award analysis is provided as Attachment 1.

D/M/WBE CONSIDERATIONS

- Due to the intellectual rights and proprietary nature of this procurement, it is recognized as non-eligible for goal setting per the deviation to DART's Procurement Regulations regarding Software Licenses and Maintenance Agreements.

- The M/WBE analysis and Equal Employment Opportunity (EEO-1) information are included in Attachment 2. The prime contractor's actual EEO-1 report is available upon request.

LEGAL CONSIDERATIONS

- Section 452.055 of the Texas Transportation Code authorizes DART to contract for the provision of goods and services.

Dallas Area Rapid Transit Authority
CONTRACT AWARD ANALYSIS
(Sole Source)
Solicitation No. S-2081846

Contract Information

A. Description: Traction Power Controller Retrofit for the Light Rail Starter System

B. Contractor: VG Controls, Inc.

C. Contract Number: C-2081846-01

D. Contract Amount: Not to exceed $3,534,000

E. Contract Type: Firm Fixed Price

F. Term of Contract: Two years

G. **Options Available:** None

H. Bond Requirement: N/A

I. Liquidated Damages: N/A

J. Funding Source: Local

Solicitation Information

A. Determination of Responsibility
Bond Check: N/A
Reference Check: Satisfactory
Financial Responsibility Survey: Satisfactory
Insurance Check: Yes, upon award
On-Site Inspection: N/A
Arithmetic Check: Yes
Verification of Offer: Yes
Buy America Certification and/or Audit, if applicable: N/A
Debarred/Suspended list: Not on the debarred /suspended list.

B. Negotiation Memorandum: Available for review in the contract file.

C. Cost & Price Considerations: The pricing is fair and reasonable based on the previous contract compared to the pricing for this project.

D. Protests Received: None

E. Determinations Required: Sole Source

Determination and Recommendation

V G Controls, Inc., is a responsible contractor, has the capacity to perform this contract, and is recommended for award.

Approval of Contract for Traction Power Controller Retrofit for the Light Rail Starter System

M/WBE Considerations

Due to the intellectual rights and proprietary nature of this procurement, it is recognized as non-eligible for goal setting per the deviation to DART's Procurement Regulations regarding Software Licenses and Maintenance Agreements.

Summary of EEO-1 Report

VG Controls, Inc. is located in Oakland, NJ and employs 8 individuals. The following is an analysis of their EEO-1 report:

	ASIAN	BLACK	HISPANIC	NATIVE AM.	WHITE	TOTAL	PERCENTAGE
MALES	1	0	0	0	4	5	**62.50%**
FEMALES	1	0	0	0	2	3	**37.50%**
TOTAL	2	0	0	0	6	8	**100%**
PERCENTAGE	**25.00%**	**0.00%**	**0.00%**	**0.00%**	**75.00%**	**100%**	

DRAFT

RESOLUTION

of the

DALLAS AREA RAPID TRANSIT BOARD

(Executive Committee)

Approval of Contract for Traction Power Controller Retrofit for the Light Rail Starter System

WHEREAS, DART's Light Rail Transit System must ensure a reliable traction power network is able to provide the needed electrical power to DART light rail vehicles while they are delivering rail service; and

WHEREAS, the original starter system Traction Thyristor Controlled Rectifier Assembly is obsolete and parts are no longer available to allow DART to make repairs; and

WHEREAS, a noncompetitive procurement for a two-year contract with no options was conducted in accordance with the DART Procurement Regulations; and

WHEREAS, the proposed pricing is fair and reasonable; and

WHEREAS, funding for this contract is within current Budget and FY 2024 20-Year Financial Plan allocations.

NOW, THEREFORE, BE IT RESOLVED by the Dallas Area Rapid Transit Board of Directors that the President & Chief Executive Officer or her designee is authorized to award a two-year contract with no options for equipment and installation services to upgrade DART's Traction Thyristor Controlled Rectifier Assembly in the original starter system sections of the Red and Blue Lines [Contract No. C-2081846-01] to VG Controls, Inc., for a total authorized amount not to exceed $3,534,000.

Approval of Contract for Traction Power Controller Retrofit for the Light Rail Starter System

Prepared by: /s/ Bernard Jackson

Bernard Jackson
Sr. Executive Vice President
Chief Operating Officer

Approved as to form: /s/ Gene Gamez

Gene Gamez
General Counsel

Approved by: /s/ Nadine S. Lee

Nadine S. Lee
President & Chief Executive Officer

Agenda Report

Committee-of-the-Whole ☒
Board Meeting ☒

Attachments:	Voting Requirements:
1. Procurement Analysis 2. D/M/WBE Details 3. History of Board Authorizations	Majority

DATE: **May 28, 2024**

SUBJECT: **Approval to Increase the Contract Value for the Design-Build Contract for the Silver Line Regional Rail Project to Include Design Services for Revisions to the Aesthetic Arch Enhancement for the Bridge Across U.S. Highway 75**

RECOMMENDATION

Approval of a resolution authorizing President & Chief Executive Officer or her designee to execute a contract modification for design-build services with Archer Western Herzog (AWH) 4.0, Joint Venture (Contract No. C-2033270-01), for the Silver Line Regional Rail Project to include design services for revisions to the Aesthetic Arch Enhancement for the Bridge across U.S. Highway 75 (US 75 Aesthetic Arch) in an amount not to exceed $1,382,900, to be funded ~~60~~ 63 % from the existing contract betterments allowance for the City of Richardson and ~~40~~ 37 % from contingency, for a new contract value of $~~1,476,956,791~~ 1,476,915,304 without change to the total Board-authorized amount not to exceed $1,535,438,367.

COMMITTEE CONSIDERATIONS

. On May 14, 2024, the Committee-of-the-Whole unanimously moved this item to the May 28, 2024, Board of Directors meeting.

FINANCIAL CONSIDERATIONS

- This contract for design services for revisions to the Aesthetic Arch Enhancement for the Bridge across U.S. Highway 75 (US 75 Aesthetic Arch) is included in Silver Line Regional Rail project budget of the approved FY 2024 Capital Budget.
- Sufficient funding for this contract in the amount of $1,382,900 is included in both Silver Line Regional Rail project budget and the Commuter Rail Capital line item of the FY 2024 20-Year Financial Plan.

BUSINESS PURPOSE

- Approval of this item will assist DART in achieving Board Strategic Priority 1: Enhance the safety and service experience through customer-focused initiatives; Strategic Priority 2: Provide stewardship of the transit system, agency assets and financial obligations; and Strategic Priority 5: Enhance DART's role as a recognized local, regional, and national transportation leader.

- On December 11, 2018 (Resolution No. 180135), the Board approved the contract award to Archer Western Herzog 4.0, Joint Venture, for design and construction of the Cotton Belt Corridor (now known as the Silver Line) Regional Rail Project as a mixed double and single-track alignment, in an amount not to exceed $783,725,980, plus a supplemental work contingency of $31,349,039 (4%) for unanticipated expenses, for a total authorized amount not to exceed $815,075,019. This contract has been modified several times as shown in the history of Board authorizations included as Attachment 3.

- On April 10, 2023 (Resolution No. 230050), DART and the City of Richardson executed an interlocal agreement with provision for the design and construction of the US 75 Aesthetic Arch for the Silver Line Regional Rail Project.

- Following discussions, DART and TxDOT have reached an agreement on revised design approach for the US 75 Aesthetic Arch, including an added column support.

- DART and AWH have reached an agreement on a not-to-exceed value for the design revisions.

- Approval of this item will permit completion of design to finalize the schedule and cost of construction.

- A future increase to the value of the AWH contract will be required for construction phase, including added column support.

- The construction of the US 75 Aesthetic Arch is not required for and will not impact the plan for segmental testing.

PROCUREMENT CONSIDERATIONS

- This design-build contract is a fixed price with performance incentives contract. The base term of the contract is currently from December 26, 2018, through final acceptance, but no later than July 4, 2025.

- The design services for revisions to the U.S. 75 Aesthetic Arch Enhancement is a Not-to-Exceed, Time and Materials based modification.

- The not-to-exceed amount of $1,382,900 to increase funding has been negotiated to reach a fair and reasonable determination.

- The procurement analysis is provided as Attachment 1.

D/M/WBE CONSIDERATIONS

- The goals for this contract were established in March 2017 at 7% DBE and 38% M/WBE participation.

- Archer Western Herzog 4.0, Joint Venture, the prime contractor, has committed to exceed the DBE goal and meet the M/WBE goal for design services. For construction services, Archer Western Herzog 4.0, Joint Venture, has committed to meet both goals.

- The D/M/WBE analysis and Equal Employment Opportunity (EEO-1) information are included in Attachment 2. The prime contractor's actual EEO-1 reports are available upon request.

LEGAL CONSIDERATIONS

- Section 452.056 (a) of the Texas Transportation Code authorizes DART to construct, develop, plan, and operate a public transportation system within the DART Service Area.
- Section 452.055 of the Texas Transportation Code authorizes DART to contract for the provision of goods and services.

Dallas Area Rapid Transit Authority
PROCUREMENT ANALYSIS
Funding Modification
SA55

Contract Information

A. Contract Description: The Cotton Belt Regional Rail (Silver Line) Design-Build Project

B. Contractor: Archer Western Herzog 4.0, Joint Venture (Archer Western Construction, LLC, and Herzog Contracting Corporation)

C. Contract Number: C-2033270-01

D. Contractual Action: Increase funding

E. Current Contract Amount: $1,476,403,631

F. Contract Modification Amount: $1,382,900 ~~40~~37% of which ($~~553,160~~511,673) is funded by project contingency. **Note**: the ~~60~~63% remainder of the modification is being paid through the City of Richardson Betterment Allowance that already exists in the Design-Build Contract.

G. New Contract Amount: $~~1,476,956,791~~1,476,915,304

H. Contract Type: Design-Build Contract: Fixed Price with Performance Incentives

I. Current Term of Contract/Performance Period: December 26, 2018, through final acceptance; but no later than July 4, 2025.

J. Remaining Options Available: None

K. Price Considerations: The cumulative estimated not-to-exceed amount of $1,382,900 is fair and reasonable based on negotiations between DART and Archer Western Herzog 4.0.

L. Negotiation Memorandum: Will be available for review in the contract file.

M. Determinations Required: None

N. Funding: Local/Federal

O. Determination of Responsibility:
Bond Check: Yes
Reference Check: Satisfactory
Financial Responsibility Survey: Satisfactory
Insurance Check: Yes
On-Site Inspection: N/A
Arithmetic Check: Yes
Verification of Offer: Yes
Buy America Certification and/or Audit, if applicable: Yes
Debarred/Suspended list: Not on the debarred/suspended list.

Determination and Recommendation

Archer Western Herzog 4.0, Joint Venture is a responsible contractor for the modification described above. Therefore, execution of the contract modification is recommended for the Silver Line Design-Build Project.

Attachment 2

Approval to Increase the Contract Value for the Design-Build Contract for the Silver Line Regional Rail Project to Include Design Services for Revisions to the Aesthetic Arch Enhancement for the Bridge Across U.S. Highway 75

D/M/WBE CONSIDERATIONS

DESIGN SERVICES

The goals for this contract were established in March 2017 at 7% DBE and 38% M/WBE participation. Archer Western Herzog 4.0, Joint Venture (AWH), the prime contractor, has committed to exceed the DBE goal and meet the MIWBE goal through utilization of the following certified firms:

DBE PARTICIPATION

VENDOR	LOCATION	ETHNICITY	SERVICE	AMOUNT	PERCENTAGE
HVJ North Texas	Dallas, TX	Asian Indian Male	Geotechnical Services	$2,624,656	4.23%
IEA, Inc	Dallas, TX	Asian Indian Male	Civil & Structural Engineering	$3,052,593	4.92%
Lamb-Star Engineering	Plano, TX	Native American Male	Quality Control	$631,103	1.02%
Multatech Engineering, Inc.	Dallas, TX	Hispanic Male	Track Engineering Support	$2,181,916	3.51%
		TOTAL DBE PARTICIPATION:		**$8,490,268**	**13.68%****

M/WBE FIRMS

VENDOR	LOCATION	ETHNICITY	SERVICE	AMOUNT	PERCENTAGE
APM & Associates	Dallas, TX	Black Male	Civil & Structural Services	$2,369,529	3.16%
ARS Engineers, Inc.	Dallas, TX	Asian Indian Male	Title Search	$624,003	1.00%
Caye Cook & Associates	Dallas, TX	White Female	Landscape Architecture	$1,194,300	1.92%
Civil Associates, Inc.	Dallas, TX	Asian Pacific Male	CADD Support	$233,128	0.37%
D&S Engineering Labs, LLC	Denton, TX	White Female	Geotechnical Services	$2,259,526	3.64%
Lina T. Ramey & Associates	Farmers Branch, TX	Asian Indian Female	Engineering Services	$6,657,519	10.73%

McAfee3 Architects, Inc.	Dallas, TX	Black Female	Architectural Design Support	$3,014,187	4.86%
Olivier, Inc	Dallas, TX	Black Female	Document Control Support	$908,426	1.19%
Simon Engineering & Consulting	Dallas, TX	Black Female	Civil Engineering Support	$1,019,821	1.64%
Solaray Engineering, Inc.	Dallas, TX	Hispanic Male	Utility Coordinator	$5,888,843	9.49%

TOTAL M/WBE PARTICIPATION: $24,169,282 38.00%**

TOTAL DBE & M/WBE PARTICIPATION: $32,659,550 51.68%**

NOTE: The goals are based on the current design cost of $62, 058,311. If there are any changes to this amount, the original goals shall still apply.

** The percentages and dollar amounts may remain level, increase or decrease depending on the circumstances.

CONSTRUCTION SERVICES ,

The goals for this contract were established in March 2017 at 7% DBE and 38% MJWBE participation. Archer Western Herzog 4.0, Joint Venture (AWH), the prime contractor, has committed to meet the DBE and M/WBE goals for the construction services portion of this project. Due to the design-build nature of this project, Archer Western Herzog 4.0, Joint Venture (AWH) has not identified its complete scope of construction services nor final identification of all D/M/WBE firms that will be utilized for construction services.

As design progresses and becomes final, Archer Western Herzog 4.0, Joint Venture (AWH) will continue to engage D/M/WBE firms to complete its subcontracting team and goals. Below is a list of D/M/WBE firms identified to-date for construction services and their current commitments:

VENDOR	LOCATION	ETHNICITY	SERVICE	AMOUNT
4K Companies, LLC	Graham, TX	White Female	Earthwork and Drainage	$7,154,650
Action Automatic Sprinkler, Inc.	Waxahachie, TX	White Female	Fire Standpipe	$2,421,532
All in One Resources	Carrollton, TX	Black Male	Janitorial Services	$148,923
Alliance Geotechnical Group, Inc.	Dallas, TX	Black Male	Quality Inspection & Testing	$744,673

ASFI Construction, LLC	Sanger, TX	White Female	Bridge Waterproofing	$5,280,332
Astro Johnny Waste Management Company	Jacksonville, TX	Black Male	Waste Management	$59,424
ATS Drilling	Ft. Worth, TX	Asian Pacific Male	Drilled Shafts	$20,380,795
B&B Diversified Materials	Green Valley, AZ	Asian Pacific Female	Material Supplier	$15,743,621
Big D Concrete	Dallas, TX	White Female	Concrete	$1,168,591
Bonded Inspection	Garland, TX	White Female	Inspection Services	$156,530
Brooklyn Sweeps, Inc.	Dallas, TX	Black Male	Street Sweeping	$108,375
Bulldog Services, LLC	Rhome, TX	White Female	Utilities	$722,573
Buyers Barricade	North Richland Hills, TX	White Female	Traffic Control	$3,375,811
CARCON Industries	Dallas, TX	Hispanic Female	Construction Management	$3,701,908
Carrco Painting Contractors	Dallas, TX	Hispanic Male	Steel Coating	$358,683
Castro Roofing of Texas	Dallas, TX	Hispanic Male	Station Canopy Roofing	$440,036
Cowboys & Sons, LLC	Dallas, TX	Hispanic Male	Trucking	$232,904
Cowtown Redi Mix, Inc.	Ft. Worth, TX	Asian Indian Female	Concrete	$803,366
Davis Advocates	Dallas, TX	White Female	Consulting Services	$143,000
DGR Consultants, LLC	Dallas, TX	White Female	Quality Assurance	$2,182,954
Diversified Electrical Solutions	Dallas, TX	Black Male	Stations/ Electrical	$15,899,153
Dowager Utility Construction	Dallas, TX	Asian Pacific Male	Station Platform Drainage	$7,558,402
Edens Touch Diversified, LLC	Garland, TX	Black Male	Landscape Maintenance	$558,595
Five Star Landscaping & Irrigation	Dallas, TX	Asian Indian Male	Landscaping	$2,395,694
GST Manufacturing	Haltom City, TX	White Female	Metal Material	$12,751,458
IEA, Inc.	Dallas, TX	Asian Indian Male	Drainage & Structural Support	$5,138,723
JB Pinnacle Group, LLC	Houston, TX	White Female	Guideway Flatwork	$7,549,623

KLP Construction Supply	Manor, TX	Native American Female	Material Supply	$1,658,937
KMCE, Inc.	Allen, TX	White Female	Franchise Utility Support	$94.080
Lamb-Star Engineering, LP	Plano, TX	Native American Male	Construction Quality Control	$2,264,910
Laughley Bridge & Construction	Ft. Worth, TX	Asian Pacific Male	Building Construction	$3,633,533
Lina T. Ramey & Associates, Inc.	Farmers Branch, TX	Asian Indian Female	Utility Potholing	$166,425
Lindamood Demolition	Irving, TX	White Female	Construction Services	$72,095,609
McRyan Hauling	Justin, TX	White Female	Furnish & Haul Aggregates	$7,098,276
National Railroad Safety Service	West Chester, OH	White Female	Flagging	$3,851,324
North Texas Trucking	Irving, TX	Hispanic Male	Trucking	$190,148
Omega Industries	Dallas, TX	Hispanic Male	Material Supplier	$2,013,696
Pannell Industries	Dallas, TX	Black Male	Street Sweeping	$116,625
Post L Group	Ft. Worth, TX	Black Male	General Construction Services	$6,937,730
Project Management Associates, PLLC	Bedford, TX	Black Male	Lab -- Airspace Modeling	$82,182
QN Management	Dallas, TX	Asian Pacific Male	Scheduling Services	$2,357,810
Reginald Loftin Photographer	Dallas, TX	Black Male	Photography Services	$60,800
Renaissance Contractors, Inc.	Ft. Worth, TX	Hispanic Female	Utilities	$16,131,835
Reyes Group	Grand Prairie, TX	Hispanic Male	Walls	$53,664,374
Roberts Trucking	Dallas, TX	Black Male	Ballast Hauling	$1,347,178
Santa Clara Construction	Austin, TX	Hispanic Male	Utility Work	$21,696,615
Slaton Brothers	Hurst, TX	White Female	Walls	$7,476,427
Solaray Engineering, Inc.	Dallas, TX	Hispanic Male	Utilities	$7,102,111
Spooner & Associates	Euless, TX	Black Male	Survey Control Verification	$17,980
Stateside Right of Way Services	Dallas, TX	White Female	Utility Work	$70,332
STL Engineers	Dallas, TX	Hispanic Female	Quality Control & Inspections	$8,500,453

Texas Industrial Security	Ft. Worth, TX	White Female	Unarmed Security	$600,209
Texas Star Transport	Dallas, TX	Hispanic Female	Trucking Services	$1,852,155
The Burrell Group, Inc.	Dallas, TX	Black Male	Public Relations	$802,718
The Fishel Company	Dallas, TX	Black Male	Street Repairs	$3,523,996
The Rios Group	Ft. Worth, TX	Hispanic Female	Potholing	$314,500
Toro Bravo Construction, LLC	Dallas, TX	Hispanic Male	Rebar	$17,124,058
Tricon Precast, Ltd.	Ft. Worth, TX	Hispanic Male	Precast Beams	$17,520,894
Trinity Public Affairs	Dallas, TX	White Female	Public Relations	$172,000
Universal Fence Company	Hurst, TX	White Female	Betterment Fencing	$661,866
Urban Infraconstruction LLC	Ft. Worth, TX	Asian Indian Male	Street Paving	$24,068,140
USA SWPP, Inc.	Ft. Worth, TX	White Female	Erosion Control	$1,572,361
Viking Fence Co.	Dallas, TX	Hispanic Male	Guideway Fence	$776,430
VRX, Inc.	Plano, TX	White Female	Environmental Services	$4,004,112
WOE Construction, Inc.	Ft. Worth, TX	White Female	Saw Cutting	$3,461

Summary of EEO-1 Reports

Archer Western Construction, LLC is located in Irving, TX and employs 2,001 individuals. The following is an analysis of their EEO-1 report:

	ASIAN	BLACK	HISPANIC	NATIVE AMERICAN	WHITE	TOTAL	Percentage
MALES	13	220	747	18	814	1,812	**90.55%**
FEMALES	3	22	62	1	101	189	**9.45%**
TOTAL	16	242	809	19	*915*	2,001	**100%**
PERCENTAGE	**0.80%**	**12.09%**	**40.43%**	**0.95%**	**45.73%**	**100%**	

Herzog Contracting Corporation is located in Joseph, MO and employs 458 individuals. The following is an analysis of their EEO-1 report:

	ASIAN	BLACK	HISPANIC	NATIVE AMERICAN	WHITE	TOTAL	Percentage
MALES	9	16	116	7	239	387	**84.50%**
FEMALES	1	1	11	3	55	71	**15.50%**
TOTAL	10	17	127	10	294	458	**100%**
PERCENTAGE	**2.18%**	**3.72%**	**27.73%**	**2.18%**	**64.19%**	**100%**	

Approval to Increase the Contract Value for the Design-Build Contract for the Silver Line Regional Rail Project to include Design Services for Revisions to the Aesthetic Arch Enhancement for the Bridge across U.S. Highway 75

Date	Action	Contract Change Amount	Total Board Authorized NTE Amount
12/11/18	Contract award to Archer Western Herzog 4.0, Joint Venture, (AWH) for design and construction of the Cotton Belt (now known as Silver Line) project as a mixed double and single-track alignment (Resolution No. 180135)		$815,075,019 ($783,725,980 plus a 4% contingency of $31,349,039)
2/12/19	Increase contract value for design-build services with AWH to completely double track the project between DFW International Airport and Shiloh Road (Resolution No. 190021)	$108,760,839	$923,835,858
1/28/20	Increase contract value to include Metes and Bounds Survey to Support Real Estate Acquisitions (Resolution No. 200015)	$848,318 (funded from contingency)	$923,835,858
5/26/20	Increase contract value for Hillcrest Road, Coit Road, traffic signals at Wester Way and Sugar Cane Way, and related modifications to return to the 10% Design (Resolution No. 200049)	$26,446,869 (funded from debt service savings in the amount of $21,972,349, and from contingency in the amount of $4,474,520)	$945,808,207
5/26/20	Increase contract value for HAWK signal for pedestrian crossing at Wester Way and traffic signal at McKamy Drive (Resolution No. 200050)	$217,840 (funded from debt service savings)	$946,026,047
5/26/20	Increase contract value for the betterment wall in the DART right-of-way (ROW) at McCallum Blvd. for Rocky Top Circle (Resolution No. 200051)	$19,770 (funded from debt service savings)	$946,045,817
5/26/20	Increase contract value for curb cut in existing median at Campbell Road (Resolution No. 200052)	$25,007 (funded from debt service savings)	$946,070,824

Approval to Increase the Contract Value for the Design-Build Contract for the Silver Line Regional Rail Project to include Design Services for Revisions to the Aesthetic Arch Enhancement for the Bridge across U.S. Highway 75

Date	Action	Contract Change Amount	Total Board Authorized NTE Amount
5/26/20	Increase contract value for 8-foot concrete wall at ROW adjacent to Fairhill School (Resolution No. 200053)	$182,019 (funded from debt service savings)	$946,252,843
5/26/20	Increase contract value for 8-foot concrete wall at ROW adjacent to Ivy Montessori School (Resolution No 200054)	$61,408 (funded from debt service savings)	$946,314,251
5/26/20	Increase contract value for a betterment wall at Highland Springs Phase II (Resolution No. 200055)	$695,079 (funded from debt service savings)	$947,009,330
8/25/20	Increase contract value for installation of foundations and underground conduits for information kiosks at Silver Line stations (Resolution No. 200085)	$686,465 (funded by an agreement with Landmark)	$947,695,795
9/22/20	Increase contract value to include design of the Veloweb Hike & Bike Trail (Resolution No. 200098)	$14,979,703 (from funding authorized by NCTCOG)	$962,675,498
12/8/20	Increase contract value to include franchise utility allowance (Resolution No. 200133)	$33,970,142 ($10,000,000 from contingency and $23,970,142 rom Debt Service savings)	$986,645,640
1/12/21	Increase contract value to include improvements for the sound-absorbing wall material and signal preview system (Resolution No. 210004)	$2,985,496 + $1,259,976, for a total of $4,245,472	$990,891,112
3/23/21	Increase the contract value to include construction of tall walls, design of the US-75 aesthetic arch and design and construction of the design enhancements (Resolution No. 210029 & Resolution No. 210030)	$8,903,073, + $1,621,367 + $859,525, for a total of $11,383,965, minus deobligations in the amount of $1,520,940	$1,000,754,137
4/13/21	Increase the contract value to include construction of the communication infrastructure duct bank (Resolution No. 210042)	$20,614,584	$1,021,368,721

Approval to Increase the Contract Value for the Design-Build Contract for the Silver Line Regional Rail Project to include Design Services for Revisions to the Aesthetic Arch Enhancement for the Bridge across U.S. Highway 75

Date	Action	Contract Change Amount	Total Board Authorized NTE Amount
5/25/21	Increase the contract value to establish an allowance to provide for negotiations of each Owner requested or third-party change request (Resolution No. 210070)	$237,403,589 + supplemental work contingency of $35,795,345	$1,294,567,655
1/25/22	Increase contract value to include a Hike & Bike Pedestrian Trail Bridge at Preston Green Park (Resolution No. 220022)	$2,009,082, funded from contingency	$1,294,567,655
3/22/22	Modify contract value to include 12th Street station connector enhancements and redesign of Aerial Station Art & Design; and modification of Jupiter & Custer grade crossings from elevated to at-grade (credit) (Resolution No. 220043)	$299,072, funded from contingency; and credit of ($5,931,887) to be transferred to contract contingency, for total contract value decrease of ($5,632,815)	$1,294,567,655
6/28/22	Modify contract value to include modifications to University of Texas at Dallas (UTD) Station driveway, construction of a fire lane blow-off valve at the UTD Station, installation of a dry standpipe at DFW North Station, and addition of temporary and permanent signals at the intersection of Coit Road and Osage Plaza Parkway in Dallas (Resolution No. 220090)	$1,574,997 funded from contingency	$1,294,567,655
8/23/22	Modify contract value to include the demolition of White Rock Creek Bridge (Resolution No. 220116)	$192,115 funded from contingency	$1,294,567,655
12/13/22	Increase contract value to add a temporary signal at Coit Road intersection with Alocasia Drive (Resolution No. 220195)	$477,754 funded from contingency	$1,294,567,655
2/28/23	Increase the contract value to establish an allowance for negotiations of owner requested or third-party change requests, to include settlement of request for equitable adjustment (Resolution No. 230017)	Final amounts were not considered at this time (see 4/18/23 Resolution No. 230044 below)	$1,294,567,655
2/28/23	Increase the contract value to include Carrollton Heights Drainage System (Resolution No. 230018)	$1,719,978	$1,296,287,633

Approval to Increase the Contract Value for the Design-Build Contract for the Silver Line Regional Rail Project to include Design Services for Revisions to the Aesthetic Arch Enhancement for the Bridge across U.S. Highway 75

Date	Action	Contract Change Amount	Total Board Authorized NTE Amount
4/18/23	Increase the contract value to establish an allowance for negotiations of owner requested or third-party change requests, to include settlement of request for equitable adjustment (Resolution No. 230044 - Clarification of previous Resolution No. 230017)	Negotiation allowance $45,698,000; Equitable Adjustment $212,169,46l; Deobligation $51,778,481; and an addition of $26,968,990 to the existing contingency	$1,529,345,603
10/31/23	Increase the contract value to include design changes for the Cotton Belt Regional Trail	$4,000,000	$1,533,345,603
1/23/24	Increase the contract value to include design and construction changes for the Carrollton multi-modal transit hub project (Resolution No. 240003)	$1,799,041	$1,535,144,644
2/27/24	Increase Contract Value to replace the Freight Only Crossing at Alma Road (Resolution No. 240012)	$362,724 to be funded from contingency	$1,535,144,644
4/16/24	Increase Contract Value to Include Procurement of Track Material and Special Trackwork for Silver Line EMF (Resolution No. 240042)	$1,476,109,908 to be funded from contingency	$1,535,144,644
4/16/24	Increase Contract Value to Include Continuous Vapor Barrier near Property Formerly Owned by Zurn Pex, Inc. (Resolution No. 240045)	$293,723	$1,535,438,367

DRAFT

RESOLUTION

of the

DALLAS AREA RAPID TRANSIT BOARD

(Executive Committee)

Approval to Increase the Contract Value for the Design-Build Contract for the Silver Line Regional Rail Project to Include Design Services for Revisions to the Aesthetic Arch Enhancement for the Bridge Across U.S. Highway 75

WHEREAS, on December 11, 2018 (Resolution No. 180135), the Board approved the contract award to Archer Western Herzog 4.0, Joint Venture, for design and construction of the Cotton Belt Corridor (now known as the Silver Line) Regional Rail Project as a mixed double and single-track alignment, in an amount not to exceed $783,725,980, plus a supplemental work contingency of $31,349,039 (4%) for unanticipated expenses, for a total authorized amount not to exceed $815,075,019; and

WHEREAS, the Board has authorized subsequent contract actions as follows: February 12, 2019 (Resolution No. 190021); May 26, 2020 (Resolution Nos. 200049, 200050, 200051, 200052, 200053, 200054, and 200055); August 25, 2020 (Resolution No. 200085); September 22, 2020 (Resolution No. 200098); December 8, 2020 (Resolution No. 200133); January 12, 2021 (Resolution No. 210004); March 23, 2021 (Resolution Nos. 210029 and 210030); April 13, 2021 (Resolution No. 210042); May 25, 2021 (Resolution No. 210070); January 25, 2022 (Resolution No. 220022); March 22, 2022 (Resolution No. 220043); June 28, 2022 (Resolution No. 220090); August 23, 2022 (Resolution No. 220116); December 13, 2022 (Resolution No. 220195); January 24, 2023 (Resolution No. 230005); February 28, 2023 (Resolution No. 230017 and 230018); April 18, 2023 (Resolution No. 230044); October 31, 2023 (Resolution No. 230144); January 23, 2024 (Resolution No. 240003), February 27, 2024 (Resolution No. 240012), April 16, 2024 (Resolution No. 240042) and April 16, 2024 (Resolution No. 240045) for a new total Board-authorized amount not to exceed $1,535,438,367; and

WHEREAS, a contract modification is needed for permit completion of design to finalize the schedule and cost of construction; and

WHEREAS, the proposed pricing is fair and reasonable; and

WHEREAS, funding for this contract modification is within current budget and FY 2024 20-Year Financial Plan allocations.

NOW, THEREFORE, BE IT RESOLVED by the Dallas Area Rapid Transit Board of Directors that the President & Chief Executive Officer or her designee is authorized to execute a contract modification for design-build services with Archer Western Herzog 4.0, Joint Venture (Contract No. C-2033270-01), for the Silver Line Regional Rail Project to include design services for revisions to the Aesthetic Arch Enhancement for the Bridge across U.S. Highway 75 in an amount not to exceed $1,382,900, to be funded ~~60~~ 63 % from the existing contract betterments allowance for the City of Richardson and ~~40~~ 37 % from contingency, for a new contract value of $~~1,476,956,791~~ 1,476,915,304 without change to the total Board-authorized amount not to exceed $1,535,438,367.

Approval to Increase the Contract Value for the Design-Build Contract for the Silver Line Regional Rail Project to Include Design Services for Revisions to the Aesthetic Arch Enhancement for the Bridge Across U.S. Highway 75

	/s/ Dee Leggett
Prepared by:	Dee Leggett Executive Vice President Chief Development Officer
	/s/ Gene Gamez
Approved as to form:	Gene Gamez General Counsel
	/s/ Nadine S. Lee
Approved by:	Nadine S. Lee President & Chief Executive Officer

Agenda Report

Committee-of-the-Whole ☒
Board Meeting ☒

Voting Requirements:
Majority

DATE: **May 28, 2024**

SUBJECT: **Approval of a Construction and Maintenance Agreement with BNSF Railway Company for a One-Way Low-Speed Crossing Diamond in Carrollton, Texas**

RECOMMENDATION

Approval of a resolution authorizing the President & Chief Executive Officer or her designee to execute a Construction and Maintenance Agreement with BNSF Railway Company for a One-Way Low-Speed Crossing Diamond in Carrollton, Texas, in substantially the form included as Exhibit 1 to the Resolution, subject to legal review.

COMMITTEE CONSIDERATIONS

- On May 14, 2024, the Committee-of-the-Whole unanimously moved this item to the May 28, 2024, Board of Directors meeting.

FINANCIAL CONSIDERATIONS

- This Construction and Maintenance Agreement with BNSF Railway Company for a One-Way Low-Speed Crossing Diamond in Carrollton, Texas, is included in Silver Line Regional Rail project budget of the approved FY 2024 Capital and Operating Budgets.
- Sufficient funding for this contract in the amount of an estimated $1,707,872 for construction and an estimated $22,720 for annual maintenance costs is included in both the Silver Line Regional Rail project budget and the Commuter Rail Capital and Operating line items of the FY 2024 20-Year Financial Plan.

BUSINESS PURPOSE

- The purpose of this item is to approve the General Construction and Maintenance Agreement (C&M Agreement) between DART and BNSF Railway Company (BSNF) to allow for the construction of the Silver Line Regional Rail Project in the Carrollton Segment and the continued maintenance of track, signals, and other facilities located on BNSF-owned right-of-way property.
- Approval of the C&M Agreement will assist DART in achieving Board Strategic Priority 1: Enhance the safety and service experience through customer-focused initiatives; and Strategic Priority 5: Enhance DART's role as a recognized local, regional and national transportation leader.

- This action contributes to DART's commitment to reliability by advancing the Silver Line Regional Rail Corridor Project.

- The Silver Line Regional Rail Corridor Project requires the installation of a One-Way Low-Speed (OWLS) diamond in the Carrollton Segment, near the Downtown Carrollton Station, to allow rail traffic to traverse east-west on the Cotton Belt Corridor, north onto the MKT Line to Denton, and south onto the Madill Line to Irving.

- The OWLS diamond will allow DART's freight tenant, Dallas, Garland & Northeastern Railroad ("DGNO"), to continue its operations on the Cotton Belt Corridor without interfering with Silver Line service, which will operate on separate tracks to the south of the intersection. The OWLS diamond will also preserve a connection between the Silver Line and the MKT Line (owned by DART and currently leased to Denton County Transportation Authority) for future public transportation expansion. In the short term, the OWLS diamond will enable DART to run trains north to Denton via the MKT Line as needed due to an emergency or maintenance, storage, or repair needs. Due to the configuration and constrained location of where the Cotton Belt, MKT, and Madill Lines intersect, the OWLS diamond will be installed on right-of-way property owned by BNSF.

- The C&M Agreement will serve two principal purposes: (1) The C&M Agreement requires BNSF to construct the OWLS diamond, signals, connecting track, and other related facilities on BNSF right-of-way. This work must be performed by BNSF's unionized workforces pursuant to BNSF's existing labor agreements. (2) The C&M Agreement sets out the ownership and maintenance obligations for the new facilities that will be constructed on BNSF right-of-way. BNSF will own and maintain the OWLS diamond, signals, and tracks traveling north-south across the diamond that BNSF will operate on; DART will own and maintain the tracks running east-west, which will primarily be operated on by DGNO.

- The C&M Agreement requires DART to reimburse BNSF for its actual costs to construct the OWLS diamond and related facilities, an estimated total cost of $1,707,872, and BNSF's continuing maintenance costs, an estimated amount of $22,720 annually. The C&M Agreement will continue until terminated in writing by mutual agreement of the parties.

- Construction of the OWLS diamond must be completed prior to testing of Segment A of the Silver Line, scheduled to begin in September 2024.

LEGAL CONSIDERATIONS

Section 452.055 of the Texas Transportation Code authorizes DART to contract for the provision of goods and services.

Section 452.056(a) of the Texas Transportation Code authorizes DART to construct, develop, plan and operate a public transportation system within the DART Service Area.

Article VII of the DART Board Bylaws states that the Board shall adopt and provide for the enforcement of rules, policies, or procedures in connection with the management, operation, and control of DART.

DRAFT

RESOLUTION

of the

DALLAS AREA RAPID TRANSIT BOARD

(Executive Committee)

Approval of a Construction and Maintenance Agreement with BNSF Railway Company for One-Way Low-Speed Crossing Diamond in Carrollton, Texas

WHEREAS, the Silver Line Regional Rail Corridor Project requires the installation of a One-Way Low-Speed (OWLS) diamond in the Carrollton Segment, near the Downtown Carrollton Station, on right-of-way property owned by BNSF Railway Company (BNSF); and

WHEREAS, the OWLS diamond will allow for rail traffic to travel east-west on the Cotton Belt Corridor, north onto the MKT Line to Denton, and south onto the Madill Line to Irving; and

WHEREAS, the OWLS diamond will allow DART's freight tenant, Dallas, Garland & Northeastern Railroad (DGNO), to continue its operations on the Cotton Belt Corridor without interfering with Silver Line service, which will operate on separate tracks to the south of the intersection; and

WHEREAS, the OWLS diamond will preserve a connection between the Silver Line and the MKT Line (owned by DART and currently leased to Denton County Transportation Authority) for future public transportation expansion and, in the short term, enable DART to run trains north to Denton County via the MKT Line as needed due to an emergency or maintenance, storage, or repair needs; and

WHEREAS, the General Construction and Maintenance Agreement with BNSF (C&M Agreement) will require BNSF, at DART's cost, to construct the OWLS diamond, signals, connecting track, and other related facilities on BNSF right-of-way; and

WHEREAS, the C&M Agreement provides that BNSF will own and maintain the OWLS diamond, signals, and tracks traveling north-south on BNSF right-of-way, which BNSF will operate on, and DART will reimburse BNSF for its maintenance costs on an annual basis; and

WHEREAS, the C&M Agreement provides that DART will own and maintain the tracks running east-west on BNSF right-of-way, which will primarily be operated on by DART's freight tenant Dallas, Garland & Northeastern Railroad; and

WHEREAS, execution of this C&M Agreement will enable DART to progress to testing of Segment A of the Silver Line; and

WHEREAS, the costs associated with this General Construction and Maintenance Agreement are within current budget and FY 2024 20-Year Financial Plan allocations..

NOW, THEREFORE, BE IT RESOLVED by Dallas Area Rapid Transit Board of Directors that the President & Chief Executive Officer or her designee is authorized to execute a Construction and Maintenance Agreement with BNSF Railway Company for a One-Way Low-Speed Crossing Diamond in Carrollton, Texas, in substantially the form included as Exhibit 1 to the Resolution, subject to legal review.

Approval of a Construction and Maintenance Agreement with BNSF Railway Company for One-Way Low-Speed Crossing Diamond in Carrollton, Texas

	/s/ Dee Leggett
	Dee Leggett
Prepared by:	Executive Vice President Chief Development Officer
	/s/ Gene Gamez
Approved as to form:	Gene Gamez General Counsel
	/s/ Nadine S. Lee
Approved by:	Nadine S. Lee President & Chief Executive Officer

Contract Number: Document ID

GENERAL CONSTRUCTION AND MAINTENANCE AGREEMENT

BNSF File No. Document ID
[Street/Roadway Name]
U.S. DOT No. [DOT Number]
Railroad Line Segment: [Line Segment]
Railroad Milepost: [Begin Mile Post]

This General Construction and Maintenance Agreement ("Agreement") is entered into effective as of [_____, 20___] ("Effective Date") by and between **BNSF RAILWAY COMPANY** ("Railway") and **DALLAS AREA RAPID TRANSIT** ("Agency"), collectively referred to herein as the "Parties".

WHEREAS, Railway operates a freight transportation system by rail with operations throughout the United States and Canada;

WHEREAS, Agency is currently constructing a passenger railway ("Silver Line") in and through Carrollton, Texas that will intersect with Railway's railroad;

WHEREAS, Agency desires to perform certain construction services and for Railway to perform certain construction services on Railway's right-of-way property ("Premises"), more particularly described on **Exhibit A**, in connection with construction of the Silver Line ("Project");

WHEREAS, Railway owns or controls certain rail, ties, ballast, and appurtenances thereto shown as white line marked on **Exhibit "C"** attached hereto and incorporated herein by reference (collectively, the "**BNSF Track**"), which operates in and through Carrollton, Texas;

WHEREAS, Agency owns or controls certain additional rail, ties, ballast, and appurtenances thereto shown as black and white striped line marked on **Exhibit "C"** attached hereto (the "**DART Track**"). The BNSF Track and DART Track, together with all appurtenances, may be hereinafter collectively called the "**Track**". The Track depicted on **Exhibit "C"** has not yet been fully constructed as of the Effective Date. The Parties shall amend this Agreement to attach an updated exhibit as necessary to depict the Track following completion of construction;

WHEREAS, the Parties entered into a Temporary Occupancy Permit, effective August 10, 2023, to allow Agency to begin preliminary construction activities in furtherance of the Project; and

WHEREAS, in connection with this Agreement, Railway and Agency have also entered into that certain Lease of Land for Construction/Rehabilitation of Track dated on or about the Effective Date of this Agreement at or near the City of Carrollton, railway station of Downtown Carrollton, County of Dallas, State of Texas (the "**Construction Lease**");

WHEREAS, in connection with this Agreement, Railway and Agency will also enter into Interlocking Agreement(s), which will govern the operating rights near the City of Carrollton, railway station of Downtown Carrollton, County of Dallas, State of Texas (the "**Interlocking Agreements**"); and

NOW, THEREFORE, in consideration of Railway entering this Agreement with Agency and granting Agency permission to enter upon the Premises (defined herein), Agency agrees with Railway as follows:

1) EXHIBITS

The following exhibits are attached hereto and fully incorporated into this Agreement for all intents and purposes:

Exhibit A – Premises
Exhibit B – Work (Project plans and specifications)
Exhibit B-1 – Cost Estimate
Exhibit C – Ownership & Maintenance
Exhibit D – Contractor's Right of Entry Agreement

2) SCOPE OF SERVICES

The term **"Work"** as used herein means the construction activities and short-term maintenance related to the construction of the Project, more particularly described on **Exhibit B**. Railway shall own or control the BNSF Track and Agency shall own or control the DART Track.

The term **"Maintenance"** as used herein means the continuing, long-term maintenance necessary to keep the Premises and completed Project in good condition, as more particularly described in Section 6. The Maintenance obligations set out in this Agreement shall continue unless and until the Parties amend, supersede, or terminate this Agreement in writing.

Performance of the Work will necessarily require Agency to enter the Premises. Agency agrees that no Work will be commenced on the Premises, except as permitted under the Temporary Occupancy Permit, until (i) this Agreement is executed by both

Agency and Railway; and (ii) Agency provides the Railway with the insurance contemplated herein.

This Agreement shall wholly supersede and replace the Temporary Occupancy Permit previously executed by the Parties.

3) PERFORMANCE OF THE WORK RAILWAY'S OBLIGATIONS

A. Railway shall perform the portion of the Work to be constructed within the limits of its right-of-way, as shown on **Exhibit B** and further detailed in 4(B) below. The estimated cost for the portion of the Work to be performed by Railway is $1,707,872, as detailed on **Exhibit B-1**. In the event construction on the Project has not commenced within six (6) months following the Effective Date, Railway may, in its sole and absolute discretion, revise the cost estimates set forth in said **Exhibit B-1**. In such event, the revised cost estimates will become a part of this Agreement as though originally set forth herein. Any item of the Work incidental to the items listed on **Exhibit B-1** but not specifically mentioned therein may be included as a part of this Agreement upon written approval of Agency, which approval will not be unreasonably withheld.

B. Railway shall:

1. Perform the portion of the Work that will be operated and maintained by Railway and is located within Railway's right-of-way, as shown on **Exhibit B**, including constructing the track and installing the signal equipment and systems elements of the Project. Railway shall perform such Work in accordance with the plans and specifications provided by Agency and previously approved by Railway (attached as **Exhibit B**. Railway shall provide all labor, equipment and supplies necessary for such Work; Agency shall provide all materials.

2. Furnish flagging services during construction of the Project as required and set forth in further detail on **Exhibit D**.

3. Furnish engineering and inspection as necessary in connection with the Work.

4. Make such changes in the alignment, location and elevation of telephone, telegraph, signal and/or wire lines and appurtenances along, over or under the tracks, both temporary and permanent, as may become necessary by reason of the construction of the Project.

C. Railway shall execute all the Work set forth in Section 4(B) above on an actual cost basis when Railway, in its sole discretion, determines it is required by its labor agreements to perform such work with its own employees working under applicable collective bargaining agreements. Railway shall provide documentation to Agency demonstrating the amount and applicability of all charges to be reimbursed by Agency pursuant to this Section.

D. Agency must reimburse Railway for documented costs actually incurred pursuant to this Section within thirty (30) days of the date of the invoice for such costs. Upon completion of the Project, Railway will send Agency a detailed invoice of final costs, segregated as to labor and materials for each item in the recapitulation shown on **Exhibit B-1**. Agency must pay the final invoice within ninety (90) days of the date of the final invoice submitted with supporting documentation. Railway will assess a finance charge of .033% per day (12% per annum) on any unpaid sums or other charges due under this Agreement which are past its credit terms. The finance charge continues to accrue daily until the date payment is received by Railway, not the date payment is made or the date postmarked on the payment. Finance charges will be assessed on delinquent sums and other charges as of the end of the month and will be reduced by amounts in dispute and any unposted payments received by the month's end. Finance charges will be noted on invoices sent to Agency under this section.

E. Railway shall perform its portion of the Work identified in this Section and shown on Exhibit B no later than August 12, 2024 unless otherwise authorized by Agency:

- Demolish and remove existing track and turnouts within limits of BNSF ROW
- Install OWLS Diamond and cut into DGNO connector track
- Construct new Madill mainline track and connect into OWLS Diamond
- Construct new Madill siding track and connect into OWLS Diamond
- Cut over new Madill mainline and siding tracks into existing Madill tracks
- All necessary signals work related to construction of the portion of the Work described above.

5) PERFORMANCE OF THE WORK - AGENCY'S OBLIGATIONS

A. Agency has furnished to Railway plans and specifications for the Project showing the plan and profile of the Work on the Premises (attached as **Exhibit B**). Railway has provided final written approval of Agency's plans and specifications; consequently, any changes or modifications to such plans and specifications during construction that affect safety or Railway's operations are subject to Railway's approval.

B. Agency shall obtain all required permits and approvals for the Work.

C. Agency shall acquire all rights of way necessary for the construction for the Work.

D. Agency shall comply with Railway's Utility Accommodation Manual (http://www.bnsf.com/communities/faqs/pdf/utility.pdf) for the installation or relocation of wire lines, pipe lines and other facilities owned by private persons, companies, corporations, political subdivisions or public utilities other than Railway which may be necessary for the construction of the Work.

E. Agency shall construct the portion of the Work that will be operated by Agency, as shown on **Exhibit B** and further described below. Agency shall furnish all labor, materials, tools, and equipment for the performance of Agency's Work. The principal elements of Agency's Work are as follows:

1. Design and reconstruction/construction of shifting of tracks.

2. Construction of track within Railway's right-of-way that will not be operated and maintained by Railway.

3. Construction of all civil, grading, drainage, utilities, and structural elements of the Project within Railway's right-of-way, including track subgrade and subballast, and signal/systems foundations, pads, and conduits required to prepare the site for performance of Railway's Work described in Section 4.

4. Perform all necessary grading, including backfill of excavations and restoration of disturbed vegetation on Railway's right-of-way.

5. Provide suitable drainage, both temporary and permanent.

6. Clean-up of the Premises, including removal of all construction materials, concrete debris, surplus soil, refuse, contaminated soils, asphalt debris, litter, and other waste materials to the satisfaction of Railway.

F. Agency's Work shall be performed in a manner that will not endanger or interfere with the safe and timely operations of Railway and its facilities.

G. If the construction work hereunder is contracted, Agency shall require compliance with the obligations set forth in this Agreement, including **Exhibit D**. Agency shall incorporate the provisions set forth in **Exhibit D** in each prime contract for performance of the Work or Maintenance.

H. Agency shall give Railway's Roadmaster 90 days advance notice of the proposed times and dates for work windows. Railway and Agency shall establish mutually agreeable work windows for the Work. Railway may revise or change the work windows due to train operations or service obligations. Railway will not be responsible for any additional costs and expenses resulting from a change in work windows. In no event shall the work windows require or necessitate performance of Agency's Work after **October 31, 2024**.

I. Agency shall notify Railway's Roadmaster at least thirty (30) calendar days prior to requesting a Railway flagman in accordance with the requirements of **Exhibit D** attached hereto. Additionally, Agency shall notify Railway's Manager of Public Projects thirty (30) calendar days prior to commencing work on Railway's property or near Railway's tracks.

J. No work will be commenced within Railway's right-of-way until each of the prime Agency's contractors employed in connection with said Work must have (i) executed and delivered to Railway an agreement in the form of **Exhibit D**, and (ii) delivered to and secured Railway's approval of the required insurance.

K. Agency shall supervise and inspect the operations of its contractors to ensure compliance with the terms of this Agreement (including **Exhibit B**) and all safety requirements of Railway. If Railway determines that proper supervision and inspection are not being performed by Agency at any time during construction of the Work within or adjacent to Railway's operating right-of-way, Railway has the right to stop such Work until Agency corrects the situation to Railway's reasonable satisfaction. If Railway feels the situation is not being corrected in an expeditious manner, Railway will immediately notify Railway's Engineering Representative for appropriate corrective action.

L. Agency agrees to reimburse Railway for work of an emergency nature caused by Agency or Agency's contractor in connection with the Project which Railway deems is reasonably necessary for the immediate restoration of railroad operations, or for the protection of persons or Railway property. Such work may be performed by Railway without prior approval of Agency and Agency agrees to fully reimburse Railway for all actual costs incurred for performance of such emergency work.

M. Railway may charge Agency for insurance expenses, including self-insurance expenses, when such expenses cover the cost of Employer's Liability (including, without limitation, liability under the Federal Employer's Liability Act) incurred in connection with the construction of the Project. Such charges will be considered

part of the actual cost of the Project, regardless of the nature or amount of ultimate liability for injury, loss or death to Railway's employees, if any.

6) MAINTENANCE

A. Agency shall perform at its sole risk and expense all Maintenance for the portion of the Premises identified as “DART Owned & Maintained” on **Exhibit C** in a safe and satisfactory condition, including but not limited to mowing, vegetation control, trash and graffiti removal. Agency shall maintain the “DART Owned & Maintained” track to a minimum FRA Class 2 standards.

B. Any entry onto and work upon Premises shall be performed in accordance with this Agreement and pursuant to the terms and conditions of the Construction Lease and Interlocking Agreements. Agency shall further comply with (a) all applicable laws, statutes, regulations, ordinances, orders, covenants, restrictions, codes, rules or any order, decision, injunction, judgment, award or decree of any public body or authority having jurisdiction over Agency, the Track, this Agreement, and/or Agency; obligations under this Agreement, and including all Environmental Laws (defined below) (collectively, "Legal Requirements") and (b) other Railway requirements made available to Agency relating to the construction, use, maintenance and operation of the Track, Facilities (defined below) or Equipment (defined below) by or for Agency. Agency shall use the Track solely for freight operations and/or commuter rail operations and for no other purpose. Agency shall not permit any use of the Track in such a manner that would endanger or interfere with Railway’s operation. Agency shall provide Railway notice of any third-party use on all or any portion of the Track.

C. Maintenance, for purposes of this Agreement, means keeping the Track in good working order and condition, including without limitation: (a) providing proper drainage along the Track; (b) keeping the Track free and clear of snow, ice, vegetation, structures, and other obstacles; and (c) maintaining adequate grade crossing warning devices, passive warning signs, gates, fences, barriers, roadways, track drainage facilities, lighting and track and other signals (collectively, "Safety Devices") in good working order and condition, all as determined solely by Railway in accordance with customary industry practices. Notwithstanding the foregoing or anything else contained herein to the contrary, construction and installation of any new Safety Devices with respect to the Track after the Effective Date, whether required by Railway in a Railway’s sole discretion or by any governmental agency or Legal Requirement, shall be at Agency’s sole cost and expense.

D. Agency shall, at its sole expense, pay all costs for changes, repairs, relocations or alterations to the DART Track that may be necessary to conform to any changes of grade or relocation of the BNSF Track at the point of connection with the Agency

Track. Agency shall, at its sole expense, pay for all costs for changes, repairs, relocations or alterations to the BNSF Track that may be necessary.

E. Railway may require Agency to use flaggers and otherwise implement all safety measures that Railroad deems appropriate in connection with the use of the DART Track by or for Agency. Without limiting the generality of the foregoing, Railway may require for safety purposes that Agency, at its sole cost and expense, furnish qualified flaggers and provide any such safety measure that Railway deems appropriate in connection with the use of the DART Track by or for Agency.

F. Railway shall perform all Maintenance, at Agency's expense, for the portions of the Premises identified as "BNSF Owned & Maintained" on **Exhibit C**, including but not limited to mowing, vegetation control, trash and graffiti removal. Railway shall maintain the "BNSF Maintained" track to a minimum FRA Class 2 track standards and in accordance with all applicable laws and regulations. Agency may perform inspections of the "BNSF Maintained" portion of the Premises on a quarterly basis with reasonable advance notice to Railway. Agency shall provide a copy of the results to Railway, and Railway shall be responsible for repairing the noted defects related to tracks operated by Agency. If Railway fails to repair the noted defects within thirty (30) days, or other reasonable period of time based on the repairs needed, Agency may make such repairs and deduct the costs from the annual maintenance costs assessed by Railway.

Annual Maintenance Costs. Railway will operate and maintain the signal equipment and signal house in proper condition. The Agency shall pay Railway for the annual inspection and maintenance of the signal equipment and signal house. The estimated annual cost to inspect and maintain the signals at four (4) locations will be **$2,720.00**. In addition, Railway shall assess an estimated annual fee of **$20,000.00** for the costs associated with Maintenance of the "BNSF Owned & Maintained" track shown on **Exhibit C**. Agency shall pay such annual fee within ninety (90) days following Agency's receipt of an invoice from Railway. Railway may adjust such annual fee on January 1 of every year in accordance with the Association of American Railroad's ("AAR's") published Annual Indexes of Chargeout Prices and Wages Rates. The Agency shall reimburse Railway for all actual costs incurred by Railway as a direct result of Railway's maintenance. Railway should use its best efforts to provide the Agency with the estimated annual maintenance costs in time to be incorporated into the Agency's annual budgeting process, and the Agency will budget these funds as necessary. In the event the Agency fails to reimbursement Railway pursuant to this provision, finance charges will be assessed on any unpaid amounts pursuant to Section 3, D above.

G. For any future inspection or maintenance, either routine or otherwise, performed by contractors or subcontractors on behalf of Agency, Agency shall require the contractors and subcontractors to comply with the provisions of the attached **Exhibit D**. Prior to performing any future maintenance with its own personnel, Agency shall: comply with all of Railway's applicable safety rules and regulations; require any Agency employee performing maintenance to complete the safety training program at the Railway's Internet Website "www.BNSFContractor.com "; notify Railway when, pursuant to the requirements of **Exhibit D**, a flagger is required to be present; procure, and have approved by Railway's Risk Management Department, Railroad Protective Liability insurance.

H. DEFAULT. The following events shall constitute defaults under this Agreement:

(a) creating or allowing to remain any condition, including without limitation, any environmental condition, on, about or affecting the Track, which in Railway's sole judgment interferes with or endangers Railway's operations;

(b) assignment or transfer by operation of law of Agency's rights or obligations under this Agreement;

(c) any default on any of the covenants or agreements of Agency contained in this Agreement; or

(d) Construction Lease that persists beyond all applicable grace or cure periods.

I. REMEDIES; TERMINATION.

(a) In addition to the Parties' termination rights set forth elsewhere in this Agreement, and in addition to all other remedies available at law or in equity, Railway may, without incurring any liability to Agency, terminate this Agreement and discontinue the operation of the Track, and discontinue the maintenance of and remove the Railroad Track, effective immediately by written notice to Agency, if any of the following events occurs:

1. any default as described in **Section I**, other than a default under **Section I(a)** or **Section I(c)** occurs;
2. any default as described in **Section I(a)** occurs and Agency does not commence to immediately cure such default and pursue such cure to completion within two (2) calendar days after the date that is the earlier of: (1) the date that Agency becomes actually aware of such default or (2) the date that Agency receives written notice from Railway of such default;
3. any default as described in **Section I(c)** occurs and persists for thirty (30) days following written notice from Railway;

4. Agency is authorized by the Surface Transportation Board to abandon its line;
5. Agency fails to provide evidence of insurance as required by **Section 8**; or
6. Any default in the Construction Lease that persists beyond all applicable grace or cure periods, or any expiration or termination of the Construction Lease.

(b) Upon expiration of the time specified in any notice of termination, this Agreement and all rights of Agency shall absolutely cease (except for any rights and obligations that expressly survive this Agreement).

(c) Agency hereby agrees to waive and release all claims, rights, and causes of action that Agency has, may have, or any other remedies exercised by Railway as provided in this section.

7) RELEASE OF LIABILITY AND INDEMNITY

TO THE FULLEST EXTENT PERMITTED BY LAW, AGENCY HEREBY RELEASES, INDEMNIFIES, DEFENDS AND HOLDS HARMLESS RAILWAY, ITS AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS AND ATTORNEYS' FEES) OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON (INCLUDING, WITHOUT LIMITATION, THE EMPLOYEES OF THE PARTIES HERETO) OR ENTITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART) (I) THE USE, OCCUPANCY OR PRESENCE OF AGENCY, ITS CONTRACTORS, SUBCONTRACTORS, EMPLOYEES OR AGENTS IN, ON, OR ABOUT THE PROPERTY OR RIGHT OF WAY, (II) THE PERFORMANCE, OR FAILURE TO PERFORM BY THE AGENCY, ITS CONTRACTORS, SUBCONTRACTORS, EMPLOYEES, OR AGENTS, ITS WORK OR ANY OBLIGATION UNDER THIS AGREEMENT, (III) THE SOLE OR CONTRIBUTING ACTS OR OMISSIONS OF AGENCY, ITS CONTRACTORS, SUBCONTRACTORS, EMPLOYEES, OR AGENTS IN, ON, OR ABOUT THE PROPERTY OR RIGHT OF WAY, (IV) AGENCY'S BREACH OF THE TEMPORARY CONSTRUCTION LICENSE OR EASEMENT GRANTED TO AGENCY PURSUANT TO ARTICLE II OF THIS AGREEMENT, (V) ANY RIGHTS OR INTERESTS GRANTED TO AGENCY PURSUANT TO THE TEMPORARY CONSTRUCTION LICENSE OR EASEMENT DISCUSSED IN ARTICLE II OF THIS AGREEMENT, (VI) AGENCY'S OCCUPATION AND USE OF RAILWAY'S PROPERTY OR RIGHT-OF-WAY, INCLUDING, WITHOUT LIMITATION, SUBSEQUENT MAINTENANCE OF THE PROJECT BY

AGENCY, (VII) AN ACT OR OMISSION OF AGENCY OR ITS OFFICERS, AGENTS, INVITEES, EMPLOYEES OR CONTRACTORS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER, OR (VIII) THE ENVIRONMENTAL CONDITION AND STATUS OF THE PROPERTY OR RIGHT OF WAY CAUSED BY OR CONTRIBUTED TO BY AGENCY OR ITS CONTRACTORS. THE LIABILITY ASSUMED BY AGENCY WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DESTRUCTION, DAMAGE, DEATH, OR INJURY WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF RAILWAY, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE OF RAILWAY.

THE INDEMNIFICATION OBLIGATION ASSUMED BY AGENCY INCLUDES ANY CLAIMS, SUITS OR JUDGMENTS BROUGHT AGAINST RAILWAY UNDER THE FEDERAL EMPLOYEE'S LIABILITY ACT INCLUDING CLAIMS FOR STRICT LIABILITY UNDER THE SAFETY APPLIANCE ACT OR THE BOILER INSPECTION ACT, WHENEVER SO CLAIMED.

Agency further agrees, at its expense, in the name and on behalf of Railway, that it will adjust and settle all claims made against Railway, and will, at Railway's discretion, appear and defend any suits or actions of law or in equity brought against Railway on any claim or cause of action arising or growing out of or in any manner connected with any liability assumed by Agency under this Agreement for which Railway is liable or is alleged to be liable. Railway will give notice to Agency, in writing, of the receipt or pendency of such claims and thereupon Agency must proceed to adjust and handle to a conclusion such claims, and in the event of a brought against Railway, Railway may forward summons and complaint or other process in connection therewith to Agency, and Agency, at Railway's discretion, must defend, adjust, or settle such suits and protect, indemnify, and save harmless Railway from and against all damages, judgments, decrees, attorney's fees, costs, and expenses growing out of or resulting from or incident to any such claims or suits.

It is mutually understood and agreed that the assumption of liabilities and indemnification provided for in this Agreement will survive any termination of this Agreement.

8) INSURANCE

Agency or Agency’s Contractor shall, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

A. Commercial General Liability "CGL" Insurance

i) The policy will provide a minimum of $5,000,000 each occurrence and an aggregate limit of at least $10,000,000 but in no event less than the amount otherwise carried by the provider. Coverage must be purchased on a post 2004 ISO occurrence form or equivalent and include coverage for, but not limited to, the following:

(1) Bodily Injury and Property Damage

(2) Personal Injury and Advertising Injury

(3) Fire legal liability

(4) Products and completed operations

ii) This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

(1) definition of "Insured Contract" will be amended to remove any exclusion or other limitation for any work being done within 50 feet of RAILWAY's property.

(2) Waiver of subrogation in favor of and acceptable to RAILWAY; and

(3) Additional insured endorsement in favor of and acceptable to RAILWAY and include coverage for ongoing operations and completed operations; and

(4) Separation of insureds; and

(5) The policy will be primary and non-contributing with respect to any insurance carried by RAILWAY.

iii) It is agreed that the workers' compensation and employers' liability related exclusions in the Commercial General Liability insurance policy(s) required herein are intended to apply to employees of the policy holder and shall not apply to ***Railway*** employees.

iv) No other endorsements limiting coverage as respects obligations under this Agreement may be included on the policy with regard to the work being

performed under this agreement.

B. Business Automobile Insurance

i) The insurance will provide minimum coverage with a combined single limit of at least $1,000,000 per accident, and include coverage for, but not limited to the following:

(1) Bodily injury and property damage

(2) Any and all vehicles non-owned or hired

ii) The policy will include the following endorsements or language, which will be indicated on or attached to the certificate of insurance:

(1) Waiver of subrogation in favor of and acceptable to RAILWAY;

(2) Additional insured endorsement in favor of and acceptable to RAILWAY;

(3) The policy shall be primary and non-contributing with respect to any insurance carried by RAILWAY.

C. Workers Compensation and Employers Liability Insurance

i) Workers Compensation and Employers Liability insurance including coverage for, but not limited to:

(1) Agency's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. Workers' compensation insurance may be self-insured.

(2) Employers' Liability (Part B) with limits of at least $500,000 each accident, $500,000 by disease policy limit, $500,000 by disease each employee. Workers' compensation insurance may be self-insured.

ii) This policy shall also contain the following endorsements or language, which

shall be indicated on the certificate of insurance:

(1) Waiver of subrogation in favor of and acceptable to Railway.

D. Railroad Protective Liability insurance

i) Railroad Protective Liability insurance naming only the ***Railway*** as the Insured with coverage of at least $5,000,000 per occurrence and $10,000,000 in the aggregate. The policy Must be issued on a standard ISO form CG 00 35 12 04 and include the following:

(1) Endorsed to include the Pollution Exclusion Amendment

(2) Endorsed to include the Limited Seepage and Pollution Endorsement.

(3) Endorsed to remove any exclusion for punitive damages.

(4) No other endorsements restricting coverage may be added.

(5) The original policy must be provided to the ***Railway*** prior to performing any work or services under this Agreement.

(6) Definition of "Physical Damage to Property" shall be endorsed to read: "means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured' care, custody, and control arising out of the acts or omissions of the contractor named on the Declarations.

In lieu of providing a Railroad Protective Liability Policy, Licensee may participate (if available) in Railway's Blanket Railroad Protective Liability Insurance Policy.

E. Other Requirements:

i) Where allowable by law, all policies (applying to coverage listed above) shall contain no exclusion for punitive damages.

ii) Agency agrees to waive its right of recovery against ***Railway*** for all claims and suits against ***Railway***. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against ***Railway*** for all claims and suits. Agency further waives its right of recovery, and its insurers also waive their right of subrogation against ***Railway*** for loss of its owned or leased property or property under Agency's care, custody or control.

iii) Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.

iv) Agency is not allowed to self-insure without the prior written consent of ***Railway.*** If granted by ***Railway***, any self-insured retention or other financial responsibility for claims shall be covered directly by Agency in lieu of insurance. Any and all ***Railway*** liabilities that would otherwise, in accordance with the provisions of this Agreement, be covered by Agency's insurance will be covered as if Agency elected not to include a deductible, self-insured retention or other financial responsibility for claims.

v) Prior to commencing services, Agency shall furnish to ***Railway*** an acceptable certificate(s) of insurance from an authorized representative evidencing the required coverage(s), endorsements, and amendments. The certificate should be directed to the following address:

BNSF Railway Company
c/o CertFocus
P.O. Box 140528
Kansas City, MO 64114
Toll Free: 877-576-2378
Fax number: 817-840-7487
Email: BNSF@certfocus.com
www.certfocus.com

vi) Agency shall notify Railway in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration.

vii) Any insurance policy shall be written by a reputable insurance company acceptable to Railway or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.

viii) If coverage is purchased on a "claims made" basis, Agency hereby agrees to maintain coverage in force for a minimum of three years after expiration, cancellation or termination of this Agreement. Annually Agency agrees to provide evidence of such coverage as required hereunder.

ix) Agency represents that this Agreement has been thoroughly reviewed by Agency's insurance agent(s)/broker(s), who have been instructed by Agency to procure the insurance coverage required by this Agreement.

x) Not more frequently than once every five years, Railway may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

xi) If any portion of the operation is to be subcontracted by Agency, Agency shall require that the subcontractor shall provide and maintain insurance coverage(s) as set forth herein, naming Railway as an additional insured, and shall require that the subcontractor shall release, defend and indemnify Railway to the same extent and under the same terms and conditions as Agency is required to release, defend and indemnify Railway herein.

xii) Failure to provide evidence as required by this section shall entitle, but not require, Railway to terminate this Agreement immediately. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of Agency's obligations hereunder.

xiii) The fact that insurance (including, without limitation, self-insurance) is obtained by Agency shall not be deemed to release or diminish the liability of Agency including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railway shall not be limited by the amount of the required insurance coverage.

xiv) In the event of a claim or lawsuit involving Railway arising out of this agreement, Agency will make available any required policy covering such claim or lawsuit.

xv) These insurance provisions are intended to be a separate and distinct obligation on the part of the Agency. Therefore, these provisions shall be enforceable and Agency shall be bound thereby regardless of whether or not indemnity provisions are determined to be enforceable in the jurisdiction in which the work covered hereunder is performed.

xvi) For purposes of this section, Railway shall mean "Burlington Northern Santa Fe, LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

9) SALES AND OTHER TAXES

In the event applicable sales taxes of a state or political subdivision of a state of the United States are levied or assessed in connection with and directly related to any

amounts invoiced by Agency to Railway ("Sales Taxes"), Railway shall be responsible for paying only the Sales Taxes that Agency separately states on the invoice or other billing documents provided to Railway; *provided, however,* that (i) nothing herein shall preclude Railway from claiming whatever Sales Tax exemptions are applicable to amounts Agency bills Railway, (ii) Agency shall be responsible for all sales, use, excise, consumption, services and other taxes which may accrue on all services, materials, equipment, supplies or fixtures that Agency and its contractors use or consume in the performance of this Agreement, (iii) Agency shall be responsible for Sales Taxes (together with any penalties, fines or interest thereon) that Agency fails to separately state on the invoice or other billing documents provided to Railway or fails to collect at the time of payment by Railway of invoiced amounts (except where Railway claims a Sales Tax exemption), and (iv) Agency shall be responsible for Sales Taxes (together with any penalties, fines or interest thereon) if Agency fails to issue separate invoices for each state in which Agency delivers goods, provides services or, if applicable, transfers intangible rights to Railway.

Upon request, Agency shall provide Railway satisfactory evidence that all taxes (together with any penalties, fines or interest thereon) that Agency is responsible to pay under this Agreement have been paid. If a written claim is made against Agency for Sales Taxes with respect to which Railway may be liable for under this Agreement, Agency shall promptly notify Railway of such claim and provide Railway copies of all correspondence received from the taxing authority. Railway shall have the right to contest, protest, or claim a refund, in Railway's own name, any Sales Taxes paid by Railway to Agency or for which Railway might otherwise be responsible for under this Agreement; provided, however, that if Railway is not permitted by law to contest any such Sales Tax in its own name, Agency shall, if requested by Railway at Railway's sole cost and expense, contest in Agency's own name the validity, applicability or amount of such Sales Tax and allow Railway to control and conduct such contest.

Railway retains the right to withhold from payments made under this Agreement amounts required to be withheld under tax laws of any jurisdiction. If Agency is claiming a withholding exemption or a reduction in the withholding rate of any jurisdiction on any payments under this Agreement, before any payments are made (and in each succeeding period or year as required by law), Agency agrees to furnish to Railway a properly completed exemption form prescribed by such jurisdiction. Agency shall be responsible for any taxes, interest or penalties assessed against Railway with respect to withholding taxes that Railway does not withhold from payments to Agency.

10) INDEPENDENT CONTRACTOR

Agency is considered an independent contractor under this Agreement and neither

Agency nor any of its employees, contractors, agents or servants are considered employees of Railway in any respect. Agency has the exclusive right and duty to control the work of its employees. All persons employed by Agency or any of its contractors under this Agreement are the sole employees of Agency or its contractors. Agency will be given general directions and instructions regarding the Work to be performed under this Agreement; however, direct supervision of Agency's employees will be Agency's responsibility and obligation.

11) TRAIN DELAYS

The parties mutually agree that neither construction activities for the Work, nor future maintenance of the Project once completed, that would impact Railway operations will be permitted during the fourth quarter of each calendar year. Emergency work will be permitted only upon prior notification to Railway's Network Operations Center (telephone number: 800 832-5452). The Agency understands and agrees that trains cannot be subjected to delay during this time period

Agency's Contractor will obtain approval from Railway for any construction work to be performed within BNSF's right-of-way during the fourth quarter each calendar year.

Agency is responsible for and hereby indemnifies and holds harmless Railway (including its affiliated railway companies, and its tenants) for, from and against all damages arising from any unscheduled delay to a freight or passenger train which affects Railway's ability to fully utilize its equipment and to meet customer service and contract obligations. Agency will be billed, as further provided below, for the economic losses arising from loss of use of equipment, contractual loss of incentive pay and bonuses and contractual penalties resulting from train delays, whether caused by Agency, or contractors, or by the Railway performing work under this Agreement. Railway agrees that it will not perform any act to unnecessarily cause train delay.

For loss of use of equipment, Agency will be billed the current freight train hour rate per train as determined from Railway's records. Any disruption to train traffic may cause delays to multiple trains at the same time for the same period.

Additionally, the parties acknowledge that passenger, U.S. mail trains and certain other grain, intermodal, coal and freight trains operate under incentive/penalty contracts between Railway and its customer(s). Under these arrangements, if Railway does not meet its contract service commitments, Railway may suffer loss of performance or incentive pay and/or be subject to penalty payments. Agency is responsible for any train performance and incentive penalties or other contractual economic losses actually incurred by Railway which are attributable to a train delay caused by Agency or its contractors.

The contractual relationship between Railway and its customers is proprietary and confidential. In the event of a train delay covered by this Agreement, Railway will share information relevant to any train delay to the extent consistent with Railway confidentiality obligations. Damages for train delay are currently $382.20 per hour per incident. **THE RATE THEN IN EFFECT AT THE TIME OF PERFORMANCE BY THE AGENCY HEREUNDER WILL BE USED TO CALCULATE THE ACTUAL COSTS OF TRAIN DELAY PURSUANT TO THIS AGREEMENT.**

Agency and its contractors must give Railway's Engineering representative four (4) weeks advance notice of the times and dates for proposed work windows. Railway and Agency will establish mutually agreeable work windows for the Project. Railway has the right at any time to revise or change the work windows due to train operations or service obligations. Railway will not be responsible for any additional costs or expenses resulting from a change in work windows. Additional costs or expenses resulting from a change in work windows shall be accounted for in Agency's expenses for the Project.

Agency and contractors must plan, schedule, coordinate and conduct all Agency's work so as to not cause any delays to any trains.

12) <u>ENVIRONMENTAL</u>

(a) Agency agrees to comply with, and shall require its contractor to agree to comply with all Environmental Laws (defined below). Agency shall not maintain a "treatment," "storage," "transfer" or "disposal" facility, or "underground storage tank," as those terms are defined by Environmental Laws (as defined below), on the BNSF property or the right of way. Agency will not handle, transport, release or suffer the release of Hazardous Materials (as defined below) on or about the Premises. Small quantities of diesel fuel, engine oil and hydraulic fluids used in the operation of Contractor's equipment shall not be deemed a violation of this Section 16(a).

(b) Agency shall give immediate notice to BNSF's Resource Operations Center at (800) 832-5452 of any release of Hazardous Materials on, from, or affecting the Premises. Agency shall use its best efforts to immediately respond to any release on or from the Premises. Any violation of Environmental Laws or any inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Agency's use of the Premises must be immediately reported to BNSF at EnvironmentalLeases@bnsf.com. Agency also shall give BNSF prompt notice of all measures undertaken on behalf of Agency to investigate, remediate, respond to or otherwise cure a release or violation.

(c) If BNSF has notice from Agency or otherwise of a release or violation of Environmental Laws arising in any way with respect to the work which occurred or may occur during the term of this Agreement, BNSF may require Agency, at Agency's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the BNSF's property.

(d) If during the construction or subsequent maintenance of the Project or any other soil-disturbing activities, soils or other materials considered to be environmentally impacted are encountered, Agency will stop work immediately and notify BNSF. After consultation with BNSF, Agency shall, at Agency's expense, characterize any such impacted soils. Upon receiving sampling results Agency shall, at Agency's expense, in consultation with BNSF, manage, remove, and/or dispose any such impacted soils offsite at an appropriately-licensed facility in accordance with Environmental Laws. Soil characterization and applicable disposal requirements shall be in accordance with applicable federal, state, and local Environmental Laws or in consultation with an agency having the capacity and authority to make such a determination.

(e) All soils and materials to be removed from BNSF's property or right of way must be properly characterized, managed, transported, and disposed of at an appropriately-licensed facility, at Agency's expense, in accordance with all Environmental Laws. Agency shall be the "Generator" of any and all such materials and waste, as such term is defined in Environmental Laws.

(f) All fill materials to be imported to BNSF's property shall be certified clean fill or from a BNSF approved source, and supporting documentation shall be provided to BNSF upon request.

(g) Notwithstanding anything in this Section 16, the parties agree that BNSF has no duty or obligation to monitor Agency's use of the property or right of way to determine Agency's compliance with Environmental Laws, it being solely Agency's responsibility to ensure that Agency's use is compliant.

(h) "Environmental Law(s)" shall mean any federal, state, local, or tribal law, statute, ordinance, code, rule, regulation, policy, common law, license, authorization, decision, order, or injunction which pertains to health, safety, any Hazardous Material, or the environment (including but not limited to ground, air, water, or noise pollution or contamination, and underground or above-ground tanks) and shall include, without limitation, CERCLA 42 U.S.C. §9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq., CERCLA; the Hazardous Materials Transportation Act, 49 U.S.C. §5101 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq.; the Clean Air Act, 42 U.S.C. §7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. §2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. §300f et seq.; the Emergency

Planning and Community Right-to-Know Act, 42 U.S.C. 11001 et seq.; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136 to 136y; the Oil Pollution Act, 33 U.S.C. 2701 et seq.; and the Occupational Safety and Health Act, 29 U.S.C. 651 et seq.; all as have been amended from time to time, and any other federal, state, local, or tribal environmental requirements, together with all rules, regulations, orders, and decrees now or hereafter promulgated under any of the foregoing, as any of the foregoing now exist or may be changed or amended or come into effect in the future.

(i) "Hazardous Material(s)" shall include but shall not be limited to any substance, material, or waste that is regulated by any Environmental Law or otherwise regulated by any federal, state, local, or tribal governmental authority because of toxic, flammable, explosive, corrosive, reactive, radioactive or other properties that may be hazardous to human health or the environment, including without limitation asbestos and asbestos-containing materials, radon, petroleum and petroleum products, urea formaldehyde foam insulation, methane, lead-based paint, polychlorinated biphenyl compounds, hydrocarbons or like substances and their additives or constituents, pesticides, agricultural chemicals, and any other special, toxic, or hazardous (i) substances, (ii) materials, or (iii) wastes of any kind, including without limitation those now or hereafter defined, determined, or identified as "hazardous chemicals," "hazardous substances," "hazardous materials," "toxic substances," or "hazardous wastes" in any Environmental Law.

13) MISCELLANEOUS.

A. It is understood and agreed that this Agreement shall not be recorded in the real property records in the county or counties in which the Track is located or otherwise placed of public record.

B. All questions concerning the interpretation or application of provisions of this Agreement shall be decided according to the laws of the State of Texas.

C. To the maximum extent possible, each provision of this Agreement must be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is prohibited by, or held to be invalid under, applicable law, such provision will be ineffective solely to the extent of such prohibition or invalidity, and this will not invalidate the remainder of such provision or any other provision of this Agreement.

D. This Agreement, together with the Construction Lease is the full and complete agreement between Railway and Agency with respect to all matters relating to the maintenance and operation of the Track and supersedes all other agreements between the Parties hereto relating to the maintenance and operation of the Track. However, nothing herein is intended to terminate any surviving obligation of Agency or Agency's obligation to defend and hold Railway harmless in any prior written agreement between the parties, including, but not limited to, the

Construction Lease**.** To the extent the terms of this Agreement conflict with the terms of the Construction Lease, the terms of this Agreement shall control.

E. Neither termination nor expiration of this Agreement will release either party from any liability or obligation under this Agreement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration of this Agreement, or if later, the date when Railway's property is restored in accordance with the applicable provisions of this Agreement or any other written agreement between the parties.

F. One or more waivers of any covenant, term, or condition of this Agreement by Railway or Agency shall not be construed as a waiver of a subsequent breach of the same covenant, term, or condition. The consent or approval by Railway or Agency to or of any act by the other party requiring such consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any subsequent similar act. The remedies set forth hereunder shall be in addition to, and not in limitation of, any other remedies that Railway or Agency may have at law or in equity.

G. The Parties acknowledge that each party and their counsel have reviewed and revised this Agreement and that the normal rule 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 amendments or exhibits hereto.

H. In this Agreement, the use of one gender shall include the other gender; and the singular shall mean the plural, and vice versa, all as the context may require.

I. This Agreement may be executed in multiple counterparts, each of which shall, for all purposes, be deemed an original but which together shall constitute one and the same instrument, and the signature pages from any counterpart may be appended to any other counterpart to assemble fully executed documents, and counterparts of this Agreement may also be exchanged electronically and any electronic version of any Party's signature shall be deemed to be an original signature for all purposes.

J. The captions are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of this Agreement, nor the intent of any provision thereof.

K. Except as may be elsewhere specifically provided in this Agreement, if either party is delayed or hindered in, or prevented from the performance required under this Agreement (except for payment of monetary obligations) by reason of earthquakes, landslides, strikes, lockouts, labor troubles, failure of power, riots, insurrection, war, acts of God or other reason of the like nature not the fault of the party delayed in performance of its obligation ("**Force Majeure**"), such party is excused from such performance for the period of delay. The period for the

performance of any such act will then be extended for the period of such delay. The party claiming Force Majeure shall take commercially reasonable steps to remove the Force Majeure event, and shall promptly notify the other party within a period of five (5) days, excluding weekends and holidays, when it learns of the existence of a Force Majeure condition and will similarly notify the other party within a period of five (5) days, excluding weekends and holidays, when a Force Majeure is terminated.

L. The Parties acknowledge that Jones Lang LaSalle Brokerage, Inc. is acting as representative for BNSF Railway Company.

14) NOTICES. Any notice required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if: (i) placed in the United States mail, certified, return receipt requested, or (ii) deposited into the custody of a nationally recognized overnight delivery service, addressed to the party to be notified at the address for such party specified below, or to such other address as the party to be notified may designate by giving the other party no less than thirty (30) days' advance written notice of such change of address.

If to Railroad: BNSF Railway Company
2650 Lou Menk Drive
Fort Worth, TX 76131-2380
Attn.:

If to Agency: Dallas Area Rapid Transit
Railroad Management Division
P.O. Box 660163
Dallas Texas, 75266-7230

with a copy to: Dallas Area Rapid Transit
Office of General Counsel
1401 Pacific Avenue
Dallas, Texas 75202

Contract Number: Document ID

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

_____	_____
Agency	**BNSF Railway Company**
By: _____	By:_____
Printed Name: _____	Name: _____ Manager Public Projects
Title: _____	Accepted and effective [_____, 20___]
Contact Person: _____	
Address: _____	
City: _____	
State: _____ Zip: _____	
Fax: _____	
Phone: _____	
E-mail: _____	

Field Notes Describing a 89,001 Square Foot (2.043 Acres)

Burlington Northern Railroad Company

Being a 89,001 Square Foot (2.043 Acres) tract of land situated in the Joshua B. Lee Survey, Abstract Number 798 in the City of Carrollton, Dallas County, Texas and being a part of that certain tract of land conveyed to Burlington Northern Railroad Company, a Delaware corporation, formerly named Burlington Northern Inc., as evidenced by Affidavit of Certificate recorded in Volume 81160, Page 1873 of the Deed Records of Dallas County, Texas (D.R.D.C.T.) and further being a part of that certain tract of land conveyed from A.W. PERRY to SAM LAZARUS, as evidenced by Deed dated 5-27-1901 and being recorded in Volume 265, Pg.214 of the Map Records of Dallas County, Texas (M.R.D.C.T.) and being more particularly described by metes and bounds as follows:

BEGINNING a 1/2-inch iron rod (Controlling Monument, (C.M.) found for an ell corner of the existing Southeasterly Right-Of-Way line of said Burlington Northern Railroad, same being a North corner of the remainder of Lot 19, Block A, out of the Woodcrest Estates, an addition to the City of Carrollton, as recorded in Volume 71004, Page 1725, D.R.D.C.T., further being the beginning of a non-tangent curve to the right, having a radius of 3,382.13 feet and whose chord bears South 46 Degrees 40 Minutes 29 Seconds West, for distance 410.09 feet, from which a 1/2-inch iron rod, C.M., found for an ell corner of said Burlington tract of land, same being an ell corner of said Lot 19 bears South 45 Degrees 44 Minutes 27 Seconds East, for a distance of 50.07 feet;

THENCE, along said existing Southeasterly Right-Of-Way line and the Northwesterly line of said Lot 19 and said curve to the right, through a central angle of 06 Degrees 57 Minutes 05 Seconds, passing at a length of 178.03 feet, the Southwest corner of said Lot 19, same being the existing North Right-Of-Way line of DART (Variable width Right-Of-Way at this location), as conveyed to DALLAS AREA RAPID TRANSIT, a Texas regional transportation authority (DART), as evidenced by Warranty Deed recorded in Instrument Number 202100311352 of the Official Public Records of Dallas County, Texas (O.P.R.D.C.T.), continuing for a total arc length of 410.34 feet, to the Southwest corner of said DALLAS AREA RAPID TRANSIT tract of land, same being the existing North Right-Of-Way line of DART (100-foot Right-Of-Way at this location), as conveyed to Dallas Area Rapid Transit, a Texas regional transportation authority, as evidenced by Deed Without Warranty recorded in Volume 2003207, Page 8979, D.R.D.C.T., unable to set corner due to sensitive area;

THENCE, along the existing South Right-Of-Way line of the aforementioned Burlington Northern Railroad, same being said existing North Right-Of-Way of DART, the following two (2) courses:

1. South 65 Degrees 55 Minutes 45 Seconds West, for a distance of 24.33 feet, to the beginning of a non-tangent curve to the left, having a radius of 2,914.79 feet and whose chord bears South 61 Degrees 35 Minutes 54 Seconds West, for a distance of 440.21 feet, unable to set corner due to sensitive area;

2. Along said curve to the left, through a central angle of 08 Degrees 39 Minutes 41 Seconds, for an arc length of 440.63 feet, to a 1/2-inch orange capped iron rod stamped, “RPLS 4260 AD HODGE”, C.M., found for the Southwest of the aforementioned Burlington Northern tract of land, same being the Southeast corner of the remainder of a called 2.182 acre tract of land conveyed to Cedar Supply, Inc., as evidenced by Special Warranty Deed recorded in Volume 89005, Page 5108, D.R.D.C.T.;

THENCE, North 29 Degrees 45 Minutes 18 Seconds West, along the West line of said Burlington Northern tract of land, same being the East line of said Cedar Supply tract of land, passing a 1/2-inch iron rod, C.M., found for the Northeast corner of said Cedar Supply, Inc. tract of land, same being the existing Southeasterly Right-Of-Way line of DART (Variable width Right-Of-Way at this location), as recorded in Instrument Number 201500321792, O.P.R.D.C.T., continuing along the East line of said DART tract of land , for a distance of 64.13 feet, to a 5/8-inch iron rod with a yellow plastic cap stamped, “ARS ENGINEERS” set on the existing Northwesterly Right-Of-Way line of said Burlington Northern Railroad, same being an ell corner of Lot 2, Block 1, out of the THOMAS PARK, PHASE 2, an addition to the City of Carrollton, as recorded in Instrument Number 201400253441, O.P.R.D.C.T.;

THENCE, North 51 Degrees 07 Minutes 43 Seconds East, along said Northwesterly Right-Of-Way line of Burlington Northern Railroad, for a distance of 117.04 feet, to a 5/8-inch iron rod with a yellow plastic cap stamped, “ARS ENGINEERS” set for corner;

THENCE, over and across the aforementioned Burlington Northern Railroad the following six (6) courses:

1. North 57 Degrees 23 Minutes 59 Seconds East, for a distance of 355.62 feet, to a 5/8-inch iron rod with a yellow plastic cap stamped, “ARS ENGINEERS” set for corner;

2. North 54 Degrees 40 Minutes 05 Seconds East, for a distance of 160.20 feet, to a 5/8-inch iron rod with a yellow plastic cap stamped, “ARS ENGINEERS” set for corner;

3. North 49 Degrees 49 Minutes 36 Seconds East, for a distance of 150.85 feet, to a 5/8-inch iron rod with a yellow plastic cap stamped, “ARS ENGINEERS” set for corner;

4. North 45 Degrees 01 Minutes 21 Seconds East, for a distance of 208.85 feet, to a 5/8-inch iron rod with a yellow plastic cap stamped, “ARS ENGINEERS” set for corner;

5. South 49 Degrees 15 Minutes 48 Seconds East, for a distance of 79.56 feet, to a 5/8-inch iron rod with a yellow plastic cap stamped, “ARS ENGINEERS” set for corner;

6. South 44 Degrees 50 Minutes 08 Seconds West, for a distance of 149.05 feet, to the **POINT OF BEGINNING** and containing 89,001 Square Feet or 2.043 Acres of land.

NOTES:

1. The Basis of Bearing is the Texas Coordinate System of 1983, North Central Zone (4202), North American Datum of 1983 (NAD83) 2011 Adjustment, Epoch 2010.00. Ref Station: PRS380175276427

2. Directional Control Line is based off the existing centerline of the main track line of the Cotton Belt. Rails date stamped 1947.

3. All coordinates and distances are US Survey Feet, displayed in surface values and may be converted to grid by dividing by the combined adjustment factor of 1.000136506

(Dallas County Scale Factor).

4. A survey plat of even date herewith accompanies the legal description.

I, Dustin D. Davison, a Registered Professional Land Surveyor in the State of Texas, hereby certify that the land description and plat represent an actual survey made on the ground under my supervision.

PRELIMINARY, THIS DOCUMENTSHALL NOT BE RECORDED FOR ANY PURPOSE AND SHALLNOT BE USED OR VIEWED OR RELIED UPON AS A FINAL SURVEY DOCUMENT



_____

Dustin D. Davison, R.P.L.S. Date
Texas Registration No. 6451
ARS Engineers
3440 Sojourn Dr. Suite 230
Carrollton, Texas 75006
TBPLS Firm No. 101319-00

Exhibit A

Sheet 5 of 6

A = TRACT 3c
CALLED 3.4055 ACRES
City of Dallas
CONVEYS TO
DALLAS AREA RAPID TRANIST
DEED WITHOUT WARRANTY
FILED DECEMBER 12, 2015
INST. No. 201500321792
O.P.R.D.C.T.

B = A.W. PERRY
CONVEYS TO
ST. LOUIS ARKANSAS AND
TEXAS RAILWAY COMPANY
VOL.92, PG.225
D.R.D.C.T.
01-28-1888

C = REMAINDER OF A CALLED
2.182 ACRE TRACT
Cedar Supply, Inc.
SPECIAL WARRANTY DEED
VOL.89005, PG.5108
D.R.D.C.T.

D = BURLINGTON NORTHERN
RAILROAD COMPANY
(VARIABLE WIDTH RIGHT-OF-WAY)
VOL.81160, PG.1873
D.R.C.C.T.

E = (CALLED 13.73 ACRES)
A.W. PERRY
CONVEYS TO
ST. LOUIS ARKANSAS AND
TEXAS RAILWAY COMPANY
VOL.96, PG.272
D.R.D.C.T.
9-22-1887
(100' STRIP THROUGH
ENTIRE PROPERTY)

F = A.W. PERRY
CONVEYS TO
ST. LOUIS ARKANSAS AND
TEXAS RAILWAY COMPANY
VOL.92, PG.225
D.R.D.C.T.
01-28-1888

NOTES:

1. All bearings and coordinates are based on the Texas State Plane Coordinate System NAD 83 (2011) North Central Zone (4202). Ref Station: PRS380175276427
2. All distances shown are surface values and may be converted to grid by dividing by the conversion factor for Dallas County of 1.000136506

0 50 100
Feet

JOSHUA B. LEE SURVEY,
ABSTRACT No. 798

THOMAS PARK, PHASE 2
INST. No. 201400253441
O.P.R.D.C.T.

L2: N29°45'18"W - 64.13'
L3: N51°07'43"E - 117.04'
L4: N57°23'59"E - 355.62'

C2: D=08°39'41" LT
R=2,914.79'
L=440.63'
CB=S61°35'54"W
CL=440.21'

LOT 2, BLOCK 1
100' DRAINAGE EASEMENT, CITY OF CARROLLTON, VOL.68157, PG.142, D.R.D.C.T.
SANITARY SEWER EASEMENT, CITY OF CARROLLTON, VOL.85178, PG.3684, D.R.D.C.T.
EXISTING BNSF RIGHT-OF-WAY
PROPOSED TEMPORARY EASEMENT LINE
A.W. PERRY TO SAM LAZARUS DEED VOL.265, PG.214 M.R.D.C.T. 5/27/1901
2.043 AC.
89,001 SQ. FT.
TO BE ACQUIRED
CB2-008TE
ORIGINAL DEED LINE AND RIGHT-OF-WAY PER VOL.92, PG.225
EXISTING DART RIGHT-OF-WAY
DEED (WITHOUT WARRANTY)
Dallas Area Rapid Transit Property Acquisition Corporation, a Texasnon-profit corporation
CONVEYS TO
Dallas Area Rapid Transit, a Texas regional transportation authority
FILED ON OCTOBER 20, 2003
VOL.2003207, PG.8979
D.R.D.C.T.
1/2" YELLOW C.I.R.F., "VOTEX RPLS 4813" (C.M. FOR BNSF R.O.W. PROJECTION, BEARS: S49°45'54"E - 4.40')
SIGN "BNSF PROPERTY LINE MAINTENANCE BEGINS HERE"
1/2" I.R.F. (C.M.)
1/2" ORANGE C.I.R.F., "RPLS 4260 AD HODGE" (C.M.)
Acquisition
100.00'
EXISTING DART RIGHT-OF-WAY
150.00'
EXISTING DART RIGHT-OF-WAY
DIRECTIONAL CONTROL LINE TRACKS DATED 1947
ORIGINAL DEED LINE AND RIGHT-OF-WAY PER VOL.96, PG.272
50.00'
100.00'
150.00'
EXISTING DART RIGHT-OF-WAY
PLAT / DEED LINE
1/2" YELLOW C.I.R.F., "VOTEX RPLS 4813" (C.M. FOR PL PROJECTION, BEARS: S00°48'38"E - 3.64')
ORIGINAL DEED LINE PER VOL.92, PG.225
EXISTING DART RIGHT-OF-WAY
LOT 4
BLOCK 2
OCCUPIED BY WONG
SPRING AVE. (50' R.O.W.)
VOL.00001, PG.0193
M.R.D.C.T. (CLOSED)
WONG OCCUPATION LINE
CARROLLTON HEIGHTS SUBDIVISION
VOL.00001, PG.0193
M.R.D.C.T.
LOT 8 LOT 7 LOT 6 LOT 5 LOT 4
CALLED 2.99 ACRES
CHUCK H. WONG AND WIFE, MICHEL HUA WONG
WARRANTY DEED WITH VENDOR'S LIEN
VOL.98243, PG.4943
D.R.D.C.T.
BLOCK 3
LOT 9
WONG OCCUPATION LINE

SEE DWG No. RP3-2001
MATCH LINE SEE SHEET 6 OF 6

LEGEND

	SIGN
	UTILITY POLE
LP	LIGHT POLE
	EXISTING RIGHT-OF-WAY
	PROPERTY LINE
	PROPOSED TEMPORARY EASEMENT
M.R.D.C.T.	MAP RECORDS OF DALLAS COUNTY, TEXAS
D.R.T.C.T.	DEED RECORDS, TARRANT COUNTY, TEXAS
O.P.R.D.C.T.	OFFICIAL PUBLIC RECORDS, DALLAS COUNTY, TEXAS
(CM)	CONTROLLING MONUMENT
	5/8 INCH DIAMETER IRON ROD WITH YELLOW PLASTIC CAP STAMPED "ARS ENGINEERS" SET
	FOUND IRON ROD OR MONUMENT AS NOTED

COTTON BELT REGIONAL RAIL SYSTEM
A 89,001 SQUARE FOOT (2.043 ACRES) PARCEL CB2-008TE
TO BE ACQUIRED FROM
BURLINGTON NORTHERN RAILROAD COMPANY

CONTRACT 14806367
DWG No. RP3-2000

SCALE	1"=100'
DRAWN	CWALLWORK
DESIGNED	DDAVISON
CHECKED	RPENA
IN CHARGE	DDAVISON
DATE	1-23-2023

DART PROJECT

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ARS Engineers, Inc.
3440 Sojourn Dr. Suite 230
Carrollton, Texas 75006
(214) 739-3152 Fax (214) 739-3169
Engineering Firm #F-819 Surveying Firm #101319-00

C:\30219046 Cotton Belt\DGN\CB2-008TE\CB2-008TE RP3-2000.dgn
1/23/2023 5/24/2024 8:17:58 AM

Exhibit A

Sheet 6 of 6

NOTES:

1. All bearings and coordinates are based on the Texas State Plane Coordinate System NAD 83 (2011) North Central Zone (4202). Ref Station: PRS380175276427
2. All distances shown are surface values and may be converted to grid by dividing by the conversion factor for Dallas County of 1.000136506

D = Burlington Northern Railroad Company (VARIABLE WIDTH RIGHT-OF-WAY) VOL.81160, PG.1873 D.R.C.C.T.

G = L. ZETTY AND SHIRLEY ZETTY VOL.77094, PG.0901 D.R.D.C.T.

H = REMAINDER OF LOT 19, BLOCK A Woodcrest Estates VOL.71004, PG.1725 D.R.D.C.T.

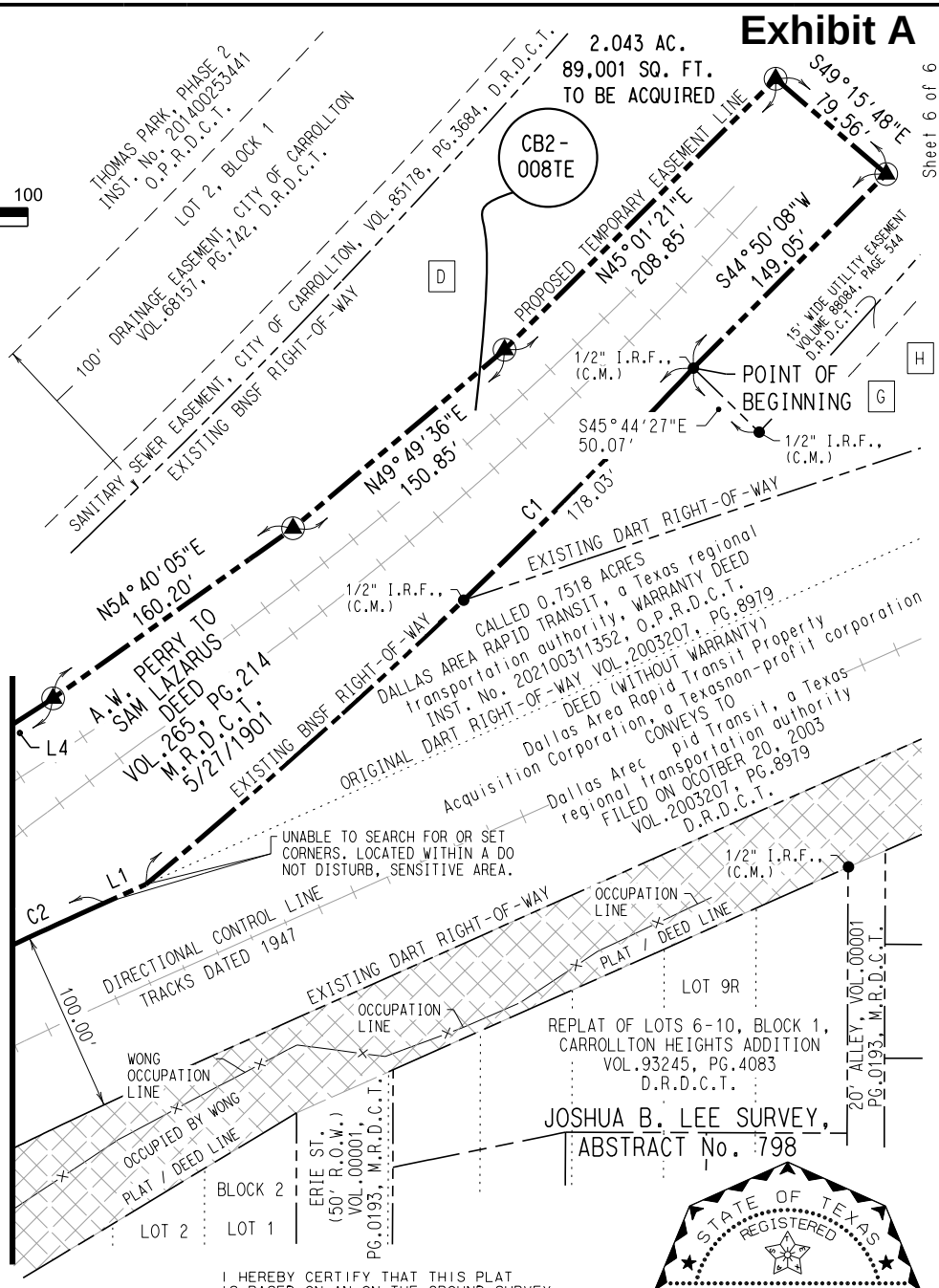
C1: D=06°57'05" RT
R=3,382.13'
L=410.34'
CB=S46°40'29"W
CL=410.09'

C2: D=08°39'41" LT
R=2,914.79'
L=440.63'
CB=S61°35'54"W
CL=440.21'

L1: S65°55'45"W - 24.33'
L4: N57°23'59"E - 355.62'

LEGEND

- SIGN
- UTILITY POLE
- LP LIGHT POLE
- EXISTING RIGHT-OF-WAY
- PROPERTY LINE
- PROPOSED TEMPORARY EASEMENT
- M.R.D.C.T. MAP RECORDS OF DALLAS COUNTY, TEXAS
- D.R.T.C.T. DEED RECORDS, TARRANT COUNTY, TEXAS
- O.P.R.D.C.T. OFFICIAL PUBLIC RECORDS, DALLAS COUNTY, TEXAS
- (CM) CONTROLLING MONUMENT
- 5/8 INCH DIAMETER IRON ROD WITH YELLOW PLASTIC CAP STAMPED "ARS ENGINEERS" SET
- FOUND IRON ROD OR MONUMENT AS NOTED



I HEREBY CERTIFY THAT THIS PLAT IS BASED ON AN ON THE GROUND SURVEY MADE UNDER MY SUPERVISION AND, TO THE BEST OF MY KNOWLEDGE, IS TRUE AND CORRECT.

PRELIMINARY, THIS DOCUMENT SHALL NOT BE RECORDED FOR ANY PURPOSE AND SHALL NOT BE USED OR VIEWED OR RELIED UPON AS A FINAL SURVEY DOCUMENT 1-23-2023

DUSTIN D. DAVISON, R.P.L.S. TEXAS No. 6451

STATE OF TEXAS REGISTERED DUSTIN D. DAVISON 6451 PROFESSIONAL LAND SURVEYOR

COTTON BELT REGIONAL RAIL SYSTEM
A 89,001 SQUARE FOOT (2.043 ACRES) PARCEL CB2-008TE TO BE ACQUIRED FROM BURLINGTON NORTHERN RAILROAD COMPANY

CONTRACT 14806367 DWG No. RP3-2001

SCALE	1"=100'
DRAWN	CWALLWORK
DESIGNED	DDAVISON
CHECKED	RPENA
IN CHARGE	DDAVISON
DATE	1-23-2023

DART PROJECT

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ARS Engineers, Inc.
3440 Sojourn Dr. Suite 230 Carrollton, Texas 75006 (214) 739-3152 Fax (214) 739-3169
Engineering Firm #F-819 Surveying Firm #101319-00

C:\30219046 Cotton Belt\DGN\CB2-008TE\CB2-008TE RP3-2001.dgn 5/24/2024 8:17:58 AM
1/23/2023

DWG No. RC6-3006

Exhibit B

BNSF Construction Responsibility

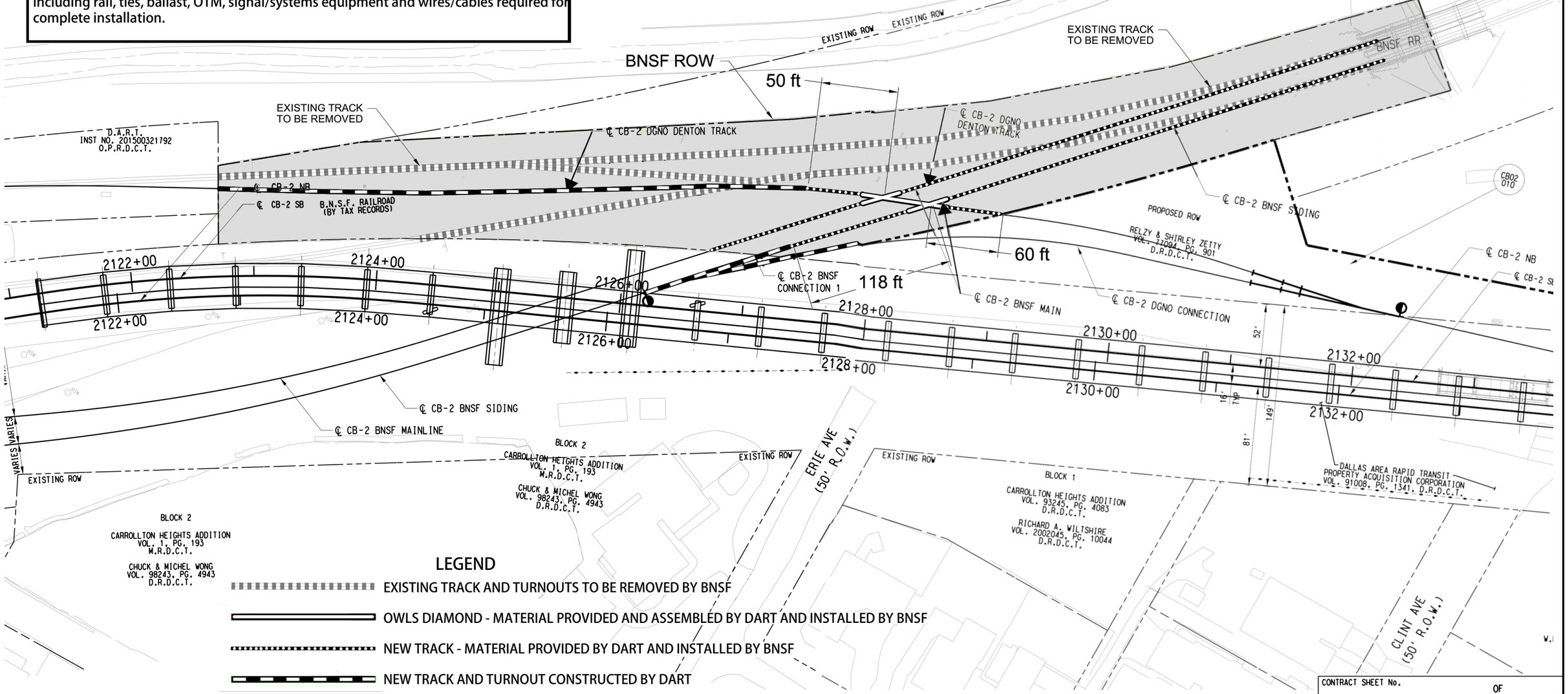
- Remove and retain all trackage within the limits of BNSF ROW including approximately 2,015 feet of track and two # 11 TO's.
- Install OWLS diamond
- Install approx. 527 track feet of new mainline track (CB-2 BNSF Mainline)
- Install approx. 465 track feet of new siding track (CB-2 BNSF Siding)
- Install approx. 75 track feet of new mainline track (CB-2 DGNO Denton Track)

Note: All materials required for BNSF construction shall be provided by DART (AWH) including rail, ties, ballast, OTM, signal/systems equipment and wires/cables required for complete installation.

DART (AWH) Construction Responsibility

- All site preparation including grading, drainage, utilities, conduits, and retaining walls required for complete site development in accordance with the approved plans.
- Install and prepare track bed including subballast
- Install approx. 475 track feet of new mainline track (CB-2 DGNO Denton Track)
- Install No 11 RH PTO (CB-2 DGNO Connection 1)
- Install approx. 55 track feet of new mainline track (CB-2 DGNO Connection)

SCALE (IN FEET)
0 20 40 80



LEGEND

- EXISTING TRACK AND TURNOUTS TO BE REMOVED BY BNSF
- OWLS DIAMOND - MATERIAL PROVIDED AND ASSEMBLED BY DART AND INSTALLED BY BNSF
- NEW TRACK - MATERIAL PROVIDED BY DART AND INSTALLED BY BNSF
- NEW TRACK AND TURNOUT CONSTRUCTED BY DART

CONTRACT SHEET No. OF

REV	DESCRIPTION	BY	ENG	CHK	APP

Jacobs
1999 BRYAN ST, SUITE 1200
DALLAS, TX 75201-3136
Phone: +1 (214) 638-0145
FIRM REGISTRATION No. F-2966

Simon Engineering Consulting Inc.
15443 KNOLL TRAIL DRIVE, SUITE 140
DALLAS, TX 75248
Phone: +1 (214) 466-7870
FIRM REGISTRATION No. F-10997

ARCHER WESTERN HERZOG

DART PROJECT

DART®

© DART, all rights reserved, 1987-2020

SCALE	1"=40'
DRAWN	D. TATUM
DESIGNED	D. TATUM
CHECKED	A. SULLIVAN
IN CHARGE	D. KELLY
DATE	07 JUN 21

CAES

COTTON BELT REGIONAL RAIL
LINE SECTION CB-2

Exhibit B
Construction Responsibility

CONTRACT	DWG No.	REV
C-2033270-01	5/24/2024 9:17:58 AM	0

CB02-RC6-3006.040

31-JAN-2023 15:10
CB02-RC6-3006.040

JEGSVCPWU01
RC6-3007 [Sheet]

EXHIBIT B-1

***** MAINTAIN PROPRIETARY CONFIDENTIALITY *****

BNSF RAILWAY COMPANY
FHPM ESTIMATE FOR
DART

LOCATION BLISS | DETAILS OF ESTIMATE | PLAN ITEM : 958210000 | VERSION : 3

PURPOSE, JUSTIFICATION AND DESCRIPTION

PIP - RDW DIV CITY OF DALLAS OWNS SUB LS 1046 MP 700.10, DART ADDING IN AN ADDITIONAL LINE. REALIGNMENT OF MADILL SUB IS INVOLVED, THIS WILL ADD A DOUBLE OWLS NEAR MP 700. 100% BILLABLE TO DART.

REQUESTED BY ANDREA HAISTEN ON 11/2/23
PRIMARY FUNDING SOURCE IS FHWA
** BUY AMERICA(N) APPLIES **

DESCRIPTION	QUANTITY	U/M	COST	TOTAL $
**********				
LABOR				
**********				
LABOR MOW	5711.4	MH	192,360	
PAYROLL ASSOCIATED COSTS			125,726	
DA OVERHEADS			284,115	
EQUIPMENT EXPENSES			209,672	
INSURANCE EXPENSES			38,125	
TOTAL LABOR COST			849,998	849,998
**********				
MATERIAL				
**********				
TOTAL MATERIAL COST			0	0
**********				
OTHER				
**********				
TOTAL OTHER ITEMS COST			0	0
PROJECT SUBTOTAL				849,998
CONTINGENCIES				0
BILL PREPARATION FEE				8,500
GROSS PROJECT COST				858,498
LESS COST PAID BY BNSF				0
TOTAL BILLABLE COST				858,498

BNSF RAILWAY COMPANY
FHPM ESTIMATE FOR
DART COMMUTER

LOCATION BLISS | DETAILS OF ESTIMATE | PLAN ITEM : 000356708 | VERSION : 2

PURPOSE, JUSTIFICATION AND DESCRIPTION

DART CARROLLTON INTERLOCKING; LS 1046 MP 698.55 TO MP 700.00; RED RIVER DIV, MADILL SUBDIV. SEQ# 89702

THE MATERIAL LIST BELOW REFLECTS TYPICAL REPRESENTATIVE PACKAGES USED FOR ESTIMATING PURPOSES ONLY

THEY CAN BE EXPECTED TO CHANGE AFTER THE ENGINEERING PROCESS. DETAILED AND ACCURATE MATERIAL LISTS WILL BE FURNISHED WHEN ENGINEERING IS COMPLETED.

CONTINUING CONTRACTS HAVE BEEN ESTABLISHED FOR PORTIONS OF SIGNAL WORK ON THE BNSF RAILROAD

THIS ESTIMATE IS GOOD FOR 180 DAYS. THEREAFTER THE ESTIMATE IS SUBJECT TO CHANGE IN COST FOR LABOR, MATERIAL, AND OVERHEAD.

********** SIGNAL WORK ONLY **********

THIS CONCEPTUAL ESTIMATE WAS DONE WITHOUT A FIELD SURVEY.

THIS ESTIMATE IS 100% BILLABLE TO DART COMMUTER.

MAINTAIN PROPRIETARY CONFIDENTIALITY

DESCRIPTION	QUANTITY	U/M	COST	TOTAL $
**********				
LABOR				
**********				
SIGNAL FIELD - INSTALL	4212.0	MH	209,430	
PAYROLL ASSOCIATED COSTS			135,836	
DA OVERHEADS			235,420	
EQUIPMENT EXPENSES			65,321	
INSURANCE EXPENSES			39,561	
TOTAL LABOR COST			685,568	685,568
**********				
MATERIAL				
**********				
TOTAL MATERIAL COST			0	0
**********				
OTHER				
**********				
MACHINE RENTAL	76.0	DAY	19,000	
TOTAL OTHER ITEMS COST			19,000	19,000
PROJECT SUBTOTAL				704,568
CONTINGENCIES				140,913
BILL PREPARATION FEE				8,455
GROSS PROJECT COST				853,936
LESS COST PAID BY BNSF				0
TOTAL BILLABLE COST				853,936

DWG No. RC6-3006

BNSF ROW

EXISTING ROW

℄ CB-2 DGNO DENTON TRACK

B.N.S.F. RAILROAD
(BY TAX RECORDS)

SIGNAL HOUSE

OWLS DIAMOND

PROPOSED SIGNAL

IJ

BNSF RR

60 ft APPROX

RELZY & SHIRLEY ZETTY
VOL. 3004, PG. 901
D.R.D.C.T.

PROPOSED ROW

℄ CB-2 NB

℄ CB-2 SB

℄ CB-2 DGNO CONNECTION

2124+00

2126+00

2128+00

2130+00

2132+00

52'

16' TYP

149'

81'

℄ CB-2 BNSF SIDING

℄ CB-2 BNSF MAINLINE

BLOCK 2
CARROLLTON HEIGHTS ADDITION
VOL. 1, PG. 193
M.R.D.C.T.

CHUCK & MICHEL WONG
VOL. 98243, PG. 4943
D.R.D.C.T.

ERIE AVE
(50' R.O.W.)

BLOCK 1
CARROLLTON HEIGHTS ADDITION
VOL. 93245, PG. 4083
D.R.D.C.T.

RICHARD A. WILTSHIRE
VOL. 2002045, PG. 10044
D.R.D.C.T.

DALLAS AREA RAPID TRANSIT
PROPERTY ACQUISITION CORPORATION
VOL. 91008, PG. 1341, D.R.D.C.T.

CLINT AVE
(50' R.O.W.)

LEGEND

DART LEASED AREA

BNSF ROW

BNSF OWNED & MAINTAINED

DART OWNED & MAINTAINED

CONTRACT SHEET No. OF

REV	ACN	CK	DATE	DESCRIPTION	BY	ENG	CHK	APP

DART PROJECT

SCALE

DRAWN D. TATUM

DESIGNED D. TATUM

CHECKED A. SULLIVAN

IN CHARGE D. KELLY

DATE 07 JUN 21

CAES

COTTON BELT REGIONAL RAIL
LINE SECTION CB-2

EXHIBIT C
OWNERSHIP & MAINTENANCE OBLIGATIONS
DART Leased Area

CONTRACT C-2033270-01 DWG No. CB02-RC6-3006.040 REV 0

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31-JAN-2023 15:10
CB02-RC6-3006.040

JEGSVCPW001
RC6-3007 [Sheet]

Contract Number: Document ID

EXHIBIT "D"

CONTRACTOR REQUIREMENTS

1) General

A. The Contractor must cooperate with BNSF RAILWAY COMPANY, hereinafter referred to as "Railway" where work is over or under on or adjacent to Railway property and/or right-of-way, hereafter referred to as "Railway Property", during the construction of _____ _____ _____.

B. The Contractor must execute and deliver to the Railway duplicate copies of the Exhibit “D-1” Agreement, in the form attached hereto, obligating the Contractor to provide and maintain in full force and effect the insurance called for under Section 3 of said Exhibit “D-1”. Questions regarding procurement of the Railroad Protective Liability Insurance should be directed to Rosa Martinez at Marsh, USA, 214-303-8519.

C. The Contractor must plan, schedule and conduct all work activities so as not to interfere with the movement of any trains on Railway Property.

D. The Contractor's right to enter Railway's Property is subject to the absolute right of Railway to cause the Contractor's work on Railway's Property to cease if, in the opinion of Railway, Contractor's activities create a hazard to Railway's Property, employees, and/or operations. Railway will have the right to stop construction work on the Project if any of the following events take place: (i) Contractor (or any of its subcontractors) performs the Project work in a manner contrary to the plans and specifications approved by Railway; (ii) Contractor (or any of its subcontractors), in Railway’s opinion, prosecutes the Project work in a manner which is hazardous to Railway property, facilities or the safe and expeditious movement of railroad traffic; (iii) the insurance described in the attached Exhibit D-1 is canceled during the course of the Project; or (iv) Contractor fails to pay Railway for the Temporary Construction License or the Easement. The work stoppage will continue until all necessary actions are taken by Contractor or its subcontractor to rectify the situation to the satisfaction of Railway’s Division Engineer or until additional insurance has been delivered to and accepted by Railway. In the event of a breach of (i) this Agreement, (ii) the Temporary Construction License, or (iii) the Easement, Railway may immediately terminate the Temporary Construction License or the Easement. Any such work stoppage under this provision will not give rise to any liability on the part of Railway. Railway’s right to stop the work is in addition to any other rights Railway may have including, but not limited to, actions or suits for damages or lost profits. In the event that Railway desires to stop construction work on the Project, Railway agrees to immediately notify the following individual in writing:

_____
_____
_____
_____

E. The Contractor is responsible for determining and complying with all Federal, State and Local Governmental laws and regulations, including, but not limited to environmental laws and regulations (including but not limited to the Resource Conservation and Recovery Act, as amended; the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, CERCLA), and health and safety laws and regulations. The Contractor hereby indemnifies, defends and holds harmless Railway for, from and against all fines or penalties imposed or assessed by Federal, State and Local Governmental Agencies against the Railway which arise out of Contractor's work under this Agreement.

F. The Contractor must notify **(Agency)** at (_____)_____ and Railway's Manager Public Projects, telephone number (_____)_____ at least thirty (30) calendar days before commencing any work on Railway Property. Contractor's notification to Railway must refer to Railway's file _____.

G. For any bridge demolition and/or falsework above any tracks or any excavations located with any part of the excavations located within, whichever is greater, twenty-five (25) feet of the nearest track or intersecting a slope from the plane of the top of rail on a 2 horizontal to 1 vertical slope beginning at eleven (11) feet from centerline of the nearest track, both measured perpendicular to center line of track, the Contractor must furnish the Railway five sets of working drawings showing details of construction affecting Railway Property and tracks. The working drawing must include the proposed method of installation and removal of falsework, shoring or cribbing, not included in the contract plans and two sets of structural calculations of any falsework, shoring or cribbing. For all excavation and shoring submittal plans, the current "BNSF-UPRR Guidelines for Temporary Shoring" must be used for determining the design loading conditions to be used in shoring design, and all calculations and submittals must be in accordance with the current "BNSF-UPRR Guidelines for Temporary Shoring". All submittal drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. All calculations must take into consideration railway surcharge loading and must be designed to meet American Railway Engineering and Maintenance-of-Way Association (previously known as American Railway Engineering Association) Coopers E-80 live loading standard. All drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. The Contractor must not begin work until notified by the Railway that plans have been approved. The Contractor will be required to use lifting devices such as, cranes and/or winches to place

or to remove any falsework over Railway's tracks. In no case will the Contractor be relieved of responsibility for results obtained by the implementation of said approved plans.

H. Subject to the movement of Railway's trains, Railway will cooperate with the Contractor such that the work may be handled and performed in an efficient manner. The Contractor will have no claim whatsoever for any type of damages or for extra or additional compensation in the event his work is delayed by the Railway.

2) Contractor Safety Orientation

A. No employee of the Contractor, its subcontractors, agents or invitees may enter Railway Property without first having completed Railway's Engineering Contractor Safety Orientation, found on the web site www.BNSFContractor.com. The Contractor must ensure that each of its employees, subcontractors, agents or invitees completes Railway's Engineering Contractor Safety Orientation through internet sessions before any work is performed on the Project. Additionally, the Contractor must ensure that each and every one of its employees, subcontractors, agents or invitees possesses a card certifying completion of the Railway Contractor Safety Orientation before entering Railway Property. The Contractor is responsible for the cost of the Railway Contractor Safety Orientation. The Contractor must renew the Railway Contractor Safety Orientation annually. Further clarification can be found on the web site or from the Railway's Representative.

3) Railway Requirements

A. The Contractor must take protective measures as are necessary to keep railway facilities, including track ballast, free of sand, debris, and other foreign objects and materials resulting from his operations. Any damage to railway facilities resulting from Contractor's operations will be repaired or replaced by Railway and the cost of such repairs or replacement must be paid for by the Agency.

B. The Contractor must notify the Railway's Division Engineer _____ at (_____)_____ and provide blasting plans to the Railway for review seven (7) calendar days prior to conducting any blasting operations adjacent to or on Railway's Property.

C. The Contractor must abide by the following temporary clearances during construction:

- 15'-0" Horizontally from centerline of nearest track
- 21'-6" Vertically above top of rail
- 27'-0" Vertically above top of rail for electric wires carrying less than 750 volts
- 28'-0" Vertically above top of rail for electric wires carrying 750 volts to 15,000 volts

- 30'-0" Vertically above top of rail for electric wires carrying 15,000 volts to 20,000 volts
- 34'-0" Vertically above top of rail for electric wires carrying more than 20,000 volts

D. Upon completion of construction, the following clearances shall be maintained:
- 25' Horizontally from centerline of nearest track
- 23' 6" Vertically above top of rail

E. Any infringement within State statutory clearances due to the Contractor's operations must be submitted to the Railway and to the **(Agency)** and must not be undertaken until approved in writing by the Railway, and until the **(Agency)** has obtained any necessary authorization from the State Regulatory Authority for the infringement. No extra compensation will be allowed in the event the Contractor's work is delayed pending Railway approval, and/or the State Regulatory Authority's approval.

F. In the case of impaired vertical clearance above top of rail, Railway will have the option of installing tell-tales or other protective devices Railway deems necessary for protection of Railway operations. The cost of tell-tales or protective devices will be borne by the Agency.

G. The details of construction affecting the Railway's Property and tracks not included in the contract plans must be submitted to the Railway by **(Agency)** for approval before work is undertaken and this work must not be undertaken until approved by the Railway.

H. At other than public road crossings, the Contractor must not move any equipment or materials across Railway's tracks until permission has been obtained from the Railway. The Contractor must obtain a "Temporary Construction Crossing Agreement" from the Railway prior to moving his equipment or materials across the Railways tracks. The temporary crossing must be gated and locked at all times when not required for use by the Contractor. The temporary crossing for use of the Contractor will be constructed and, at the completion of the project, removed at the expense of the Contractor.

I. Discharge, release or spill on the Railway Property of any hazardous substances, oil, petroleum, constituents, pollutants, contaminants, or any hazardous waste is prohibited and Contractor must immediately notify the Railway's Resource Operations Center at 1(800) 832-5452, of any discharge, release or spills in excess of a reportable quantity. Contractor must not allow Railway Property to become a treatment, storage or transfer facility as those terms are defined in the Resource Conservation and Recovery Act or any state analogue.

J. The Contractor upon completion of the work covered by this contract, must promptly remove from the Railway's Property all of Contractor's tools, equipment, implements and other materials, whether brought upon said property by said Contractor or any

Subcontractor, employee or agent of Contractor or of any Subcontractor, and must cause Railway's Property to be left in a condition acceptable to the Railway's representative.

4) Contractor Roadway Worker on Track Safety Program and Safety Action Plan

A. Each Contractor that will perform work within 25 feet of the centerline of a track must develop and implement a Roadway Worker Protection/On Track Safety Program and work with Railway Project Representative to develop an on track safety strategy as described in the guidelines listed in the on track safety portion of the Safety Orientation. This Program must provide Roadway Worker protection/on track training for all employees of the Contractor, its subcontractors, agents or invitees. This training is reinforced at the job site through job safety briefings. Additionally, each Contractor must develop and implement the Safety Action Plan, as provided for on the web site **www.BNSFContractor.com**, which will be made available to Railway prior to commencement of any work on Railway Property. During the performance of work, the Contractor must audit its work activities. The Contractor must designate an on-site Project Supervisor who will serve as the contact person for the Railway and who will maintain a copy of the Safety Action Plan, safety audits, and Material Safety Datasheets (MSDS), at the job site.

B. Contractor shall have a background investigation performed on all of its employees, subcontractors and agents who will be performing any services for Railroad under this Agreement which are determined by Railroad in its sole discretion **a)** to be on Railroad's property, or **b)** that require access to Railroad Critical Infrastructure, Railroad Critical Information Systems, Railroad's Employees, Hazardous Materials on Railroad's property or is being transported by or otherwise in the custody of Railroad, or Freight in Transit involving Railroad.

i) The required background screening shall at a minimum meet the rail industry background screening criteria defined by the e-RAILSAFE Program as outlined at **www.erailsafe.com**, in addition to any other applicable regulatory requirements.

ii) Contractor shall obtain written consent from all its employees, subcontractors or agents screened in compliance with the e-RAILSAFE Program to participate in the Program on their behalf and to release completed background information to Railroad's designee. Contractor shall be subject to periodic audit to ensure compliance.

iii) Contractor subject to the e-RAILSAFE Program hereunder shall not permit any of its employees, subcontractors or agents to perform services hereunder who are not first approved under e-RAILSAFE Program standards. Railroad shall have the right to deny entry onto its premises or access as described in this section above to any of Contractor's employees, subcontractors or agents who do not display the authorized identification badge issued by a background screening service meeting the standards

set forth in the e-RAILSAFE Program, or who in Railroad's opinion, which may not be unreasonable, may pose a threat to the safety or security of Railroad's operations, assets or personnel.

iv) Contractors shall be responsible for ensuring that its employees, subcontractors and agents are United States citizens or legally working in the United States under a lawful and appropriate work VISA or other work authorization.

5) Railway Flagger Services

A. The Contractor must give Railway's **Roadmaster (telephone _____)** a minimum of thirty (30) calendar days advance notice when flagging services will be required so that the Roadmaster can make appropriate arrangements (i.e., bulletin the flagger's position). If flagging services are scheduled in advance by the Contractor and it is subsequently determined by the parties hereto that such services are no longer necessary, the Contractor must give the Roadmaster five (5) working days advance notice so that appropriate arrangements can be made to abolish the position pursuant to union requirements.

B. Unless determined otherwise by Railway's Project Representative, Railway flagger will be required and furnished when Contractor's work activities are located over, under and/or within twenty-five (25) feet measured horizontally from centerline of the nearest track and when cranes or similar equipment positioned beyond 25-feet from the track centerline could foul the track in the event of tip over or other catastrophic occurrence, but not limited thereto for the following conditions:

i) When, upon inspection by Railway's Representative, other conditions warrant.

ii) When any excavation is performed below the bottom of tie elevation, if, in the opinion of Railway's representative, track or other Railway facilities may be subject to movement or settlement.

iii) When work in any way interferes with the safe operation of trains at timetable speeds.

iv) When any hazard is presented to Railway track, communications, signal, electrical, or other facilities either due to persons, material, equipment or blasting in the vicinity.

v) Special permission must be obtained from the Railway before moving heavy or cumbersome objects or equipment which might result in making the track impassable.

C. Flagging services will be performed by qualified Railway flaggers.

i) Flagging crew generally consists of one employee. However, additional personnel may be required to protect Railway Property and operations, if deemed necessary by the Railways Representative.

ii) Each time a flagger is called, the minimum period for billing will be the eight (8) hour basic day.

iii) The cost of flagger services provided by the Railway will be borne by **(Agency)**. The estimated cost for one (1) flagger is approximately between $1,200.00-$2,000.00 for an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays. The estimated cost for each flagger includes vacation allowance, paid holidays, Railway and unemployment insurance, public liability and property damage insurance, health and welfare benefits, vehicle, transportation, meals, lodging, radio, equipment, supervision and other costs incidental to performing flagging services. Negotiations for Railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase actual or estimated flagging rates. **THE FLAGGING RATE IN EFFECT AT THE TIME OF PERFORMANCE BY THE CONTRACTOR HEREUNDER WILL BE USED TO CALCULATE THE ACTUAL COSTS OF FLAGGING PURSUANT TO THIS PARAGRAPH.**

The cost of **inspector coordinator services** provided by the railway will be borne by **Contractor**. The estimated cost for inspector coordinator services is approximately $1,200 per day. The contractor shall reimburse the railroad for actual costs of inspection services.

iv) The average train traffic on this route is _____ freight trains per 24-hour period at a timetable speed _____ MPH and _____ passenger trains at a timetable speed of _____ MPH.

6) Contractor General Safety Requirements

A. Work in the proximity of railway track(s) is potentially hazardous where movement of trains and equipment can occur at any time and in any direction. All work performed by contractors within 25 feet of any track must be in compliance with FRA Roadway Worker Protection Regulations.

B. Before beginning any task on Railway Property, a thorough job safety briefing must be conducted with all personnel involved with the task and repeated when the personnel or task changes. If the task is within 25 feet of any track, the job briefing must include the Railway's flagger, as applicable, and include the procedures the Contractor will use to protect its employees, subcontractors, agents or invitees from moving any equipment adjacent to or across any Railway track(s).

C. Workers must not work within 25 feet of the centerline of any track without an on track safety strategy approved by the Railway's Project Representative. When authority is provided, every contractor employee must know: (1) who the Railway flagger is, and how to contact the flagger, (2) limits of the authority, (3) the method of communication to stop and resume work, and (4) location of the designated places of safety. Persons or equipment entering flag/work limits that were not previously job briefed, must notify the flagger immediately, and be given a job briefing when working within 25 feet of the center line of track.

D. When Contractor employees are required to work on the Railway Property after normal working hours or on weekends, the Railway's representative in charge of the project must be notified. A minimum of two employees must be present at all times.

E. Any employees, agents or invitees of Contractor or its subcontractors under suspicion of being under the influence of drugs or alcohol, or in the possession of same, will be removed from the Railway's Property and subsequently released to the custody of a representative of Contractor management. Future access to the Railway's Property by that employee will be denied.

F. Any damage to Railway Property, or any hazard noticed on passing trains must be reported immediately to the Railway's representative in charge of the project. Any vehicle or machine which may come in contact with track, signal equipment, or structure (bridge) and could result in a train derailment must be reported immediately to the Railway representative in charge of the project and to the Railway's Resource Operations Center at 1(800) 832-5452. Local emergency numbers are to be obtained from the Railway representative in charge of the project prior to the start of any work and must be posted at the job site.

G. For safety reasons, all persons are prohibited from having pocket knives, firearms or other deadly weapons in their possession while working on Railway's Property.

H. All personnel protective equipment (PPE) used on Railway Property must meet applicable OSHA and ANSI specifications. Current Railway personnel protective equipment requirements are listed on the web site, **www.BNSFContractor.com,** however, a partial list of the requirements include: a) safety glasses with permanently affixed side shields (no yellow lenses); b) hard hats; c) safety shoe with: hardened toes, above-the-ankle lace-up and a defined heel; and d) high visibility retro-reflective work wear. The Railway's representative in charge of the project is to be contacted regarding local specifications for meeting requirements relating to hi-visibility work wear. Hearing protection, fall protection, gloves, and respirators must be worn as required by State and Federal regulations. **(NOTE – Should there be a discrepancy between the information contained on the web site and the information in this paragraph, the web site will govern.)**

I. THE CONTRACTOR MUST NOT PILE OR STORE ANY MATERIALS, MACHINERY OR EQUIPMENT CLOSER THAN 25'-0" TO THE CENTER LINE OF THE NEAREST RAILWAY TRACK. MATERIALS, MACHINERY OR EQUIPMENT MUST NOT BE STORED OR LEFT WITHIN 250 FEET OF ANY HIGHWAY/RAIL AT-GRADE CROSSINGS OR TEMPORARY CONSTRUCTION CROSSING, WHERE STORAGE OF THE SAME WILL OBSTRUCT THE VIEW OF A TRAIN APPROACHING THE CROSSING. PRIOR TO BEGINNING WORK, THE CONTRACTOR MUST ESTABLISH A STORAGE AREA WITH CONCURRENCE OF THE RAILWAY'S REPRESENTATIVE.

J. Machines or vehicles must not be left unattended with the engine running. Parked machines or equipment must be in gear with brakes set and if equipped with blade, pan or bucket, they must be lowered to the ground. All machinery and equipment left unattended on Railway's Property must be left inoperable and secured against movement. (See internet Engineering Contractor Safety Orientation program for more detailed specifications)

K. Workers must not create and leave any conditions at the work site that would interfere with water drainage. Any work performed over water must meet all Federal, State and Local regulations.

L. All power line wires must be considered dangerous and of high voltage unless informed to the contrary by proper authority. For all power lines the minimum clearance between the lines and any part of the equipment or load must be; 200 KV or below - 15 feet; 200 to 350 KV - 20 feet; 350 to 500 KV - 25 feet; 500 to 750 KV - 35 feet; and 750 to 1000 KV - 45 feet. If capacity of the line is not known, a minimum clearance of 45 feet must be maintained. A person must be designated to observe clearance of the equipment and give a timely warning for all operations where it is difficult for an operator to maintain the desired clearance by visual means.

7) Excavation

A. Before excavating, the Contractor must determine whether any underground pipe lines, electric wires, or cables, including fiber optic cable systems are present and located within the Project work area. The Contractor must determine whether excavation on Railway's Property could cause damage to buried cables resulting in delay to Railway traffic and disruption of service to users. Delays and disruptions to service may cause business interruptions involving loss of revenue and profits. Before commencing excavation, the Contractor must contact **BNSF's Field Engineering Representative (_____).** All underground and overhead wires will be considered HIGH VOLTAGE and dangerous until verified with the company having ownership of the line. **It is the Contractor's responsibility to notify any other companies that have underground utilities in the area and arrange for the location of all underground utilities before excavating.**

B. The Contractor must cease all work and notify the Railway immediately before continuing excavation in the area if obstructions are encountered which do not appear on drawings. If the obstruction is a utility and the owner of the utility can be identified, then the Contractor must also notify the owner immediately. If there is any doubt about the location of underground cables or lines of any kind, no work must be performed until the exact location has been determined. There will be no exceptions to these instructions.

C. All excavations must be conducted in compliance with applicable OSHA regulations and, regardless of depth, must be shored where there is any danger to tracks, structures or personnel.

D. Any excavations, holes or trenches on the Railway's Property must be covered, guarded and/or protected when not being worked on. When leaving work site areas at night and over weekends, the areas must be secured and left in a condition that will ensure that Railway employees and other personnel who may be working or passing through the area are protected from all hazards. All excavations must be back filled as soon as possible.

8) Hazardous Waste, Substances and Material Reporting:

A. If Contractor discovers any hazardous waste, hazardous substance, petroleum or other deleterious material, including but not limited to any non-containerized commodity or material, on or adjacent to Railway's Property, in or near any surface water, swamp, wetlands or waterways, while performing any work under this Agreement, Contractor must immediately: (a) notify the Railway's Resource Operations Center at 1(800) 832-5452, of such discovery: (b) take safeguards necessary to protect its employees, subcontractors, agents and/or third parties: and (c) exercise due care with respect to the release, including the taking of any appropriate measure to minimize the impact of such release.

9) Personal Injury Reporting

A. The Railway is required to report certain injuries as a part of compliance with Federal Railroad Administration (FRA) reporting requirements. Any personal injury sustained by an employee of the Contractor, subcontractor or Contractor's invitees while on the Railway's Property must be reported immediately (by phone mail if unable to contact in person) to the Railway's representative in charge of the project. The Non-Employee Personal Injury Data Collection Form contained herein is to be completed and sent by Fax to the Railway at 1(817) 352-7595 and to the Railway’s Project Representative no later than the close of shift on the date of the injury.

Contract Number: Document ID

NON-EMPLOYEE PERSONAL INJURY DATA COLLECTION

(If injuries are in connection with rail equipment accident/incident, highway rail grade crossing accident or automobile accident, ensure that appropriate information is obtained, forms completed and that data entry personnel are aware that injuries relate to that specific event.)

Injured Person Type:

- ☐ Passenger on train (C)
- ☐ Non-employee (N) *(i.e., emp of another railroad, or, non-BNSF emp involved in vehicle accident, including company vehicles)*
- ☐ Contractor/safety
- ☐ Contractor/non-safety sensitive (G)
- ☐ Volunteer/safety sensitive (H)
- ☐ Volunteer/other non-safety sensitive (I)
- ☐ Non-trespasser (D) - to include highway users involved in highway rail grade crossing accidents who did not go around or through gates
- ☐ Trespasser (E) - to include highway users involved in highway rail grade crossing accidents who went around or through gates
- ☐ Non-trespasser (J) - Off railroad property

If train involved, Train ID:

_____

Transmit attached information to Accident/Incident Reporting Center by:
Fax 1-817-352-7595 or by Phone 1-800-697-6736 **or email to:** Accident-Reporting.Center@BNSF.com

Officer Providing Information:

_____ _____ _____
(Name) (Employee No.) (Phone #)

REPORT PREPARED TO COMPLY WITH FEDERAL ACCIDENT REPORTING REQUIREMENTS AND PROTECTED FROM DISCLOSURE PURSUANT TO 49 U.S.C. 20903 AND 83 U.S.C. 490

Contract Number: Document ID

NON-EMPLOYEE PERSONAL INJURY DATA COLLECTION

Please complete this form and provide to the BNSF supervisor, who will input this information into the EHS Star system. For questions, call (817) 352-1267 or email Safety.IncidentReporting@BNSF.com.

Accident City/State: _____ Date: _____ Time: _____

County: _____ Temperature: _____ Weather: _____
(if non-BNSF location)

Name (Last/First/MI): _____

Age: _____ Gender (if available): _____

Company: _____

eRailsafe Badge Number: _____ Expiration Date: _____

BNSF Contractor Badge Number: _____ Expiration Date: _____

Injury: _____ Body Part: _____
(e.g., laceration) (e.g., hand)

Description of accident (including how accident occurred, potential cause, etc.):

_____

_____

Work activity in progress at time of accident: _____

Tools, machinery, or hazardous materials involved in accident: _____

_____

Treatment:

- ☐ First Aid Only
- ☐ Required Medical Treatment
- ☐ Other Medical Treatment: _____

Dr. Name: _____ Date: _____

Dr. Street Address: _____ City: _____ State: _____ Zip: _____

Hospital Name: _____

Hospital Street Address: _____ City: _____ State: _____ Zip: _____

Diagnosis: _____

THIS REPORT IS PART OF BNSF'S ACCIDENT REPORT PURSUANT TO THE ACCIDENT REPORTS STATUTE AND, AS SUCH SHALL NOT "BE ADMITTED AS EVIDENCE OR USED FOR ANY PURPOSE IN ANY SUIT OR ACTION FOR DAMAGES GROWING OUT OF ANY MATTER MENTIONED IN SAID REPORT…." 49 U.S.C. § 20903. See 49 C.F.R. § 225.7(b).

Contract Number: Document ID

EXHIBIT "D-1"

Agreement Between

BNSF RAILWAY COMPANY

and the

CONTRACTOR

Railway File: _____

Agency Project: _____

Account Name, a/an State or Country of Formation Type of Organization (hereinafter called "Contractor"), has entered into an agreement (hereinafter called "Agreement") dated _____, 20__, with **[insert the name of the Agency here]** for the performance of certain work in connection with the following project:_____. Performance of such work will necessarily require Contractor to enter **BNSF RAILWAY COMPANY** (hereinafter called "Railway") right of way and property (hereinafter called "Railway Property"). The Agreement provides that no work will be commenced within Railway Property until the Contractor employed in connection with said work for **[insert Agency name here]** (i) executes and delivers to Railway an Agreement in the form hereof, and (ii) provides insurance of the coverage and limits specified in such Agreement and Section 3 herein. If this Agreement is executed by a party who is not the Owner, General Partner, President or Vice President of Contractor, Contractor must furnish evidence to Railway certifying that the signatory is empowered to execute this Agreement on behalf of Contractor.

Accordingly, in consideration of Railway granting permission to Contractor to enter upon Railway Property and as an inducement for such entry, Contractor, effective on the date of the Agreement, has agreed and does hereby agree with Railway as follows:

1) RELEASE OF LIABILITY AND INDEMNITY

A. Contractor hereby waives, releases, indemnifies, defends and holds harmless Railway for all judgments, awards, claims, demands, and expenses (including attorneys' fees), for injury or death to all persons, including Railway's and Contractor's officers and employees, and for loss and damage to property belonging to any person, arising in any manner from Contractor's or any of Contractor's subcontractors' acts or omissions or any work

performed on or about Railway's property or right-of-way. **THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DESTRUCTION, DAMAGE, DEATH, OR INJURY WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF RAILWAY, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENSIONAL MISCONDUCT OR GROSS NEGLIGENCE OF RAILWAY.**

B. THE INDEMNIFICATION OBLIGATION ASSUMED BY CONTRACTOR INCLUDES ANY CLAIMS, SUITS OR JUDGMENTS BROUGHT AGAINST RAILWAY UNDER THE FEDERAL EMPLOYEE'S LIABILITY ACT, INCLUDING CLAIMS FOR STRICT LIABILITY UNDER THE SAFETY APPLIANCE ACT OR THE LOCOMOTIVE INSPECTION ACT, WHENEVER SO CLAIMED.

C. Contractor further agrees, at its expense, in the name and on behalf of Railway, that it will adjust and settle all claims made against Railway, and will, at Railway's discretion, appear and defend any suits or actions of law or in equity brought against Railway on any claim or cause of action arising or growing out of or in any manner connected with any liability assumed by Contractor under this Agreement for which Railway is liable or is alleged to be liable. Railway will give notice to Contractor, in writing, of the receipt or dependency of such claims and thereupon Contractor must proceed to adjust and handle to a conclusion such claims, and in the event of a suit being brought against Railway, Railway may forward summons and complaint or other process in connection therewith to Contractor, and Contractor, at Railway's discretion, must defend, adjust, or settle such suits and protect, indemnify, and save harmless Railway from and against all damages, judgments, decrees, attorney's fees, costs, and expenses growing out of or resulting from or incident to any such claims or suits.

D. In addition to any other provision of this Agreement, in the event that all or any portion of this Article shall be deemed to be inapplicable for any reason, including without limitation as a result of a decision of an applicable court, legislative enactment or regulatory order, the parties agree that this Article shall be interpreted as requiring Contractor to indemnify Railway to the fullest extent permitted by applicable law. **THROUGH THIS AGREEMENT THE PARTIES EXPRESSLY INTEND FOR CONTRACTOR TO INDEMNIFY RAILWAY FOR RAILWAY'S ACTS OF NEGLIGENCE.**

E. It is mutually understood and agreed that the assumption of liabilities and indemnification provided for in this Agreement survive any termination of this Agreement.

2) TERM

A. This Agreement is effective from the date of the Agreement until (i) the completion of the project set forth herein, and (ii) full and complete payment to Railway of any and all sums or other amounts owing and due hereunder.

3) INSURANCE

Contractor shall, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

A. Commercial General Liability "CGL" Insurance

i) The policy will provide a minimum of $5,000,000 each occurrence and an aggregate limit of at least $10,000,000 but in no event less than the amount otherwise carried by the provider. Coverage must be purchased on a post 2004 ISO occurrence form or equivalent and include coverage for, but not limited to, the following:

(1) Bodily Injury and Property Damage

(2) Personal Injury and Advertising Injury

(3) Fire legal liability

(4) Products and completed operations

ii) This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

(1) definition of "Insured Contract" will be amended to remove any exclusion or other limitation for any work being done within 50 feet of RAILWAY's property.

(2) Waiver of subrogation in favor of and acceptable to RAILWAY; and

(3) Additional insured endorsement in favor of and acceptable to RAILWAY and include coverage for ongoing operations and completed operations; and

(4) Separation of insureds; and

(5) The policy will be primary and non-contributing with respect to any insurance carried by RAILWAY.

iii) It is agreed that the workers' compensation and employers' liability related exclusions

in the Commercial General Liability insurance policy(s) required herein are intended to apply to employees of the policy holder and shall not apply to ***Railway*** employees.

iv) No other endorsements limiting coverage as respects obligations under this Agreement may be included on the policy with regard to the work being performed under this agreement.

B. Business Automobile Insurance

i) The insurance will provide minimum coverage with a combined single limit of at least $1,000,000 per accident, and include coverage for, but not limited to the following:

(1) Bodily injury and property damage

(2) Any and all vehicles owned, used or hired

ii) The policy will include the following endorsements or language, which will be indicated on or attached to the certificate of insurance:

(1) Waiver of subrogation in favor of and acceptable to RAILWAY;

(2) Additional insured endorsement in favor of and acceptable to RAILWAY;

(3) Separation of insureds;

(4) The policy shall be primary and non-contributing with respect to any insurance carried by RAILWAY.

C. Workers Compensation and Employers Liability Insurance

i) Workers Compensation and Employers Liability insurance including coverage for, but not limited to:

(1) Contractor's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.

(2) Employers' Liability (Part B) with limits of at least $500,000 each accident, $500,000 by disease policy limit, $500,000 by disease each employee.

ii) This policy shall also contain the following endorsements or language, which shall be

indicated on the certificate of insurance:

(1) Waiver of subrogation in favor of and acceptable to Railway.

D. Railroad Protective Liability insurance

i) Railroad Protective Liability insurance naming only the ***Railway*** as the Insured with coverage of at least $5,000,000 per occurrence and $10,000,000 in the aggregate. The policy Must be issued on a standard ISO form CG 00 35 12 04 and include the following:

(1) Endorsed to include the Pollution Exclusion Amendment

(2) Endorsed to include the Limited Seepage and Pollution Endorsement.

(3) Endorsed to remove any exclusion for punitive damages.

(4) No other endorsements restricting coverage may be added.

(5) The original policy must be provided to the ***Railway*** prior to performing any work or services under this Agreement.

(6) Definition of "Physical Damage to Property" shall be endorsed to read: "means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured' care, custody, and control arising out of the acts or omissions of the contractor named on the Declarations.

In lieu of providing a Railroad Protective Liability Policy, Licensee may participate (if available) in Railway's Blanket Railroad Protective Liability Insurance Policy.

E. Other Requirements:

i) Where allowable by law, all policies (applying to coverage listed above) shall contain no exclusion for punitive damages.

ii) Contractor agrees to waive its right of recovery against ***Railway*** for all claims and suits against ***Railway***. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against ***Railway*** for all claims and suits. Contractor further waives its right of recovery, and its insurers also waive their right of subrogation against ***Railway*** for loss of its owned or leased property or property under Contractor's care, custody or control.

iii) Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.

iv) Contractor is not allowed to self-insure without the prior written consent of ***Railway.*** If granted by ***Railway***, any self-insured retention or other financial responsibility for claims shall be covered directly by Contractor in lieu of insurance. Any and all ***Railway*** liabilities that would otherwise, in accordance with the provisions of this Agreement, be covered by Contractor's insurance will be covered as if Contractor elected not to include a deductible, self-insured retention or other financial responsibility for claims.

v) Prior to commencing services, Contractor shall furnish to ***Railway*** an acceptable certificate(s) of insurance from an authorized representative evidencing the required coverage(s), endorsements, and amendments. The certificate should be directed to the following address:

BNSF Railway Company
c/o CertFocus
P.O. Box 140528
Kansas City, MO 64114
Toll Free: 877-576-2378
Fax number: 817-840-7487
Email: BNSF@certfocus.com
www.certfocus.com

vi) Contractor shall notify Railway in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration.

vii) Any insurance policy shall be written by a reputable insurance company acceptable to Railway or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.

viii) If coverage is purchased on a "claims made" basis, Contractor hereby agrees to maintain coverage in force for a minimum of three years after expiration, cancellation or termination of this Agreement. Annually Contractor agrees to provide evidence of such coverage as required hereunder.

ix) Contractor represents that this Agreement has been thoroughly reviewed by Contractor's insurance agent(s)/broker(s), who have been instructed by Contractor to procure the insurance coverage required by this Agreement.

x) Not more frequently than once every five years, Railway may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

xi) If any portion of the operation is to be subcontracted by Contractor, Contractor shall require that the subcontractor shall provide and maintain insurance coverage(s) as set forth herein, naming Railway as an additional insured, and shall require that the subcontractor shall release, defend and indemnify Railway to the same extent and under the same terms and conditions as Contractor is required to release, defend and indemnify Railway herein.

xii) Failure to provide evidence as required by this section shall entitle, but not require, Railway to terminate this Agreement immediately. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of Contractor's obligations hereunder.

xiii) The fact that insurance (including, without limitation, self-insurance) is obtained by Contractor shall not be deemed to release or diminish the liability of Contractor including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railway shall not be limited by the amount of the required insurance coverage.

xiv) In the event of a claim or lawsuit involving Railway arising out of this agreement, Contractor will make available any required policy covering such claim or lawsuit.

xv) These insurance provisions are intended to be a separate and distinct obligation on the part of the Contractor. Therefore, these provisions shall be enforceable and Contractor shall be bound thereby regardless of whether or not indemnity provisions are determined to be enforceable in the jurisdiction in which the work covered hereunder is performed.

xvi) For purposes of this section, Railway shall mean "Burlington Northern Santa Fe LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

E. Commercial General Liability "CGL" Insurance

i) The policy will provide a minimum of $2,000,000 each occurrence and an aggregate limit of at least $4,000,000 but in no event less than the amount otherwise carried by the provider. Coverage must be purchased on a post 2004 ISO occurrence form or equivalent and include coverage for, but not limited to, the following:

(1) Bodily Injury and Property Damage

(2) Personal Injury and Advertising Injury

(3) Fire legal liability

(4) Products and completed operations

ii) This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

(1) definition of "Insured Contract" will be amended to remove any exclusion or other limitation for any work being done within 50 feet of RAILWAY's property.

(2) Waiver of subrogation in favor of and acceptable to RAILWAY; and

(3) Additional insured endorsement in favor of and acceptable to RAILWAY and include coverage for ongoing operations and completed operations; and

(4) Separation of insureds; and

(5) The policy will be primary and non-contributing with respect to any insurance carried by RAILWAY.

iii) It is agreed that the workers' compensation and employers' liability related exclusions in the Commercial General Liability insurance policy(s) required herein are intended to apply to employees of the policy holder and shall not apply to ***Railway*** employees.

iv) No other endorsements limiting coverage as respects obligations under this Agreement may be included on the policy with regard to the work being performed under this agreement.

F. Business Automobile Insurance

i) The insurance will provide minimum coverage with a combined single limit of at least $1,000,000 per accident, and include coverage for, but not limited to the following:

(1) Bodily injury and property damage

(2) Any and all vehicles owned, used or hired

ii) The policy will include the following endorsements or language, which will be indicated on or attached to the certificate of insurance:

(1) Waiver of subrogation in favor of and acceptable to RAILWAY;

(2) Additional insured endorsement in favor of and acceptable to RAILWAY;

(3) Separation of insureds;

(4) The policy shall be primary and non-contributing with respect to any insurance carried by RAILWAY.

G. Workers Compensation and Employers Liability Insurance

i) Workers Compensation and Employers Liability insurance including coverage for, but not limited to:

(1) Contractor's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.

(2) Employers' Liability (Part B) with limits of at least $500,000 each accident, $500,000 by disease policy limit, $500,000 by disease each employee.

ii) This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

(1) Waiver of subrogation in favor of and acceptable to Railway.

H. Railroad Protective Liability insurance

i) Railroad Protective Liability insurance naming only the ***Railway*** as the Insured with

coverage of at least $2,000,000 per occurrence and $6,000,000 in the aggregate. The policy Must be issued on a standard ISO form CG 00 35 12 04 and include the following:

(1) Endorsed to include the Pollution Exclusion Amendment

(2) Endorsed to include the Limited Seepage and Pollution Endorsement.

(3) Endorsed to remove any exclusion for punitive damages.

(4) No other endorsements restricting coverage may be added.

(5) The original policy must be provided to the ***Railway*** prior to performing any work or services under this Agreement.

(6) Definition of "Physical Damage to Property" shall be endorsed to read: "means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured' care, custody, and control arising out of the acts or omissions of the contractor named on the Declarations.

In lieu of providing a Railroad Protective Liability Policy, Licensee may participate (if available) in Railway's Blanket Railroad Protective Liability Insurance Policy.

F. <u>Other Requirements:</u>

i) Where allowable by law, all policies (applying to coverage listed above) shall contain no exclusion for punitive damages.

ii) Contractor agrees to waive its right of recovery against ***Railway*** for all claims and suits against ***Railway***. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against ***Railway*** for all claims and suits. Contractor further waives its right of recovery, and its insurers also waive their right of subrogation against ***Railway*** for loss of its owned or leased property or property under Contractor's care, custody or control.

iii) Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.

iv) Contractor is not allowed to self-insure without the prior written consent of ***Railway.*** If granted by ***Railway***, any self-insured retention or other financial responsibility for claims shall be covered directly by Contractor in lieu of insurance. Any and all ***Railway***

liabilities that would otherwise, in accordance with the provisions of this Agreement, be covered by Contractor's insurance will be covered as if Contractor elected not to include a deductible, self-insured retention or other financial responsibility for claims.

v) Prior to commencing services, Contractor shall furnish to ***Railway*** an acceptable certificate(s) of insurance from an authorized representative evidencing the required coverage(s), endorsements, and amendments. The certificate should be directed to the following address:

BNSF Railway Company
c/o CertFocus
P.O. Box 140528
Kansas City, MO 64114
Toll Free: 877-576-2378
Fax number: 817-840-7487
Email: BNSF@certfocus.com
www.certfocus.com

vi) Contractor shall notify Railway in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration.

vii) Any insurance policy shall be written by a reputable insurance company acceptable to Railway or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.

viii) If coverage is purchased on a "claims made" basis, Contractor hereby agrees to maintain coverage in force for a minimum of three years after expiration, cancellation or termination of this Agreement. Annually Contractor agrees to provide evidence of such coverage as required hereunder.

ix) Contractor represents that this Agreement has been thoroughly reviewed by Contractor's insurance agent(s)/broker(s), who have been instructed by Contractor to procure the insurance coverage required by this Agreement.

x) Not more frequently than once every five years, Railway may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

xi) If any portion of the operation is to be subcontracted by Contractor, Contractor shall require that the subcontractor shall provide and maintain insurance coverage(s) as set forth herein, naming Railway as an additional insured, and shall require that the subcontractor shall release, defend and indemnify Railway to the same extent and under the same terms and conditions as Contractor is required to release, defend and indemnify Railway herein.

xii) Failure to provide evidence as required by this section shall entitle, but not require, Railway to terminate this Agreement immediately. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of Contractor's obligations hereunder.

xiii) The fact that insurance (including, without limitation, self-insurance) is obtained by Contractor shall not be deemed to release or diminish the liability of Contractor including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railway shall not be limited by the amount of the required insurance coverage.

xiv) In the event of a claim or lawsuit involving Railway arising out of this agreement, Contractor will make available any required policy covering such claim or lawsuit.

xv) These insurance provisions are intended to be a separate and distinct obligation on the part of the Contractor. Therefore, these provisions shall be enforceable and Contractor shall be bound thereby regardless of whether or not indemnity provisions are determined to be enforceable in the jurisdiction in which the work covered hereunder is performed.

xvi) For purposes of this section, Railway shall mean “Burlington Northern Santa Fe LLC”, “BNSF Railway Company” and the subsidiaries, successors, assigns and affiliates of each.

I. Commercial General Liability “CGL” Insurance

i) The policy will provide a minimum of $2,000,000 each occurrence and an aggregate limit of at least $6,000,000 but in no event less than the amount otherwise carried by the provider. Coverage must be purchased on a post 2004 ISO occurrence form or

equivalent and include coverage for, but not limited to, the following:

(1) Bodily Injury and Property Damage

(2) Personal Injury and Advertising Injury

(3) Fire legal liability

(4) Products and completed operations

ii) This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

(1) definition of "Insured Contract" will be amended to remove any exclusion or other limitation for any work being done within 50 feet of RAILWAY's property.

(2) Waiver of subrogation in favor of and acceptable to RAILWAY; and

(3) Additional insured endorsement in favor of and acceptable to RAILWAY and include coverage for ongoing operations and completed operations; and

(4) Separation of insureds; and

(5) The policy will be primary and non-contributing with respect to any insurance carried by RAILWAY.

iii) It is agreed that the workers' compensation and employers' liability related exclusions in the Commercial General Liability insurance policy(s) required herein are intended to apply to employees of the policy holder and shall not apply to ***Railway*** employees.

iv) No other endorsements limiting coverage as respects obligations under this Agreement may be included on the policy with regard to the work being performed under this agreement.

J. <u>Business Automobile Insurance</u>

i) The insurance will provide minimum coverage with a combined single limit of at least

$1,000,000 per accident, and include coverage for, but not limited to the following:

(1) Bodily injury and property damage

(2) Any and all vehicles owned, used or hired

ii) The policy will include the following endorsements or language, which will be indicated on or attached to the certificate of insurance:

(1) Waiver of subrogation in favor of and acceptable to RAILWAY;

(2) Additional insured endorsement in favor of and acceptable to RAILWAY;

(3) Separation of insureds;

(4) The policy shall be primary and non-contributing with respect to any insurance carried by RAILWAY.

K. Workers Compensation and Employers Liability Insurance

i) Workers Compensation and Employers Liability insurance including coverage for, but not limited to:

(1) Contractor's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.

(2) Employers' Liability (Part B) with limits of at least $500,000 each accident, $500,000 by disease policy limit, $500,000 by disease each employee.

ii) This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

(1) Waiver of subrogation in favor of and acceptable to Railway.

L. Railroad Protective Liability insurance

i) Railroad Protective Liability insurance naming only the ***Railway*** as the Insured with coverage of at least $2,000,000 per occurrence and $6,000,000 in the aggregate. The policy Must be issued on a standard ISO form CG 00 35 12 04 and include the

following:

(1) Endorsed to include the Pollution Exclusion Amendment

(2) Endorsed to include the Limited Seepage and Pollution Endorsement.

(3) Endorsed to remove any exclusion for punitive damages.

(4) No other endorsements restricting coverage may be added.

(5) The original policy must be provided to the ***Railway*** prior to performing any work or services under this Agreement.

(6) Definition of "Physical Damage to Property" shall be endorsed to read: "means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured' care, custody, and control arising out of the acts or omissions of the contractor named on the Declarations.

In lieu of providing a Railroad Protective Liability Policy, Licensee may participate (if available) in Railway's Blanket Railroad Protective Liability Insurance Policy.

G. Other Requirements:

i) Where allowable by law, all policies (applying to coverage listed above) shall contain no exclusion for punitive damages.

ii) Contractor agrees to waive its right of recovery against ***Railway*** for all claims and suits against ***Railway***. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against ***Railway*** for all claims and suits. Contractor further waives its right of recovery, and its insurers also waive their right of subrogation against ***Railway*** for loss of its owned or leased property or property under Contractor's care, custody or control.

iii) Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.

iv) Contractor is not allowed to self-insure without the prior written consent of ***Railway.*** If granted by ***Railway***, any self-insured retention or other financial responsibility for claims shall be covered directly by Contractor in lieu of insurance. Any and all ***Railway*** liabilities that would otherwise, in accordance with the provisions of this Agreement,

be covered by Contractor's insurance will be covered as if Contractor elected not to include a deductible, self-insured retention or other financial responsibility for claims.

v) Prior to commencing services, Contractor shall furnish to ***Railway*** an acceptable certificate(s) of insurance from an authorized representative evidencing the required coverage(s), endorsements, and amendments. The certificate should be directed to the following address:

BNSF Railway Company
c/o CertFocus
P.O. Box 140528
Kansas City, MO 64114
Toll Free: 877-576-2378
Fax number: 817-840-7487
Email: BNSF@certfocus.com
www.certfocus.com

vi) Contractor shall notify Railway in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration.

vii) Any insurance policy shall be written by a reputable insurance company acceptable to Railway or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.

viii) If coverage is purchased on a "claims made" basis, Contractor hereby agrees to maintain coverage in force for a minimum of three years after expiration, cancellation or termination of this Agreement. Annually Contractor agrees to provide evidence of such coverage as required hereunder.

ix) Contractor represents that this Agreement has been thoroughly reviewed by Contractor's insurance agent(s)/broker(s), who have been instructed by Contractor to procure the insurance coverage required by this Agreement.

x) Not more frequently than once every five years, Railway may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

xi) If any portion of the operation is to be subcontracted by Contractor, Contractor shall require that the subcontractor shall provide and maintain insurance coverage(s) as set

forth herein, naming Railway as an additional insured, and shall require that the subcontractor shall release, defend and indemnify Railway to the same extent and under the same terms and conditions as Contractor is required to release, defend and indemnify Railway herein.

xii) Failure to provide evidence as required by this section shall entitle, but not require, Railway to terminate this Agreement immediately. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of Contractor's obligations hereunder.

xiii) The fact that insurance (including, without limitation, self-insurance) is obtained by Contractor shall not be deemed to release or diminish the liability of Contractor including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railway shall not be limited by the amount of the required insurance coverage.

xiv) In the event of a claim or lawsuit involving Railway arising out of this agreement, Contractor will make available any required policy covering such claim or lawsuit.

xv) These insurance provisions are intended to be a separate and distinct obligation on the part of the Contractor. Therefore, these provisions shall be enforceable and Contractor shall be bound thereby regardless of whether or not indemnity provisions are determined to be enforceable in the jurisdiction in which the work covered hereunder is performed.

xvi) For purposes of this section, Railway shall mean “Burlington Northern Santa Fe LLC”, “BNSF Railway Company” and the subsidiaries, successors, assigns and affiliates of each.

M. Commercial General Liability “CGL” Insurance

i) This insurance shall contain broad form contractual liability with a combined single limit of a minimum of **$2,000,000** each occurrence and an aggregate limit of at least **$2,000,000 (TXDOT Agreements only)** but in no event less than the amount otherwise carried by the Contractor. Coverage must be purchased on a post 2004 ISO occurrence form or equivalent and include coverage for, but not limited to, the

following:

(1) Bodily Injury and Property Damage

(2) Personal Injury and Advertising Injury

(3) Fire legal liability

(4) Products and completed operations

ii) This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

(1) definition of "Insured Contract" will be amended to remove any exclusion or other limitation for any work being done within 50 feet of RAILWAY's property.

(2) Waiver of subrogation in favor of and acceptable to RAILWAY; and

(3) Additional insured endorsement in favor of and acceptable to RAILWAY and include coverage for ongoing operations and completed operations; and

(4) Separation of insureds; and

(5) The policy will be primary and non-contributing with respect to any insurance carried by RAILWAY.

iii) It is agreed that the workers' compensation and employers' liability related exclusions in the Commercial General Liability insurance policy(s) required herein are intended to apply to employees of the policy holder and shall not apply to ***Railway*** employees.

iv) No other endorsements limiting coverage as respects obligations under this Agreement may be included on the policy with regard to the work being performed under this agreement.

N. <u>Business Automobile Insurance</u>

i) The insurance will provide minimum coverage with a combined single limit of at least

$1,000,000 per accident, and include coverage for, but not limited to the following:

(1) Bodily injury and property damage

(2) Any and all vehicles owned, used or hired

ii) The policy will include the following endorsements or language, which will be indicated on or attached to the certificate of insurance:

(1) Waiver of subrogation in favor of and acceptable to RAILWAY;

(2) Additional insured endorsement in favor of and acceptable to RAILWAY;

(3) Separation of insureds;

(4) The policy shall be primary and non-contributing with respect to any insurance carried by RAILWAY.

O. Workers Compensation and Employers Liability Insurance

i) Workers Compensation and Employers Liability insurance including coverage for, but not limited to:

(1) Contractor's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.

(2) Employers' Liability (Part B) with limits of at least $500,000 each accident, $500,000 by disease policy limit, $500,000 by disease each employee.

ii) This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

(1) Waiver of subrogation in favor of and acceptable to Railway.

P. Railroad Protective Liability insurance

i) Railroad Protective Liability insurance naming only the ***Railway*** as the Insured with coverage of at least **$2,000,000** per occurrence and **$6,000,000** in the aggregate. The policy Must be issued on a standard ISO form CG 00 35 12 04 and include the

following:

(1) Endorsed to include the Pollution Exclusion Amendment

(2) Endorsed to include the Limited Seepage and Pollution Endorsement.

(3) Endorsed to remove any exclusion for punitive damages.

(4) No other endorsements restricting coverage may be added.

(5) The original policy must be provided to the ***Railway*** prior to performing any work or services under this Agreement.

(6) Definition of "Physical Damage to Property" shall be endorsed to read: "means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured' care, custody, and control arising out of the acts or omissions of the contractor named on the Declarations.

In lieu of providing a Railroad Protective Liability Policy, Licensee may participate (if available) in Railway's Blanket Railroad Protective Liability Insurance Policy.

H. <u>Other Requirements:</u>

i) Where allowable by law, all policies (applying to coverage listed above) shall contain no exclusion for punitive damages.

ii) Contractor agrees to waive its right of recovery against ***Railway*** for all claims and suits against ***Railway***. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against ***Railway*** for all claims and suits. Contractor further waives its right of recovery, and its insurers also waive their right of subrogation against ***Railway*** for loss of its owned or leased property or property under Contractor's care, custody or control.

iii) Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.

iv) Contractor is not allowed to self-insure without the prior written consent of ***Railway.*** If granted by ***Railway***, any self-insured retention or other financial responsibility for claims shall be covered directly by Contractor in lieu of insurance. Any and all ***Railway*** liabilities that would otherwise, in accordance with the provisions of this Agreement,

be covered by Contractor's insurance will be covered as if Contractor elected not to include a deductible, self-insured retention or other financial responsibility for claims.

v) Prior to commencing services, Contractor shall furnish to ***Railway*** an acceptable certificate(s) of insurance from an authorized representative evidencing the required coverage(s), endorsements, and amendments. The certificate should be directed to the following address:

BNSF Railway Company
c/o CertFocus
P.O. Box 140528
Kansas City, MO 64114
Toll Free: 877-576-2378
Fax number: 817-840-7487
Email: BNSF@certfocus.com
www.certfocus.com

vi) Contractor shall notify Railway in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration.

vii) Any insurance policy shall be written by a reputable insurance company acceptable to Railway or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.

viii) If coverage is purchased on a "claims made" basis, Contractor hereby agrees to maintain coverage in force for a minimum of three years after expiration, cancellation or termination of this Agreement. Annually Contractor agrees to provide evidence of such coverage as required hereunder.

ix) Contractor represents that this Agreement has been thoroughly reviewed by Contractor's insurance agent(s)/broker(s), who have been instructed by Contractor to procure the insurance coverage required by this Agreement.

x) Not more frequently than once every five years, Railway may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

xi) If any portion of the operation is to be subcontracted by Contractor, Contractor shall require that the subcontractor shall provide and maintain insurance coverage(s) as set

forth herein, naming Railway as an additional insured, and shall require that the subcontractor shall release, defend and indemnify Railway to the same extent and under the same terms and conditions as Contractor is required to release, defend and indemnify Railway herein.

xii) Failure to provide evidence as required by this section shall entitle, but not require, Railway to terminate this Agreement immediately. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of Contractor's obligations hereunder.

xiii) The fact that insurance (including, without limitation, self-insurance) is obtained by Contractor shall not be deemed to release or diminish the liability of Contractor including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railway shall not be limited by the amount of the required insurance coverage.

xiv) In the event of a claim or lawsuit involving Railway arising out of this agreement, Contractor will make available any required policy covering such claim or lawsuit.

xv) These insurance provisions are intended to be a separate and distinct obligation on the part of the Contractor. Therefore, these provisions shall be enforceable and Contractor shall be bound thereby regardless of whether or not indemnity provisions are determined to be enforceable in the jurisdiction in which the work covered hereunder is performed.

xvi) For purposes of this section, Railway shall mean “Burlington Northern Santa Fe LLC”, “BNSF Railway Company” and the subsidiaries, successors, assigns and affiliates of each.

Q. Commercial General Liability “CGL” Insurance

i) This insurance shall contain broad form contractual liability with a combined single limit of a minimum of **$2,000,000 (TXDOT Agreements only)** each occurrence and an aggregate limit of at least **$2,000,000 (TXDOT Agreements only)** but in no event less than the amount otherwise carried by the Contractor. Coverage must be purchased on a post 2004 ISO occurrence form or equivalent and include coverage for, but not

limited to, the following:

(1) Bodily Injury and Property Damage

(2) Personal Injury and Advertising Injury

(3) Fire legal liability

(4) Products and completed operations

ii) This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

(1) definition of "Insured Contract" will be amended to remove any exclusion or other limitation for any work being done within 50 feet of RAILWAY's property.

(2) Waiver of subrogation in favor of and acceptable to RAILWAY; and

(3) Additional insured endorsement in favor of and acceptable to RAILWAY and include coverage for ongoing operations and completed operations; and

(4) Separation of insureds; and

(5) The policy will be primary and non-contributing with respect to any insurance carried by RAILWAY.

iii) It is agreed that the workers' compensation and employers' liability related exclusions in the Commercial General Liability insurance policy(s) required herein are intended to apply to employees of the policy holder and shall not apply to ***Railway*** employees.

iv) No other endorsements limiting coverage as respects obligations under this Agreement may be included on the policy with regard to the work being performed under this agreement.

R. <u>Business Automobile Insurance</u>

i) The insurance will provide minimum coverage with a combined single limit of at least

$1,000,000 per accident, and include coverage for, but not limited to the following:

(1) Bodily injury and property damage

(2) Any and all vehicles owned, used or hired

ii) The policy will include the following endorsements or language, which will be indicated on or attached to the certificate of insurance:

(1) Waiver of subrogation in favor of and acceptable to RAILWAY;

(2) Additional insured endorsement in favor of and acceptable to RAILWAY;

(3) Separation of insureds;

(4) The policy shall be primary and non-contributing with respect to any insurance carried by RAILWAY.

S. Workers Compensation and Employers Liability Insurance

i) Workers Compensation and Employers Liability insurance including coverage for, but not limited to:

(1) Contractor's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.

(2) Employers' Liability (Part B) with limits of at least $500,000 each accident, $500,000 by disease policy limit, $500,000 by disease each employee.

ii) This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

(1) Waiver of subrogation in favor of and acceptable to Railway.

T. Railroad Protective Liability insurance

i) Railroad Protective Liability insurance naming only the ***Railway*** as the Insured with coverage of at least **$5,000,000** per occurrence and **$10,000,000** in the aggregate. The policy Must be issued on a standard ISO form CG 00 35 12 04 and include the

following:

(1) Endorsed to include the Pollution Exclusion Amendment

(2) Endorsed to include the Limited Seepage and Pollution Endorsement.

(3) Endorsed to remove any exclusion for punitive damages.

(4) No other endorsements restricting coverage may be added.

(5) The original policy must be provided to the ***Railway*** prior to performing any work or services under this Agreement.

(6) Definition of "Physical Damage to Property" shall be endorsed to read: "means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured' care, custody, and control arising out of the acts or omissions of the contractor named on the Declarations.

In lieu of providing a Railroad Protective Liability Policy, Licensee may participate (if available) in Railway's Blanket Railroad Protective Liability Insurance Policy.

I. <u>Other Requirements:</u>

i) Where allowable by law, all policies (applying to coverage listed above) shall contain no exclusion for punitive damages.

ii) Contractor agrees to waive its right of recovery against ***Railway*** for all claims and suits against ***Railway***. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against ***Railway*** for all claims and suits. Contractor further waives its right of recovery, and its insurers also waive their right of subrogation against ***Railway*** for loss of its owned or leased property or property under Contractor's care, custody or control.

iii) Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.

iv) Contractor is not allowed to self-insure without the prior written consent of ***Railway.*** If granted by ***Railway***, any self-insured retention or other financial responsibility for claims shall be covered directly by Contractor in lieu of insurance. Any and all ***Railway*** liabilities that would otherwise, in accordance with the provisions of this Agreement,

be covered by Contractor's insurance will be covered as if Contractor elected not to include a deductible, self-insured retention or other financial responsibility for claims.

v) Prior to commencing services, Contractor shall furnish to ***Railway*** an acceptable certificate(s) of insurance from an authorized representative evidencing the required coverage(s), endorsements, and amendments. The certificate should be directed to the following address:

BNSF Railway Company
c/o CertFocus
P.O. Box 140528
Kansas City, MO 64114
Toll Free: 877-576-2378
Fax number: 817-840-7487
Email: BNSF@certfocus.com
www.certfocus.com

vi) Contractor shall notify Railway in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration.

vii) Any insurance policy shall be written by a reputable insurance company acceptable to Railway or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.

viii) If coverage is purchased on a "claims made" basis, Contractor hereby agrees to maintain coverage in force for a minimum of three years after expiration, cancellation or termination of this Agreement. Annually Contractor agrees to provide evidence of such coverage as required hereunder.

ix) Contractor represents that this Agreement has been thoroughly reviewed by Contractor's insurance agent(s)/broker(s), who have been instructed by Contractor to procure the insurance coverage required by this Agreement.

x) Not more frequently than once every five years, Railway may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

xi) If any portion of the operation is to be subcontracted by Contractor, Contractor shall require that the subcontractor shall provide and maintain insurance coverage(s) as set

forth herein, naming Railway as an additional insured, and shall require that the subcontractor shall release, defend and indemnify Railway to the same extent and under the same terms and conditions as Contractor is required to release, defend and indemnify Railway herein.

xii) Failure to provide evidence as required by this section shall entitle, but not require, Railway to terminate this Agreement immediately. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of Contractor's obligations hereunder.

xiii) The fact that insurance (including, without limitation, self-insurance) is obtained by Contractor shall not be deemed to release or diminish the liability of Contractor including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railway shall not be limited by the amount of the required insurance coverage.

xiv) In the event of a claim or lawsuit involving Railway arising out of this agreement, Contractor will make available any required policy covering such claim or lawsuit.

xv) These insurance provisions are intended to be a separate and distinct obligation on the part of the Contractor. Therefore, these provisions shall be enforceable and Contractor shall be bound thereby regardless of whether or not indemnity provisions are determined to be enforceable in the jurisdiction in which the work covered hereunder is performed.

xvi) For purposes of this section, Railway shall mean “Burlington Northern Santa Fe LLC”, “BNSF Railway Company” and the subsidiaries, successors, assigns and affiliates of each.

4) SALES AND OTHER TAXES

A. In the event applicable sales taxes of a state or political subdivision of a state of the United States are levied or assessed in connection with and directly related to any amounts invoiced by Contractor to Railway (“Sales Taxes”), Railway shall be responsible for paying only the Sales Taxes that Contractor separately states on the invoice or other billing documents provided to Railway; *provided, however,* that (i) nothing herein shall preclude Railway from claiming whatever Sales Tax exemptions are applicable to amounts Contractor bills Railway, (ii) Contractor shall be responsible for all sales, use, excise, consumption, services and other taxes which may accrue on all services, materials, equipment, supplies or fixtures that Contractor and its subcontractors use or consume in the performance of this Agreement, (iii) Contractor shall be responsible for Sales Taxes

(together with any penalties, fines or interest thereon) that Contractor fails to separately state on the invoice or other billing documents provided to Railway or fails to collect at the time of payment by Railway of invoiced amounts (except where Railway claims a Sales Tax exemption), and (iv) Contractor shall be responsible for Sales Taxes (together with any penalties, fines or interest thereon) if Contractor fails to issue separate invoices for each state in which Contractor delivers goods, provides services or, if applicable, transfers intangible rights to Railway.

B. Upon request, Contractor shall provide Railway satisfactory evidence that all taxes (together with any penalties, fines or interest thereon) that Contractor is responsible to pay under this Agreement have been paid. If a written claim is made against Contractor for Sales Taxes with respect to which Railway may be liable for under this Agreement, Contractor shall promptly notify Railway of such claim and provide Railway copies of all correspondence received from the taxing authority. Railway shall have the right to contest, protest, or claim a refund, in Railway's own name, any Sales Taxes paid by Railway to Contractor or for which Railway might otherwise be responsible for under this Agreement; provided, however, that if Railway is not permitted by law to contest any such Sales Tax in its own name, Contractor shall, if requested by Railway at Railway's sole cost and expense, contest in Contractor's own name the validity, applicability or amount of such Sales Tax and allow Railway to control and conduct such contest.

C. Railway retains the right to withhold from payments made under this Agreement amounts required to be withheld under tax laws of any jurisdiction. If Contractor is claiming a withholding exemption or a reduction in the withholding rate of any jurisdiction on any payments under this Agreement, before any payments are made (and in each succeeding period or year as required by law), Contractor agrees to furnish to Railway a properly completed exemption form prescribed by such jurisdiction. Contractor shall be responsible for any taxes, interest or penalties assessed against Railway with respect to withholding taxes that Railway does not withhold from payments to Contractor.

5) EXHIBIT "D" CONTRACTOR REQUIREMENTS

A. The Contractor must observe and comply with all provisions, obligations, requirements and limitations contained in the Agreement, and the Contractor Requirements set forth on Exhibit "D" attached to the Agreement and this Agreement, including, but not be limited to, payment of all costs incurred for any damages to Railway roadbed, tracks, and/or appurtenances thereto, resulting from use, occupancy, or presence of its employees, representatives, or agents or subcontractors on or about the construction site. Contractor shall execute a Temporary Construction Crossing Agreement or Private Crossing Agreement (http://www.bnsf.com/communities/faqs/permits-real-estate/), for any

temporary crossing requested to aid in the construction of this Project, if approved by BNSF.

6) TRAIN DELAY

A. Contractor is responsible for and hereby indemnifies and holds harmless Railway (including its affiliated railway companies, and its tenants) for, from and against all damages arising from any unscheduled delay to a freight or passenger train which affects Railway's ability to fully utilize its equipment and to meet customer service and contract obligations. Contractor will be billed, as further provided below, for the economic losses arising from loss of use of equipment, contractual loss of incentive pay and bonuses and contractual penalties resulting from train delays, whether caused by Contractor, or subcontractors, or by the Railway performing work under this Agreement. Railway agrees that it will not perform any act to unnecessarily cause train delay.

B. For loss of use of equipment, Contractor will be billed the current freight train hour rate per train as determined from Railway's records. Any disruption to train traffic may cause delays to multiple trains at the same time for the same period.

C. Additionally, the parties acknowledge that passenger, U.S. mail trains and certain other grain, intermodal, coal and freight trains operate under incentive/penalty contracts between Railway and its customer(s). Under these arrangements, if Railway does not meet its contract service commitments, Railway may suffer loss of performance or incentive pay and/or be subject to penalty payments. Contractor is responsible for any train performance and incentive penalties or other contractual economic losses actually incurred by Railway which are attributable to a train delay caused by Contractor or its subcontractors.

D. The contractual relationship between Railway and its customers is proprietary and confidential. In the event of a train delay covered by this Agreement, Railway will share information relevant to any train delay to the extent consistent with Railway confidentiality obligations. The rate then in effect at the time of performance by the Contractor hereunder will be used to calculate the actual costs of train delay pursuant to this agreement.

E. Contractor and its subcontractors must give Railway's representative (_____) _____ (__) weeks advance notice of the times and dates for proposed work windows. Railway and Contractor will establish mutually agreeable work windows for the project. Railway has the right at any time to revise or change the work windows due to train operations or service obligations. Railway will not be responsible for any additional costs or expenses resulting from a change in work windows. Additional costs or expenses resulting from a change in work windows shall be accounted for in Contractor's expenses for the project.

F. Contractor and subcontractors must plan, schedule, coordinate and conduct all Contractor's work so as to not cause any delays to any trains.

SIGNATURE PAGE FOLLOWS

Contract Number: Document ID

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed by its duly authorized officer the day and year first above written.

BNSF RAILWAY COMPANY	**Account Name**
Signature:_____	Signature:_____
Printed Name:_____	Printed Name:_____
Title: Manager Public Projects	Title:_____
Date:_____	Date:_____

Accepted and effective this _____day of 20__.

Contact Person:_____

Address:_____

City:_____

State:_____ Zip:_____

Fax:_____

Phone:_____

E-mail:_____

Agenda Report

Committee-of-the-Whole ☒
Board Meeting ☒

Voting Requirements:
Majority

DATE: **May 28, 2024**

SUBJECT: **Approval of a Lease of Land for Construction/Rehabilitation of Track with BNSF Railway Company for One-Way Low-Speed Crossing Diamond in Carrollton, Texas**

RECOMMENDATION

Approval of a resolution authorizing the President & Chief Executive Officer or her designee to execute a Lease of Land for Construction/Rehabilitation of Track with BNSF Railway Company for One-Way Low-Speed Crossing Diamond in Carrollton, Texas, in substantially the form shown in Exhibit 1 to the resolution, subject to legal review.

COMMITTEE CONSIDERATIONS

. On May 14, 2024, the Committee-of-the-Whole unanimously moved this item to the May 28, 2024, Board of Directors meeting.

FINANCIAL CONSIDERATIONS

- This contract for a Lease of Land for Construction/Rehabilitation of Track with BNSF Railway is included in the Silver Line Regional Rail project budget of the approved FY 2024 Operating Budget.
- Sufficient funding for this contract in the amount of $500 is included in both Silver Line Regional Rail project budget and the Commuter Rail Operating line item of the FY 2024 20-Year Financial Plan.

BUSINESS PURPOSE

- The purpose of this item is to approve the Lease of Land for Construction/Rehabilitation of Track (Lease) between DART and BNSF Railway Company (BSNF), which will allow DART's contractor to perform long-term maintenance of the tracks running east-west connecting to the One-Way Low-Speed (OWLS) crossing diamond on BNSF right-of-way in Carrollton, Texas.
- Approval of this lease will assist DART in achieving Board Strategic Priority 1: Enhance the safety and service experience through customer-focused initiatives; and Strategic Priority 5: Enhance DART’s role as a recognized local, regional and national transportation leader.
- This action contributes to DART’s commitment to reliability by advancing the Silver Line Regional Rail Corridor Project.

- The Silver Line Regional Rail Corridor Project requires the installation of a One-Way Low-Speed (OWLS) diamond in the Carrollton Segment, near the Downtown Carrollton Station, to allow rail traffic to traverse east-west on the Cotton Belt Corridor, north onto the MKT Line to Denton, and south onto the Madill Line to Irving.

- The OWLS diamond will allow DART's freight tenant, Dallas, Garland & Northeastern Railroad ("DGNO"), to continue its operations on the Cotton Belt Corridor without interfering with Silver Line passenger service, which will operate on separate tracks to the south of the intersection. The OWLS diamond will also preserve a connection between the Silver Line and the MKT Line (owned by DART and currently leased to Denton County Transportation Authority) for future public transportation expansion. In the short term, the OWLS diamond will enable DART to run trains north to Denton County via the MKT Line as needed due to an emergency or maintenance, storage, or repair needs. Due to the configuration and constrained location of where the Cotton Belt, MKT, and Madill Lines intersect, the OWLS diamond will be installed on right-of-way property owned by BNSF.

- Pursuant to the Construction and Maintenance Agreement, which will be executed simultaneously with this Lease upon Board approval, DART will own and maintain the tracks running east-west, which will primarily be operated on by DGNO. BNSF's existing labor agreements require that its unionized workforces perform all work on BNSF right-of-way; however, this Lease will divest BNSF of interest in the property and extinguish the union restrictions. Consequently, DART's contractor will be able to perform the maintenance work at any time without further permission or payment to BNSF.

- The Lease requires DART to pay BNSF annual rent of $500 for use of BNSF-owned property, which is subject to an annual minimum escalation of three percent (3%). The Lease will continue until terminated by either party with 30-days' notice.

- Construction of the OWLS diamond must be completed prior to testing of Segment A of the Silver Line, scheduled to begin in September 2024.

LEGAL CONSIDERATIONS

Section 452.055 of the Texas Transportation Code authorizes DART to contract for the provision of goods and services.

Section 452.056(a) of the Texas Transportation Code authorizes DART to construct, develop, plan and operate a public transportation system within the DART Service Area.

Article VII of the DART Board Bylaws states that the Board shall adopt and provide for the enforcement of rules, policies, or procedures in connection with the management, operation, and control of DART.

DRAFT

RESOLUTION

of the

DALLAS AREA RAPID TRANSIT BOARD

(Executive Committee)

Approval of a Lease of Land for Construction/Rehabilitation of Track with BNSF Railway Company for One-Way Low-Speed Crossing Diamond in Carrollton, Texas

WHEREAS, the Silver Line Regional Rail Corridor Project requires the installation of a One-Way Low-Speed (OWLS) diamond in the Carrollton Segment, near the Downtown Carrollton Station, on right-of-way property owned by BNSF Railway Company (BNSF); and

WHEREAS, the OWLS diamond will allow for rail traffic to travel east-west on the Cotton Belt Corridor, north onto the MKT Line to Denton, and south onto the Madill Line to Irving; and

WHEREAS, the OWLS diamond will allow DART's freight tenant, Dallas, Garland & Northeastern Railroad ("DGNO"), to continue its operations on the Cotton Belt Corridor without interfering with Silver Line passenger service, which will operate on separate tracks to the south of the intersection; and

WHEREAS, the OWLS diamond will preserve a connection between the Silver Line and the MKT Line (owned by DART and currently leased to Denton County Transportation Authority) for future public transportation expansion, and, in the short term, the OWLS diamond will enable DART to run trains north to Denton County via the MKT Line as needed due to an emergency or maintenance, storage, or repair needs; and

WHEREAS, the General Construction and Maintenance Agreement with BNSF (C&M Agreement), which will be executed simultaneously with the Lease of Land for Construction/Rehabilitation of Track ("Lease") upon Board approval, provides that DART will own and maintain the tracks running east-west on BNSF right-of-way, which will primarily be operated on by DART's freight tenant Dallas, Garland & Northeastern Railroad; and

WHEREAS, BNSF's existing labor agreements require that its unionized workforces perform all work on BNSF right-of-way; however, this Lease will divest BNSF of interest in the property and extinguish the union restrictions. Consequently, DART 's contractor will be able to perform the maintenance work at any time without further permission or payment to BNSF; and

WHEREAS, execution of this Lease will enable DART to progress to testing of Segment A of the Silver Line; and

WHEREAS, funding for the Lease is within current budget and FY 2024 20-Year Financial Plan allocations.

NOW, THEREFORE, BE IT RESOLVED by Dallas Area Rapid Transit Board of Directors that the President & Chief Executive Officer or her designee is authorized to execute the Lease of Land for Construction/Rehabilitation of Track with BNSF Railway Company for One-Way Low-Speed Crossing Diamond in Carrollton, Texas, in substantially the form shown in Exhibit 1 to the resolution, subject to legal review.

Approval of a Lease of Land for Construction/Rehabilitation of Track with BNSF Railway Company for One-Way Low-Speed Crossing Diamond in Carrollton, Texas

/s/ Dee Leggett

Dee Leggett
Prepared by: Executive Vice President
Chief Development Officer

/s/ Gene Gamez

Gene Gamez
Approved as to form: General Counsel

/s/ Nadine S. Lee

Approved by:

Nadine S. Lee
President & Chief Executive Officer

BNSF RAILWAY COMPANY
LEASE OF LAND FOR CONSTRUCTION/REHABILITATION OF TRACK

THIS LEASE OF LAND FOR CONSTRUCTION/REHABILITATION OF TRACK ("**Lease**") is made to be effective as of the date of the last signature hereto ("**Effective Date**"), by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("**Railroad**"), and **DALLAS AREA RAPID TRANSIT**, a regional transportation authority, created and existing pursuant to Chapter 452 of the Texas Transportation Code ("**Agency**").

RECITALS

A. Railroad owns or controls certain land situated at or near the City of Carrollton, railway station of Carrollton, County of Dallas, State of Texas, as described or shown on **Exhibit "A"**, attached and incorporated herein ("**Premises**").

B. Railroad and Agency have also entered into that certain Construction and Maintenance Agreement dated on or about the Effective Date of this Agreement at or near the City of Carrollton, railway station of Carrollton, County of Dallas, State of Texas ("**C&M Agreement**") relating to the operation and maintenance of that certain Railroad Track (as defined in the C&M Agreement) and that certain Agency Track (as defined in the C&M Agreement) (the Railroad Track and Agency Track to be collectively referred to herein as the "**Track**") located on or near the Premises .

C. The parties desire to enter into this Lease to allow Agency to occupy the Premises in connection with its maintenance and operation of the Track and for the construction of a portion of the Track on the Premises.

AGREEMENTS

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

Section 1. LEASE OF PREMISES.

1.1 Railroad hereby leases to Agency, subject to all rights, interests and estates of third parties and upon the terms and conditions set forth below, the Premises for the Permitted Uses (defined below).

1.2 If Agency requires access to and from the Premises by use of Railroad's property adjacent to the Premises, Railroad hereby grants Agency a non-exclusive license and permission to enter upon Railroad's property for such purpose. Railroad shall, at its sole discretion, designate the location or route to be used by Agency. For the purposes of this Lease, the designated access, whether specifically defined or not, is included in the definition of Premises.

Section 2. PERMITTED USES. Agency shall use the Premises exclusively as a site for: (i) the performance of Routine Activities (defined below) and (ii) Major Construction (defined below) related to the Track and for no other purposes (collectively, the "**Permitted Uses**"). Agency shall not use or store: (i) Hazardous Materials (as defined below) or (ii) petroleum or oil as defined by applicable Environmental Laws (defined below), on the Track or any part of the Premises. Agency shall provide all relevant information in response to Railroad's inquiries regarding the use or condition of the Premises. For purposes of this Lease:

2.1 "**Routine Activities**" shall include those normal maintenance and operating activities described in the C&M Agreement, so long as such normal maintenance and operating activities described in the Track Agreement do not involve Major Construction.

2.2 "**Major Construction**" shall mean activities conducted on the Premises or Track that (a) require the excavation of soil that would alter or disturb the Premises; (b) require the use of heavy machinery; (c) involve Fouling (defined below) or a significant risk of Fouling; or (d) require the sheltering of the Facilities (defined below) or Equipment (defined below) in shelters located closer than twenty-five (25) feet from the nearest portion of the Track or other track owned or operated by Railroad. In addition, the parties agree that all activities on the Premises prior to the first date that initial construction of the Track on the Premises is complete to the point that railroad cars can operate over such Track shall be deemed to be "Major Construction", even if such activities do not include activities described in (a), (b), (c) or (d) above.

2.3 "**Fouling**" shall mean the existence, movement or placement of material, equipment and/or personnel on the Track or within twenty-five (25) feet vertically or laterally of the centerline of the Track, or any other activity which in Railroad's sole opinion may interfere with any operations of Railroad.

2.4 "**Facilities**" shall collectively mean all structures and improvements affecting the Track, including without limitation track scales, gates and fencing, unloading pits, loading or unloading devices, adjustable loading docks, and warehouse doors.

2.5 "**Equipment**" shall collectively mean all of Agency's equipment touching, used in conjunction with or affecting the Track.

Section 3. **TERM**. Unless earlier terminated as provided herein, this Lease will be in force for a term commencing on the Effective Date and shall automatically continue thereafter until terminated by either party giving the other thirty (30) days' written notice of its desire to terminate the Lease (the "**Term**"); provided that such Term is included herein for the sole purpose of establishing the duration of the parties' rights and obligations under this Lease (unless such rights and obligations expressly survive this Lease).

Section 4. **RENTAL.**

4.1 Beginning on the Effective Date and continuing on each anniversary thereof during the Term, Agency shall pay to Railroad in advance an annual rental payment of Five Hundred and No/100 Dollars ($500.00) ("**Base Rent**") for the lease of the Premises. Such Base Rent shall be subject to a minimum annual escalation of three percent (3%) on each anniversary date of the Effective Date of this Lease. Said Base Rent shall be subject to revision by Railroad upon thirty (30) days written notice to Agency prior to each anniversary of the Effective Date. Either party hereto may assign any receivables due it under this Lease; provided, however, such assignments shall not relieve the assignor of any of its rights or obligations under this Lease. All rent and other monetary payments under this Lease from Agency to Railroad shall be delivered solely to the following address:

BNSF Railway Company
PO Box 676160
Dallas, TX 75267-6160

Railroad shall have the right to designate at any time and from time to time a different address for delivery of such payments by written notice to Agency pursuant to the notice provisions of **Section 25** below. No rent or other payment sent to any other address shall be deemed received by Railroad unless and until Railroad has actually posted such payment as received on the account of Agency, and Agency shall be subject to all default provisions hereunder, late fees and other consequences as a result thereof in the same manner as if Agency had failed or delayed in making any payment.

4.2 Agency acknowledges that Railroad utilizes the rental collection system involving direct deposit of monies received through a financial institution selected by Railroad, which precludes Railroad's ability to exercise rejection of a rental payment before Agency's check is cashed. Agency agrees that as a condition of Railroad granting this Lease, Agency hereby waives any rights it may have under law to force continuation of this Lease due to Railroad having accepted and cashed Agency's rental remittance. Railroad shall have the option of rejecting Agency's payment by refunding to Agency the rental amount paid by Agency, adjusted as set forth in this Lease, and enforcing the termination provisions of this Lease.

4.3 Agency shall pay the Base Rent and all additional amounts (such Base Rent and all additional amounts being sometimes referred to hereinafter collectively as "rent" or "rental") due pursuant to this Lease as and when the same become due and payable, without demand, set-off, or deduction. Agency's obligation to pay Base Rent and all amounts due under this Lease is an independent covenant and no act or circumstance, regardless of whether such act or circumstance constitutes a breach under this Lease by Railroad, shall release Agency of its obligation to pay Base Rent and all amounts due as required by this Lease.

4.4 If any Base Rent or any payment under this Lease or any other payment due by Agency hereunder is not paid within five (5) days after the date the same is due, Railroad may assess Agency a late fee ("**Late Fee**") in an amount equal to five percent (5%) of the amount which was not paid when due to compensate Railroad for Railroad's administrative burden in connection with such late payment. In addition to said Late Fee, Agency shall pay interest on the unpaid sum from the due date thereof to the date of payment by Agency at an annual rate equal

to twelve percent (12%), or the maximum rate permitted by law, whichever is less.

4.5 If Agency fails to surrender the Premises to Railroad upon the expiration or termination of this Lease, and Railroad does not consent in writing to Agency's holding over, then such holding over will be deemed a month-to-month tenancy. Agency's holdover will be subject to all provisions of this Lease, provided that Agency shall pay to Railroad in advance a total monthly rental of One Hundred Fifty Percent (150%) of one-twelfth ($1/12^{th}$) of the prior invoiced annual rental charge during such holdover period. In no event shall such holding over renew or extend the Term except as provided for in this **Section 4**.

Section 5. MAINTENANCE AND REPAIRS.

5.1 Agency shall at all times, and at its sole risk and expense, maintain (or cause to be maintained), repair (or cause to be repaired), the Premises in a safe and satisfactory condition, and in strict compliance with all applicable Legal Requirements (defined below), and in accordance with other Railroad requirements relating to the use, maintenance, and operation of the Premises and construction of the Track. Agency shall promptly make all necessary or desirable repairs and maintenance to the Premises. Maintenance, for purposes of this Lease, means keeping the Premises in good working order and condition, including without limitation: (a) providing proper drainage on the Premises; (b) keeping the Premises free and clear of snow, ice, vegetation, structures, and other obstacles; and (c) maintaining adequate grade crossing warning devices, passive warning signs, gates, fences, barriers, roadways, track drainage facilities, lighting and track and other signals, all as determined by Railroad in Railroad's sole discretion. The Track shall be maintained in accordance with the terms and conditions of the C&M Agreement.

5.2 Agency shall keep and maintain any paved areas, sidewalks, curbs, landscaping and lawn parts of the Premises in a clean and orderly condition, and free of accumulation of dirt and rubbish. Agency shall not cause or permit, commit, or maintain any waste or nuisance in, on or about the Premises.

5.3 Railroad shall not have any liability or obligation to furnish or pay for any water, light, power, or any other services or facilities of whatsoever nature or to make any repairs or alterations of whatsoever nature in or to the Premises, including but not limited to structural repairs, or to maintain the Premises in any manner. Agency acknowledges that Railroad shall have no responsibility for management of the Premises.

5.4 Agency shall notify Railroad's representative, Roadmaster Adam Schildhammer, at 100 E. McCart, Krum, TX 76249-5628, telephone 940-482-8433, five (5) days prior to commencing any Major Construction.

5.5 Notwithstanding anything contained herein to the contrary, in the event of any conflict between the terms of this Lease and the C&M Agreement with regard to the use and maintenance of the Premises, the most stringent provision or requirement applicable to Agency will control.

Section 6. COMPLIANCE WITH LAWS.

6.1 Agency shall be responsible for obtaining, without expense to Railroad, all necessary real property rights and public authority and permission, including without limitation applicable licenses and permits, for the maintenance and operation of the Premises and the construction of the Track, provided Agency obtains prior written consent from Railroad. Agency, at Agency's expense, shall at all times comply with the requirements of each such license and permit.

6.2 Agency shall comply with all Railroad requirements related to the use of the Premises. Agency further agrees to comply with all Legal Requirements applicable to Agency and the Premises, this Lease and Agency's activities and obligations hereunder, and shall have the sole responsibility for costs, fees, or expenses associated with such compliance. As used herein, the term "**Legal Requirements**" shall mean all applicable laws, statutes, regulations, ordinances, orders, covenants, restrictions, codes, rules or any order, decision, injunction, judgment, award or decree of any public body or authority having jurisdiction over Agency, the Track, all other parts of the Premises, this Lease, and/or Agency's obligations under this Lease, and shall include all Environmental Laws.

6.3 Prior to entering the Premises, Agency shall and shall cause its contractor(s) to comply with all of Railroad's applicable safety rules and regulations. Agency shall provide safety orientation to its employees, contractors, agents and invitees entering upon the Premises for any purpose, which orientation shall include prohibitions against stopping and parking on any railroad tracks or otherwise Fouling any railroad tracks. In

addition to and not in limitation of the foregoing:

6.3.1 Agency must ensure that each of its employees, contractors, agents and invitees entering upon the Premises completes the safety training program at the Website "www.BNSFcontractor.com" (the "**Safety Orientation**") within one year prior to entering upon the Premises. Additionally, Agency must ensure that each and every employee of Agency, its contractors, agents and invitees entering upon the Premises possess a card certifying completion of the Safety Orientation prior to entering upon the Premises. The Safety Orientation must be renewed annually.

6.3.2 Prior to any contractor of Agency entering the Premises, Agency shall cause each such contractor to enter into and comply with Railroad's then-current standard Contractor's Right of Entry Agreement ("**Right of Entry Agreement**"). Railroad's standard Right of Entry Agreement at the Effective Date is in the form attached hereto as **Exhibit "D"** and incorporated herein by this reference.

Section 7. OPERATION AND USE OF PREMISES.

7.1 If the Premises are used for receiving, forwarding, or storing Hazardous Materials, Agency agrees to comply with all applicable Legal Requirements and with Railroad's further requirements concerning the same.

7.2 If Agency desires to install any Facilities, Agency shall first submit in writing to Railroad the plans and specifications for such Facilities, and secure written approval from Railroad, which may be withheld in Railroad's sole discretion, before construction of any Facilities is undertaken by Agency.

7.3 Agency shall be responsible for the safe condition of the Facilities and shall construct, install, use, maintain, and repair any Facilities approved in advance by Railroad at Agency's sole risk and expense, in a manner and of materials satisfactory to Railroad. Agency, during the installation, construction, use, operation, renewal, relocation, modification, maintenance and repair of these Facilities, shall exercise utmost and extraordinary diligence to prevent damage to the property of Railroad or injury to its agents, employees, invitees and contractors.

7.4 If Agency installs any Facilities, Agency shall be solely responsible for assuring the safe and satisfactory condition of the same and shall not allow any Facilities to be a source of danger or environmental harm to the Premises, or interfere with the safe operations of the Track or Premises. Agency shall also be solely responsible for assuring the safe and satisfactory condition of all of the Equipment and shall not allow any Equipment to be a source of danger to the safe operation of the Track. Before utilizing or unloading any Equipment spotted onto the Track, Agency shall inspect the same and all other Equipment and Facilities for the safety of persons working on or about these items to assure compliance with the foregoing. Agency shall utilize all Facilities and Equipment so as not to negatively affect safe and efficient operation over the Track. In furtherance of the foregoing obligations of Agency but not in limitation of the same, Agency shall do, among others, the following things: (a) keep any gates across the Track or any other part of the Premises open whenever necessary, in Railroad's sole judgment, to enable Railroad to safely and efficiently operate over the Track or any other part of the Premises; (b) keep unloading pits securely covered when not in actual use and at all times when the Track is being switched by Railroad; (c) keep all doors firmly secured, and adjustable loading docks at warehouses shall likewise be securely fastened in an upright position when not in actual use and at all times when the Track is being switched by Railroad; and (d) operate and maintain all other Facilities so as not to negatively affect the safe and efficient operation of Railroad over Track or any other part of the Premises.

7.5 Without relieving Agency from any of its obligations under this Lease, Railroad may refuse to enter the Premises or use or enter the Facilities or contact the Equipment whenever Railroad, in its sole discretion, determines that the same is unsatisfactory for Railroad's operation, entry or contact. If and when Agency has remedied such condition to Railroad's sole satisfaction, Railroad may resume entry into the Premises or use of or entry into the Facilities or contact with the Equipment. Railroad's entry into the Premises or use of or entry into any Facility or contact with any Equipment with knowledge of an unsatisfactory condition is not a waiver of Agency's obligations contained herein or of Railroad's right to recover for or be indemnified and defended against damages to property or the environment, or injury to or death of persons, that may result therefrom.

7.6 It is understood by Agency that the Premises may be in dangerous proximity to railroad tracks, including the Track, and that persons and property, whether real or personal, on the Premises will be in danger of injury, death or destruction incident to the operation of the railroad, including, without limitation, the risk of derailment, fire, or inadequate clearance (including sight clearance or vision obstruction problems at grade

crossings on or adjacent to the Premises), and Agency enters into this Lease subject to such dangers.

7.7 Agency shall pay all taxes, assessments, levies, utilities, and other charges of every kind and character, whether foreseen or unforeseen, ordinary or extraordinary, which are attributable to the Term and may become due or levied against the Track, any other part of the Premises, against Agency, against the business conducted on the Track, or any other part of the Premises during the Term, even though such taxes, utilities or other charges may not become due and payable until after termination of this Lease. Agency waives all rights pursuant to all Legal Requirements to protest appraised values or receive notice of reappraisal regarding the Premises or the Track (including Railroad's personalty), irrespective of whether Railroad contests the same.

7.8 Railroad may require Agency to use flaggers and otherwise implement all safety measures that Railroad deems appropriate in connection with the use of the Track by or for Agency. Without limitation to the foregoing, the following provisions shall apply to Agency and Agency's contractors:

7.8.1 In connection with any track or other property owned or controlled by Railroad outside of the Premises, Railroad may require for safety purposes that Agency, at its sole cost and expense, use Railroad's flaggers and provide lights, traffic control devices, automatic warning devices, or any such safety measure that Railroad deems appropriate in connection with the use of the Track by or for Agency. Agency shall reimburse Railroad within thirty (30) days of receipt of bills rendered therefor for all of Railroad's costs, including but not limited to the furnishing of Railroad's flaggers and any vehicle rental costs incurred. The cost of flagger services and other safety measures provided by Railroad, when deemed necessary by Railroad's representative, will be the sole responsibility of Agency. Flagger costs shall include, but not be limited to, the following: pay for at least an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays (as applicable); vacation allowance; paid holidays (as applicable); Railroad and unemployment insurance; public liability and property damage insurance; health and welfare benefits; transportation; meals; lodging and supervision. Negotiations for Railroad labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase flagging rates. Flagging rates in effect at the time of performance by the flaggers will be used to calculate the flagging costs pursuant to this **Section 7.8.1**.

7.8.2 In connection with (i) the Track or any other part of the Premises; or (ii) any other track located on Agency-owned or -controlled property, or other property not owned or controlled by Railroad, Railroad may require for safety purposes that Agency, at its sole cost and expense, furnish qualified flaggers and provide lights, traffic control devices, automatic warning devices, or any such safety measure that Railroad deems appropriate in connection with the use of the Track by or for Agency.

7.9 Agency shall, at its sole expense, pay all costs for changes, repairs, relocations or alterations to the Track if such changes, repairs, relocations or alterations: (i) are required to comply with any Legal Requirements, (ii) are requested by any governmental agency, or (iii) are made for any other reason beyond Railroad's reasonable control. Without limiting the generality of the foregoing, if the public authority having jurisdiction thereover orders the separation of the grade of the Track and any street, road, highway, other rail line, or the like, Agency hereby consents to the removal and/or relocation of the Track and shall reimburse Railroad all expenses in connection with the removal and/or relocation of said Track.

7.10 Agency shall be solely responsible for the security of the Premises during the Term, including without limitation excluding third parties from the Premises.

Section 8. <u>CONDITION OF PREMISES</u>.

8.1 Agency represents that the Premises, including without limitation the title thereto, the improvements and structures located on the Premises or adjoining the same, the environmental condition of the Premises, any subsurface conditions underlying the Premises, and the present uses of the Premises have been examined by Agency. Agency accepts the Premises in the condition in which they now are, without representation or warranty, expressed or implied, in fact or by law, by Railroad, and without recourse to Railroad as to the title thereto, the nature, condition or usability thereof, or the uses to which the Premises may be put. By taking possession or commencing use of the Premises, Agency: (i) acknowledges that it is relying on its own inspections of the Premises and not on any representations from Railroad regarding the Premises; (ii) establishes conclusively that the Premises are at such time in satisfactory condition and in conformity with this Lease and all zoning or other

governmental requirements in all respects; and (iii) accepts the Premises in its condition as of the Effective Date on an "AS IS," "WHERE IS," and "WITH ALL FAULTS" basis, subject to all faults and infirmities and the environmental condition of the Premises, whether now or hereafter existing. Agency expressly waives any and all claims that Railroad has any duty or obligation to inform or warn Agency of patent or latent hazards, defects or environmental conditions, if any, or to make the Premises free of same, and Agency expressly assumes these obligations, whether or not applicable law imposes such requirements on Railroad. Nothing contained in this **Section 8** affects the commencement of the Term or the obligation of Agency to pay rent as provided above.

8.2 Agency represents and warrants to Railroad as follows: (a) Agency does not intend to, and will not, use the Premises for any purposes other than as set forth in **Section 2**; (b) Agency has previously disclosed in writing to Railroad all special requirements (but Railroad shall have no responsibility relative to any such special requirement), if any, which Agency may have in connection with its intended uses of the Premises; and (c) Agency has undertaken and has reasonably and diligently completed all appropriate investigations regarding the suitability of the Premises for Agency's intended uses. Agency shall comply with any covenants, conditions or restrictions now or hereafter affecting the Premises, and acknowledges that Railroad may place any covenants, conditions or restrictions of record affecting the Premises prior to or during the Term. In such event, this Lease will be subject and subordinate to all of the same without further action by either party, including, without limitation, the execution of any further instruments. Agency acknowledges that Railroad has given material concessions for the acknowledgments and provisions contained in this **Section 8**, and that Railroad is relying on these acknowledgments and agreements and would not have entered into this Lease without such acknowledgments and agreements by Agency.

8.3 Except as may be expressly provided elsewhere in this Lease or as otherwise approved by Railroad in writing in advance:

(a) Agency may not make any alterations to the Premises or permanently affix anything to the Premises or any buildings or other structures adjacent to the Premises without Railroad's prior written consent; and

(b) All alterations, additions, or betterments to the Premises, other than the rails and the ties, shall upon completion of construction become the sole property of Railroad.

Upon completion of the construction of the Track on the Premises pursuant to this Lease, such track shall be considered "Railroad Track" or "Agency Track", as applicable, for purposes of the C&M Agreement and this Lease.

Section 9. WATER RIGHTS AND USE OF WELLS. This Lease does not grant, convey or transfer any right to the use of water under any water right owned or claimed by Railroad which may be appurtenant to the Premises. All right, title, and interest in and to such water is expressly reserved unto Railroad, and the right to use same or any part thereof may be obtained only by the prior written consent of Railroad. Agency shall not use, install or permit to be installed or used any wells on the Premises without the prior written consent of Railroad, which consent is in Railroad's sole and absolute discretion.

Section 10. DEFINITION OF COST AND EXPENSE.

10.1 For the purpose of this Lease, "cost" or "costs", "expense" or "expenses" includes, but is not limited to, actual labor and material costs including all assignable additives, and material and supply costs at current value where used.

10.2 All invoices are due thirty (30) days after the date of invoice. If Agency shall fail to pay any monies due to Railroad within thirty (30) days after the invoice date, then Agency shall pay interest on such unpaid sum from thirty (30) days after its invoice date to the date of payment by Agency at an annual rate equal to twelve percent (12%), or the maximum rate permitted by law, whichever is less.

Section 11. RIGHT OF RAILROAD TO USE; ACCESS TO PREMISES BY RAILROAD.

11.1 All rights granted to Agency hereunder are subject and subordinate to the prior and continuing right of Railroad, without liability to Agency or any other party for compensation or damages thereto: (a) to use the Premises in any manner whatsoever; (b) to construct, maintain, renew, use, operate, change, modify or relocate any existing fences, pipelines, communication facilities, fiber optic lines, wireless towers, telephone, power or other transmission lines, or appurtenances and other facilities or structures of like character upon, over, under or across

the Premises, without payment of any sum for any damage, including damage to growing crops; (c) to allow to be constructed upon the Premises or its right-of-way any other facilities and to use its right-of-way in any manner as Railroad in its sole discretion deems appropriate; (d) to take all required materials and equipment onto the Premises, and perform all required work therein, for the purpose of making alterations, repairs, or additions to the Premises as Railroad may elect if Agency defaults in its obligation to do so; (e) to enter the Premises to show the Premises to holders of encumbrances on the interest of Railroad in the Premises, or to prospective purchasers or mortgagees of the Premises; (f) to exhibit the Premises to prospective lessees; (g) to enter the Premises and place signage thereon to advertise that the same is available for lease or sale; and (h) to enter the Premises at any time to inspect the Premises. All such entries and activities described in (a) - (h) above shall be without any rebate of rent to Agency for any loss of occupancy of the Premises, or damage, injury or inconvenience thereby caused; provided that Railroad agrees to use commercially reasonable efforts to avoid material interference with Agency's use of the Track and all other parts of the Premises as described herein.

11.2 For purposes stated in this **Section 11**, Railroad will at all times have keys with which to unlock all of the doors and gates on the Premises, and Agency will not change or alter any lock thereon without Railroad's permission.

11.3 In an emergency, Railroad will be entitled to use any and all means that Railroad may deem proper to open doors, gates, and other entrances to obtain entry to the Premises. Any entry to the Premises by Railroad as described in this **Section 11** shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, or any eviction of Agency from the Premises, and any damages caused on account thereof will be paid by Agency.

Section 12. CLEARANCES. Agency shall not: (a) place, permit to be placed, or allow to remain, any permanent or temporary material, structure, pole, container, storage vessel, above-ground or underground tank, or other obstruction (i) within eight and one-half (8-1/2) feet laterally from the center (nine and one-half (9-1/2) feet on either side of the centerline of curved track) or (ii) within twenty-three and one-half (23-1/2) feet vertically from the top of the rail of any track, or (b) place or allow to be placed any freight cars, materials, machinery, or other equipment on the Premises within two hundred fifty (250) feet of either side of any at-grade crossings when there is also an adjacent track of any type belonging to any party (collectively, "**Minimal Clearances**"), provided that if any Legal Requirement requires greater clearances than those provided for in this **Section 12**, then Agency shall strictly comply with such Legal Requirement. However, vertical or lateral clearances that are less than the Minimal Clearances but are in compliance with applicable Legal Requirements will not be a violation of this **Section 12**, so long as Agency strictly complies with the terms of any such Legal Requirement and posts a sign on the Premises in a location approved by Railroad clearly noting the existence of such reduced clearance. Any such sign shall be painted with black and white reflective paint. Railroad or Agency's operation over the Track or Premises with knowledge of an unauthorized reduced clearance will not be a waiver of the covenants of Agency contained in this **Section 12** or of Railroad's right to recover for and be indemnified and defended against such damages to property or the environment, or injury to or death of persons, that may result therefrom.

Section 13. INDEMNIFICATION.

13.1 The provisions of this **Section 13** shall apply to Agency throughout the Term; provided, however, the provisions of **Exhibit "B"**, attached hereto and incorporated herein by this reference, shall also apply to Agency during: (i) all periods of Major Construction, to the extent Agency self-performs all or any portion of such Major Construction, and (ii) all periods during which Agency's contractor(s) are on the Premises and Agency has failed to cause its contractor(s) to timely enter into and fully comply with Railroad's Right of Entry Agreement.

13.2 For purposes of this Lease: (a) "**Indemnitees**" means Railroad and Railroad's affiliated companies, partners, successors, assigns, legal representatives, officers, directors, shareholders, employees and agents; (b) "**Liabilities**" means all claims, liabilities, fines, penalties, costs, damages, losses, liens, causes of action, suits, demands, judgments and expenses (including, without limitation, taxes, court costs, reasonable attorneys' fees, costs of investigation, removal and remediation and governmental oversight costs) environmental or otherwise; and (c) "**Agency Parties**" means Agency and Agency's officers, agents, invitees, licensees, employees, or contractors, or any party directly or indirectly employed by any of them, or any party they control or exercise control over.

13.3

13.3.1 SUBJECT TO THE PROVISIONS OF SECTIONS 16.5 AND 16.6 BELOW REGARDING PRE-EXISTING CONDITIONS (AS HEREINAFTER DEFINED), BUT OTHERWISE TO THE FULLEST

EXTENT PERMITTED BY LAW, AGENCY SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, FOREVER WAIVE ANY AND ALL CLAIMS IT MAY HAVE OR WHICH MAY ARISE OUT OF THE ENVIRONMENTAL CONDITION OF THE PREMISES. THIS WAIVER IS APPLICABLE REGARDLESS OF WHETHER SUCH LIABILITY IS BASED ON STRICT LIABILITY, NEGLIGENCE, OR ANY OTHER STANDARD; AND IS APPLICABLE REGARDLESS OF WHETHER SUCH CLAIMS ARISE OUT OF COMMON LAW OR OUT OF CERCLA (AS DEFINED BELOW) OR ANY OTHER ENVIRONMENTAL LAW. IN NO EVENT WILL RAILROAD BE RESPONSIBLE FOR THE ENVIRONMENTAL CONDITION OF THE PREMISES AS BETWEEN THE TWO PARTIES.

13.3.2 FURTHER, TO THE FULLEST EXTENT PERMITTED BY LAW, AGENCY IS CONSIDERED FOR PURPOSES OF APPLYING ENVIRONMENTAL LAWS TO BE THE OWNER AND OPERATOR OF THE PREMISES FOR THE ENTIRE PERIOD AGENCY OCCUPIES OR OTHERWISE USES THE PREMISES. AGENCY INDEMNIFIES, HOLDS HARMLESS, AND SHALL DEFEND INDEMNITEES FOR ANY LIABILITIES (AS DEFINED IN SECTION 13.2 ABOVE) THAT ARISE OUT OF INDEMNITEES' STATUS AS AN OWNER OR OPERATOR OF THE PREMISES FOR THE ENTIRE PERIOD AGENCY OCCUPIES OR OTHERWISE USES THE PREMISES. FURTHER, AGENCY INDEMNIFIES, HOLDS HARMLESS, AND SHALL DEFEND INDEMNITEES AGAINST ANY CLAIMS THAT ANY INDEMNITEE IS A GENERATOR, ARRANGER OR TRANSPORTER BY VIRTUE OF ITS ENTERING INTO THIS LEASE. NOTHING IN THIS LEASE IS MEANT BY EITHER PARTY TO CONSTITUTE A WAIVER OF ANY INDEMNITEE'S COMMON-CARRIER DEFENSES AND THE LEASE SHOULD NOT BE SO CONSTRUED. IF ANY AGENCY OR COURT CONSTRUES THE LEASE TO BE A WAIVER OF ANY INDEMNITEE'S COMMON-CARRIER DEFENSES, SUBJECT TO THE PROVISIONS OF SECTIONS 16.5 AND 16.6 BELOW REGARDING PRE-EXISTING CONDITIONS, AGENCY AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND INDEMNITEES FOR ANY LIABILITIES RELATED TO THAT CONSTRUCTION OF THIS LEASE.

13.4 IF ANY EMPLOYEE OF AN AGENCY PARTY ASSERTS THAT HE OR SHE IS AN EMPLOYEE OF ANY INDEMNITEE, AGENCY SHALL RELEASE, INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FROM AND AGAINST ANY LIABILITIES (AS DEFINED IN SECTION 13.2 ABOVE) ARISING OUT OF OR RELATED TO (IN WHOLE OR IN PART) ANY SUCH ASSERTION INCLUDING, BUT NOT LIMITED TO, LIABILITIES UNDER THE FEDERAL EMPLOYERS' LIABILITY ACT, THE SAFETY APPLIANCE ACT, THE LOCOMOTIVE INSPECTION ACT, THE OCCUPATIONAL SAFETY AND HEALTH ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE. AGENCY'S OBLIGATIONS UNDER THIS SECTION 13.4 ARE REGARDLESS OF ANY ACTUAL OR ALLEGED NEGLIGENCE, FAULT, OR COMPARATIVE FAULT OF ANY INDEMNITEE RELATED TO SUCH CAUSES OF ACTION.

13.5 Upon written notice from Railroad, Agency agrees to assume the defense of any lawsuit or other proceeding brought against any Indemnitee by any entity, relating to any matter covered by this Lease for which Agency has an obligation to assume liability for and/or save and hold harmless any Indemnitee. Agency shall pay all costs and expenses incident to such defense, including, but not limited to, reasonable attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments.

Section 14. PERSONAL PROPERTY WAIVER. ALL PERSONAL PROPERTY, INCLUDING, BUT NOT LIMITED TO, FIXTURES, EQUIPMENT, OR RELATED MATERIALS UPON THE TRACK OR PREMISES WILL BE AT THE RISK OF AGENCY ONLY, AND NO INDEMNITEE WILL BE LIABLE FOR ANY DAMAGE THERETO OR THEFT THEREOF, WHETHER OR NOT DUE IN WHOLE OR IN PART TO THE NEGLIGENCE OF ANY INDEMNITEE.

Section 15. INSURANCE.

15.1 The provisions of this **Section 15** shall apply to Agency throughout the Term; provided, however, the provisions of **Exhibit "C"**, attached hereto and incorporated herein by this reference, shall also apply to Agency during: (i) all periods of Major Construction, to the extent Agency self-performs all or any portion of such Major Construction, and (ii) all periods during which Agency's contractor(s) are on the Premises and Agency has failed to cause its contractor(s) to timely enter into and fully comply with Railroad's Right of Entry Agreement. Throughout the Term, Agency shall, at its sole cost and expense, procure and maintain the following insurance coverage:

15.2 **Commercial General Liability ("CGL") Insurance.**

(a) The policy will provide a minimum coverage of $1,000,000 each occurrence and an aggregate limit of at least $2,000,000 but in no event will the coverage be in an amount less than the amount otherwise carried by Agency. Coverage must be purchased on a post 2004 ISO occurrence form or equivalent and include coverage for, but not limited to, the following:

- Bodily Injury and Property Damage.
- Products and completed operations.

(b) The policy will include the following endorsements or language, which will be indicated on or attached to the certificate of insurance:

- Additional insured endorsement in favor of and acceptable to BNSF.
- Waiver of subrogation in favor of and acceptable to BNSF.

(c) The parties agree that the workers' compensation and employers' liability related exclusions in the CGL policy(ies) are intended to apply to employees of the policy holder and will not apply to BNSF employees.

(d) No other endorsements that limit coverage with respect to Agency's obligations under this Lease may be included on the policy.

15.3 **Workers' Compensation and Employers' Liability Insurance.**

(a) This insurance shall include coverage for, but not limited to:

- Agency's statutory liability under the workers' compensation laws of the state(s) in which the work is to be performed. The policy will cover all of Agency's employees, regardless of whether such coverage is optional under the law of that state(s). Workers' compensation insurance may be self-insured.
- Employers' Liability (Part B) with limits of at least $500,000 each accident, $500,000 by disease policy limit, $500,000 by disease each employee. Workers' compensation insurance may be self-insured.

(b) The policy will include the following endorsements or language, which shall be indicated on or attached to the certificate of insurance:

- Waiver of subrogation in favor of and acceptable to BNSF.

15.4 **Other Requirements.**

(a) Any insurance policy shall be written by a reputable insurance company with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided. If Agency subcontracts any portion of the operation, Agency shall require that the subcontractor provide and maintain insurance coverage as set forth herein.

(b) Prior to commencing operations, Agency shall furnish to BNSF an acceptable certificate(s) of insurance from an authorized representative evidencing the required coverage(s), endorsements, and amendments.

(c) Agency agrees to provide evidence to BNSF that it has the required coverage in place at least annually or in the event of a renewal or material change of coverage.

(d) In the event of a claim or lawsuit involving BNSF arising out of this Lease, Agency will make the policy covering such claim or lawsuit available to BNSF.

(e) Failure to provide evidence of insurance as required by this **Section 15** shall entitle, but not require, BNSF to terminate this Lease immediately. Acceptance of a certificate that does not comply with this Section shall not operate as a waiver of Agency's obligations hereunder. The fact that Agency obtains insurance (including, without limitation, self-insurance) shall not release or diminish Agency's liabilities or obligations including, without limitation, the liabilities and obligations

under the indemnity provisions of this Lease. Damages recoverable by BNSF shall not be limited by the amount of the required insurance coverage.

15.5 For purposes of this **Section 15**, BNSF shall mean "Burlington Northern Santa Fe, LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns, and affiliates of each. These insurance provisions are intended to be a separate and distinct obligation on the part of the Agency. Therefore, these provisions shall be enforceable and Agency shall be bound thereby regardless of whether or not indemnity provisions are determined to be enforceable in the jurisdiction in which the work covered hereunder is performed.

Section 16. ENVIRONMENTAL.

16.1 Agency shall strictly comply with all Environmental Laws. Agency shall not maintain any treatment, storage, transfer or disposal facility, or underground storage tank, as defined by Environmental Laws, on the Premises. Agency shall not release or suffer the release of oil or Hazardous Materials on, about or affecting the Premises.

16.2 Agency shall give Railroad immediate notice to Railroad's Resource Operations Center at (800) 832-5452 of any release of Hazardous Materials on, from, or affecting the Premises and to Railroad's Manager Environmental Leases at EnvironmentalLeases@BNSF.com for any violation of Environmental Laws, or inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Agency's use of the Premises. Agency also shall give Railroad's Manager-Environmental Leases immediate notice of all measures undertaken by or on behalf of Agency to investigate, remediate, respond to or otherwise cure such release or violation and shall provide to Railroad's Manager-Environmental Leases copies of all reports and/or data regarding any investigations or remediations of the Premises. If Railroad has notice from Agency or otherwise of a release or violation of Environmental Laws on, from, or otherwise affecting the Premises which occurred or may occur during the Term, Railroad may require Agency, at Agency's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure each such release or violation on, from, or otherwise affecting the Premises, Railroad's adjoining property, or Railroad's right-of-way.

16.3 Agency shall promptly report to Railroad in writing any conditions or activities upon the Premises which create a risk of harm to persons, property or the environment and shall take whatever action is necessary to mitigate injury or damage to persons, property or the environment arising out of such conditions or activities, including but not limited to releases or violations of Environmental Laws; provided, however, that Agency's reporting to Railroad shall not relieve Agency of any obligation whatsoever imposed on it by this Lease or by any Legal Requirement. Agency shall promptly respond to Railroad's request for information regarding said conditions or activities.

16.4 In addition to the rights set forth in **Section 11** above, Railroad and its agents and representatives shall have a right of entry and access to the Premises: (i) at any time an actual or suspected emergency exists and (ii) at any reasonable time, upon prior written notice, and, at Agency's election, with a representative of Agency present, for the purposes of (a) inspecting the documentation relating to Hazardous Materials or environmental matters maintained by Agency or any occupant of the Premises and (b) ascertaining whether Agency is in compliance with its obligations under this **Section 16**.

16.5 Within thirty (30) days after the Effective Date, Agency has the right, at its option, to conduct an environmental audit of the Premises for use as a baseline ("**Baseline Audit**"). The cost of the Baseline Audit shall be borne by Agency. Agency agrees to use an environmental consulting engineer acceptable to Railroad to perform such Baseline Audit and further agrees to promptly provide a copy of the final environmental Baseline Audit report to Railroad. If such Baseline Audit reveals an environmental condition(s) in existence at the date of the Baseline Audit ("**Pre-Existing Condition**") that is not satisfactory to either party, either party has the right, which must be exercised by written notice to the other party on or before sixty (60) days after the Effective Date, to terminate this Lease. Such termination shall be effective thirty (30) days from receipt of the written notice by the other party. Upon such termination, the parties shall have no further obligations hereunder except for those that have accrued prior to such termination. Notwithstanding anything else herein to the contrary, except to the extent caused, aggravated, or contributed to by an Agency Party, Agency shall not be responsible for any Pre-Existing Condition on the Premises as shown in the Baseline Audit report.

16.6 Regardless of whether Agency elects to have a Baseline Audit performed, Railroad has the right, at its option, on or prior to termination of this Lease, to require Agency to conduct an environmental audit of the Premises to determine if any noncompliance or environmental damage to the Premises has occurred during

Agency's occupancy thereof ("**Exit Audit**"). The cost of the Exit Audit shall be borne by Agency. Agency agrees to use an environmental consulting engineer acceptable to Railroad to perform such Exit Audit, and further agrees to promptly provide a copy of the final environmental Exit Audit report to Railroad. Agency shall pay all expenses that may be required to correct: (i) any noncompliance or environmental condition on the Premises shown in the Exit Audit but not shown on the Baseline Audit as a Pre-Existing Condition; and/or (ii) any aggravation of or contribution to a Pre-Existing Condition during the Term hereof. Notwithstanding the foregoing, however, if Agency did not elect to perform a Baseline Audit, then Agency shall pay all expenses that may be required to correct any noncompliance or environmental conditions on the Premises shown on the Exit Audit. Agency shall diligently pursue all necessary work to completion no later than thirty (30) days after termination. Agency acknowledges that it remains responsible for any noncompliance or environmental damage during Agency's occupancy of the Premises that was not discovered during the Exit Audit or that was not completely investigated or remediated by Agency, and that this **Section 16.6** does not relieve Agency of that responsibility. Agency's obligations under this **Section 16.6** shall survive termination of this Lease.

16.7 "**Environmental Law(s)**" shall mean any federal, state, or local law, statute, ordinance, code, rule, regulation, policy, common law, license, authorization, decision, order, or injunction which pertains to health, safety, any Hazardous Material, or the environment (including but not limited to ground, air, water, or noise pollution or contamination, and underground or above-ground tanks) and shall include, without limitation, the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq., the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §9601 et seq. ("**CERCLA**"); the Hazardous Materials Transportation Act, 49 U.S.C. §5101 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq.; the Clean Air Act, 42 U.S.C. §7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. §2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. §300f et seq.; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. 11001 et seq., the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136 to 136y; the Oil Pollution Act, 33 U.S.C. 2701 et seq.; and the Occupational Safety and Health Act, 29 U.S.C. 651 et seq.; all as have been amended from time to time, and any other federal, state, or local environmental requirements, together with all rules, regulations, orders, and decrees now or hereafter promulgated under any of the foregoing, as any of the foregoing now exist or may be changed or amended or come into effect in the future.

16.8 "**Hazardous Material(s)**" shall include but shall not be limited to any substance, material, or waste that is regulated by any Environmental Law or otherwise regulated by any federal, state, or local governmental authority because of toxic, flammable, explosive, corrosive, reactive, radioactive or other properties that may be hazardous to human health or the environment, including without limitation asbestos and asbestos-containing materials, radon, petroleum and petroleum products, urea formaldehyde foam insulation, methane, lead-based paint, polychlorinated biphenyl compounds, hydrocarbons or like substances and their additives or constituents, pesticides, agricultural chemicals, and any other special, toxic, or hazardous (i) substances, (ii) materials, or (iii) wastes of any kind, including without limitation those now or hereafter defined, determined, or identified as "hazardous chemicals", "hazardous substances," "hazardous materials," "toxic substances," or "hazardous wastes" in any Environmental Law.

Section 17. NO WARRANTIES. RAILROAD'S DUTIES AND WARRANTIES ARE LIMITED TO THOSE EXPRESSLY STATED IN THIS LEASE, IF ANY, AND SHALL NOT INCLUDE ANY IMPLIED DUTIES OR IMPLIED WARRANTIES, NOW OR IN THE FUTURE. NO REPRESENTATIONS OR WARRANTIES HAVE BEEN MADE BY RAILROAD OTHER THAN THOSE CONTAINED IN THIS LEASE. AGENCY HEREBY WAIVES ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE TRACK OR PREMISES WHICH MAY EXIST BY OPERATION OF LAW OR IN EQUITY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, HABITABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

Section 18. QUIET ENJOYMENT. RAILROAD DOES NOT WARRANT ITS TITLE TO THE TRACK OR PREMISES NOR UNDERTAKE TO DEFEND AGENCY IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE. This Lease is made subject to all outstanding rights or interests of others. If the Premises and/or Track are subsequently found to be subject to prior claim, this Lease shall terminate immediately on notice to that effect from Railroad. Agency accepts this Lease subject to that possibility and its effect on Agency's rights and ownership of any Facilities or any other improvements constructed or installed on the Premises by or for Agency, including without limitation the Agency Track (collectively, "**Agency Improvements**"). In case of eviction of Agency by anyone other than Railroad, or anyone owning or claiming title to or any interest in the Premises, Railroad shall not be liable to Agency for damage of any kind (including any loss of ownership rights to the Agency Improvements) or to refund any rent paid hereunder, except to return the unearned portion of any rent paid in advance.

Section 19. **LIENS.** Agency shall promptly, and in any case no later than ten (10) days after notice of the filing thereof, pay and discharge any and all liens arising out of any Major Construction, Routine Activities or any other activities done, suffered or permitted to be done by Agency on the Track or Premises, and shall indemnify, defend and hold harmless Railroad from any such liens. Railroad is hereby authorized to post any notices or take any other action upon or with respect to the Track or Premises that is or may be permitted by law to prevent the attachment of any such liens to the Track or Premises; provided, however, that failure of Railroad to take any such action shall not relieve Agency of any obligation or liability under this **Section 19** or any other section of this Lease.

Section 20. **DAMAGE OR DESTRUCTION.** If at any time during the Term, the Track or Premises are damaged or destroyed by fire or other casualty, then Railroad, at its sole option, has the right to either: (i) terminate this Lease or (ii) repair and reconstruct the Premises to substantially the same condition in which the Premises existed immediately prior to the damage or destruction, except that Railroad is not required to: (a) repair, reconstruct or otherwise restore any Agency Improvements, or (b) repair, replace or restore any personal property, furniture, trade fixtures, or office equipment located on the Premises and removable by Agency under the provisions of this Lease.

Section 21. **EMINENT DOMAIN.** If any part of the Premises is taken by eminent domain, then Railroad, at its sole option, has the right to either: (i) terminate this Lease or (ii) continue the Lease in effect. If Railroad elects to continue the Lease, rent will be reduced in proportion to the area of the Premises taken by eminent domain, and Railroad shall repair any damage to the Premises resulting from the taking. All sums awarded or agreed upon between Railroad and the condemning authority for the taking of the interest of Railroad or Agency, whether as damages or as compensation, will be the property of Railroad; without prejudice, however, to claims of Agency against the condemning authority for moving costs and the unamortized cost of Agency Improvements paid for by Agency and taken by the condemning authority. If this Lease is terminated under this **Section 21**, rent will be payable up to the date that possession is taken by the condemning authority, and Railroad shall refund to Agency any prepaid unaccrued rent less any sum then owing by Agency to Railroad.

Section 22. **DEFAULT.** The following events shall constitute defaults hereunder:

(a) creating or allowing to remain any condition, including without limitation, any environmental condition other than a Pre-Existing Condition, on, about or affecting the Track or Premises, which in Railroad's sole judgment interferes with or endangers Railroad's operations;
(b) assignment or transfer by operation of law of Agency's rights or obligations under this Lease;
(c) any default on any of the covenants or agreements of Agency contained in this Lease;
(d) any default on any of the covenants or agreements of Agency contained in the C&M Agreement that persists beyond all applicable grace or cure periods.

Section 23. **REMEDIES; TERMINATION.**

23.1 In addition to the parties' termination rights set forth elsewhere in this Lease, and in addition to all other remedies available at law or in equity, Railroad may, without incurring any liability to Agency, terminate this Lease, discontinue the maintenance of the Railroad Track and operation over the Track, and remove the Railroad Track, effective immediately by written notice to Agency, if any of the following events occurs:

(i) Any default as described in **Section 22**, other than a default under **Section 22(c)**, occurs.
(ii) Any default as described in **Section 22(c)** occurs and persists for thirty (30) days following written notice from Railroad. Agency
(iii) Agency abandons or vacates the Premises.
(iv) Railroad is authorized by competent public authority to abandon its line to which the Track is connected.
(v) Railroad is dispossessed of the right to operate over the Track or its connecting track or any part thereof.
(vii) Agency fails to provide evidence of insurance as required by **Section 15**.
(viii) The expiration or termination of the C&M Agreement.

23.2 Upon the expiration or earlier termination of this Lease as provided herein, Railroad at its sole discretion shall have the right to: (a) require Agency to transfer title to that portion of the Agency Track located upon the Premises, and any Facilities or other Agency Improvements located upon, over, or under the Premises, to Railroad, and upon such transfer Railroad shall pay Agency the salvage value of the same, and Agency, at Railroad's request and Agency's sole cost and expense, shall convey to Railroad by bill of sale all such Facilities

and Agency Improvements required by Railroad to be transferred; or (b) require Agency to remove, at its sole cost and expense, that portion of the Agency Track located upon the Premises and any Facilities, Equipment or other Agency Improvements upon, over, or under the Premises, and to restore the Premises to substantially the state in which they were on the Effective Date of this Lease or otherwise to Railroad's reasonable sole satisfaction. If Railroad elects option (b) and Agency fails within thirty (30) days after the date of such expiration or termination to make the removal and restoration, then Railroad may do so itself. In such event Agency shall, within thirty (30) days after receipt of a bill therefor, reimburse Railroad for all costs incurred by Railroad in connection therewith. Agency's obligations under this **Section 23.2** shall expressly survive termination of this Lease.

23.3 Agency hereby agrees to waive and release all claims, rights, and causes of action that Agency has, may have, or may assert against Railroad because of the discontinuance of operation and/or removal of the Track as provided in this **Section 23**.

23.4 Upon expiration of the time specified in any notice of termination, this Lease and all rights of Agency shall absolutely cease (except for any rights and obligations that expressly survive this Lease).

Section 24. ASSIGNMENT/SUBLETTING.

24.1 This Lease will inure to the benefit of and be binding upon the successors and approved assigns of the parties hereto; provided, however, that Agency may not sell, assign, transfer, or hypothecate this Lease or sublet all or any part of the Premises or any interest herein (either voluntarily or by operation of law) without the prior written consent of Railroad, which consent shall not be unreasonably withheld. Any attempted assignment by Agency in violation of this **Section 24** shall be absolutely void. For purposes of this **Section 24**, the word "assign" shall include without limitation (a) any sale of the equity interests of Agency following which the equity interest holders of Agency immediately prior to such sale own, directly or indirectly, less than fifty percent (50%) of the combined voting power of the outstanding voting equity interests of Agency, (b) any sale of all or substantially all of the assets of (i) Agency and (ii) Agency's parent and subsidiaries (to the extent such entities exist), taken as a whole, or (c) any reorganization, recapitalization, merger or consolidation involving Agency, except for a reorganization, recapitalization, merger or consolidation following which the equity interest holders of Agency immediately prior to such reorganization, recapitalization, merger or consolidation own, directly or indirectly, at least fifty percent (50%) of the combined voting power of the outstanding voting equity interests of Agency or any successor thereto or the entity resulting from such reorganization, recapitalization, merger or consolidation. Either party hereto may assign any receivables due to them under this Lease; provided, however, that such assignments will not relieve the assignor of any of its rights or obligations under this Lease. This Lease cannot be assigned or transferred independently from the C&M Agreement.

24.2 Railroad shall have the right to transfer and assign, in whole or in part, all of its rights and obligations under this Lease and in the Premises, and upon such transfer, Railroad shall be released from any further obligations hereunder, and Agency agrees to look solely to the successor in interest of Railroad for the performance of such obligations.

Section 25. NOTICES. Any notice required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if (i) placed in the United States mail, certified, return receipt requested, or (ii) deposited into the custody of a nationally recognized overnight delivery service, addressed to the party to be notified at the address for such party specified below, or to such other address as the party to be notified may designate by giving the other party no less than thirty (30) days' advance written notice of such change in address.

If to Railroad: BNSF Railway Company
2650 Lou Menk Drive
Fort Worth, TX 76131-2380
Attn.: CRE-D - Track Agreements

with a copy to: Jones Lang LaSalle Brokerage, Inc.
2650 Lou Menk Drive
Fort Worth, TX 76131-2380
Attn.: Track Agreements

If to Agency: Dallas Area Rapid Transit
Railroad Management Division

P.O. Box 660163
Dallas Texas, 75266-7230

with a copy to: Dallas Area Rapid Transit
Office of General Counsel
1401 Pacific Avenue
Dallas, Texas 75202

Section 26. SUBORDINATION; ATTORNMENT; ESTOPPEL CERTIFICATES.

26.1 Upon written request of Railroad, or Railroad's mortgagee, or the beneficiary of a deed of trust of Railroad, or lessor of Railroad, Agency will subordinate its rights pursuant to this Lease in writing to the lien of any mortgage, deed of trust, declaration of covenants, conditions and restrictions or the interest of any lease in which Railroad is the lessee (or, if so requested, cause the lien of said mortgage, deed of trust, declaration of covenants, conditions and restrictions or the interest of any lease in which Railroad is the lessee to be subordinated to this Lease), and upon any building hereafter placed upon the land of which the Premises are a part, and to all advances made or thereafter to be made upon the security thereof.

26.2 If any proceedings are brought for foreclosure (or a conveyance in lieu of foreclosure), or in the event of the exercise of the power of sale under any mortgage or deed of trust made by Railroad covering the Premises, Agency shall attorn to the purchaser or lessor under this Lease upon such foreclosure, sale or lease termination and recognize the purchaser or lessor as Railroad under this Lease, provided that the purchaser or lessor shall acquire and accept the Premises subject to this Lease.

26.3 Agency, within ten (10) days from receipt of Railroad's written request, shall execute, acknowledge and deliver to Railroad a written statement certifying (a) that this Lease is in full force and effect, without modification (except as identified in the estoppel certificate), (b) that there are no uncured defaults in Railroad's performance (or stating with specificity the nature of any alleged default) and that Agency has no right of offset, counterclaim or deduction against rental and any other amount owed hereunder, (c) the date to which rent and other charges have been paid, and (d) any other matters reasonably requested by Railroad. Failure of Agency to execute and deliver this statement within said ten (10) days shall constitute Agency's acknowledgement that: (i) the Lease is in full force and effect, without modification except as represented by Railroad, (ii) no rent has been paid more than thirty (30) days in advance, and (iii) no defaults exist with respect to the Lease.

Section 27. MISCELLANEOUS.

27.1 It is understood and agreed that this Lease shall not be recorded in the real property records in the county or counties in which the Premises are located or otherwise placed of public record.

27.2 All questions concerning the interpretation or application of provisions of this Lease shall be decided according to the laws of the State of Texas.

27.3 To the maximum extent possible, each provision of this Lease shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Lease shall be prohibited by, or held to be invalid under, applicable law, such provision shall be ineffective solely to the extent of such prohibition or invalidity, and this shall not invalidate the remainder of such provision or any other provision of this Lease.

27.4 This Lease, together with the C&M Agreement, is the full and complete agreement between Railroad and Agency with respect to all matters relating to the lease of the Premises and the construction, maintenance and operation of the Track located thereon, and supersedes any and all other agreements between the parties hereto relating to lease of the Premises. However, nothing herein is intended to terminate any surviving obligation of Agency or Agency's obligation to defend and hold Railroad harmless in any prior written agreement between the parties, including, but not limited to, the C&M Agreement.

27.5 Neither termination nor expiration of this Lease will release either party from any liability or obligation under this Lease, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration of this Lease, or, if later, the date when the Premises are restored in accordance with the applicable provisions of this Lease, the C&M Agreement or any other written agreement between the parties.

27.6 One or more waivers of any covenant, term, or condition of this Lease by Railroad shall not be construed as a waiver of a subsequent breach of the same covenant, term, or condition. The consent or approval by Railroad to or of any act by Agency requiring such consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any subsequent similar act. The remedies set forth hereunder shall be in addition to, and not in limitation of, any other remedies that Railroad may have at law or in equity.

27.7 If Agency consists of two or more parties, all covenants and agreements of Agency herein contained shall be the joint and several covenants and agreements of such parties.

27.8 The parties acknowledge that each party and their counsel have reviewed and revised this Lease and that the normal rule 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 Lease or any amendments or exhibits hereto.

27.9 In this Lease, the use of one gender shall include the other gender; and the singular shall mean the plural, and vice versa, all as the context may require.

27.10 This Lease may be executed in multiple counterparts, each of which shall, for all purposes, be deemed an original but which together shall constitute one and the same instrument, and the signature pages from any counterpart may be appended to any other counterpart to assemble fully executed documents, and counterparts of this Lease may also be exchanged electronically and any electronic version of any party's signature shall be deemed to be an original signature for all purposes.

27.11 The captions are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of this Lease, nor the intent of any provision thereof.

27.12 The parties acknowledge that Jones Lang LaSalle Brokerage, Inc. is acting as representative for BNSF Railway Company.

27.13 Except as may be elsewhere specifically provided in this Lease, if either party is delayed or hindered in, or prevented from the performance required under this Lease (except for payment of monetary obligations) by reason of earthquakes, landslides, strikes, lockouts, labor troubles, failure of power, riots, insurrection, war, acts of God or other reason of the like nature not the fault of the party delayed in performance of its obligation ("**Force Majeure**"), such party is excused from such performance for the period of delay. The period for the performance of any such act will then be extended for the period of such delay. The party claiming Force Majeure shall take commercially reasonable steps to remove the Force Majeure event, and shall promptly notify the other party within a period of five (5) days, excluding weekends and holidays, when it learns of the existence of a Force Majeure condition and will similarly notify the other party within a period of five (5) days, excluding weekends and holidays, when a Force Majeure is terminated.

[*Signature Page Follows*]

IN WITNESS WHEREOF, the parties have executed this Lease to be effective as of the Effective Date.

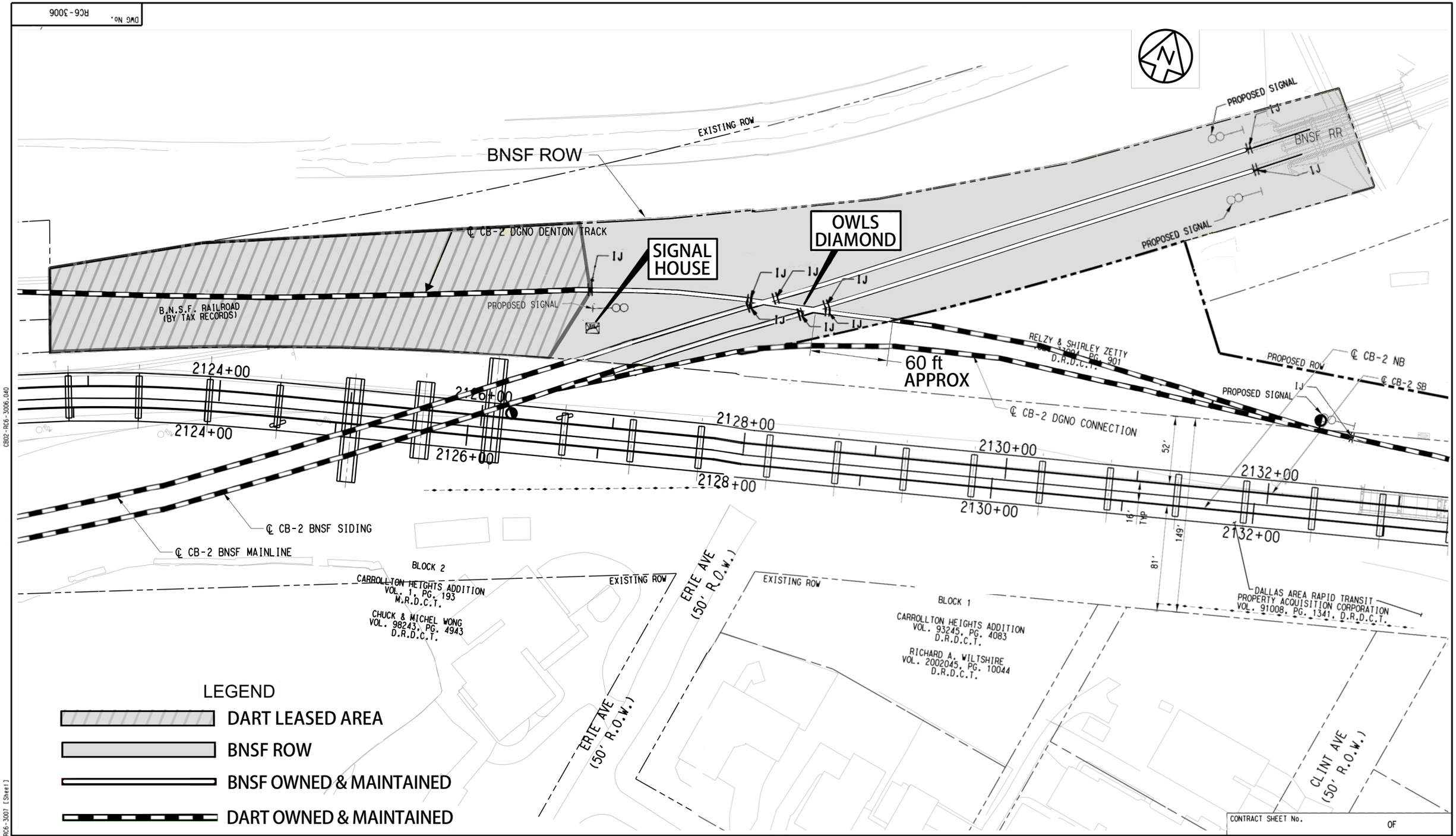
RAILROAD: **BNSF Railway Company**, a Delaware corporation

By: _____
Name: _____
Title: _____
Date: _____

AGENCY: **Dallas Area Rapid Transit**, a regional transportation authority

By: _____
Name: _____
Title: _____
Date: _____

DWG No. RC6-3006



LEGEND

- DART LEASED AREA
- BNSF ROW
- BNSF OWNED & MAINTAINED
- DART OWNED & MAINTAINED

CONTRACT SHEET No. OF

REV	PAGE	QTY	DATE	DESCRIPTION	BY	ENG	CHK	APP

ARCHER WESTERN HERZOG

DART PROJECT

DART

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CAES

SCALE	
DRAWN	D. TATUM
DESIGNED	D. TATUM
CHECKED	A. SULLIVAN
IN CHARGE	D. KELLY
DATE	07 JUN 21

COTTON BELT REGIONAL RAIL
LINE SECTION CB-2

EXHIBIT A

DART Leased Area

CONTRACT C-2033270-01 | DWG No. CB02-RC6-3006.040 | REV 0

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EXHIBIT "B"

Indemnification Provisions Applicable During Major Construction

In addition to the provisions of **Section 13** above, the provisions of this **Exhibit "B"** shall apply to Agency during: (i) all periods of Major Construction, to the extent Agency self-performs all or any portion of such Major Construction, and (ii) all periods during which Agency's contractor(s) are on the Premises and Agency has failed to cause its contractor(s) to timely enter into and fully comply with Railroad's Right of Entry Agreement.

1. TO THE FULLEST EXTENT PERMITTED BY LAW, AGENCY SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS INDEMNITEES FOR, FROM AND AGAINST ANY AND ALL LIABILITIES OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON OR ENTITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART):

1.1 ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LEASE, INCLUDING WITHOUT LIMITATION ANY AGENCY PARTY'S OCCUPATION AND/OR USE OF THE PREMISES OR OTHER PROPERTY OF ANY INDEMNITEE, AND/OR ANY USE OF AND/OR OPERATION BY ANY INDEMNITEE UPON AGENCY'S PROPERTY,

1.2 SUBJECT TO THE PROVISIONS OF SECTIONS 16.5 AND 16.6 OF THE LEASE REGARDING PRE-EXISTING CONDITIONS, THE ENVIRONMENTAL CONDITION AND STATUS OF THE TRACK, ANY OTHER PART OF THE PREMISES, OR OTHER PROPERTY OF ANY INDEMNITEE CAUSED BY, AGGRAVATED BY, OR CONTRIBUTED TO, IN WHOLE OR IN PART, BY ANY AGENCY PARTY, INCLUDING ANY OFF-SITE MIGRATION, OR AGENCY

1.3 ANY ACT OR OMISSION OF ANY AGENCY PARTY.

2. THE FOREGOING OBLIGATIONS OF AGENCY SHALL NOT APPLY TO THE EXTENT LIABILITIES ARE PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY INDEMNITEE, OR TO LIABILITIES WHOLLY CAUSED BY THE SOLE NEGLIGENCE OF ANY INDEMNITEE, BUT SHALL APPLY TO ALL OTHER LIABILITIES, INCLUDING THOSE ARISING FROM OR ATTRIBUTED TO ANY OTHER NEGLIGENCE OF ANY INDEMNITEE.

EXHIBIT "C"

Insurance Provisions Applicable During Major Construction

In addition to the provisions of **Section 15** above, the provisions of this **Exhibit "C"** shall apply to Agency during: (i) all periods of Major Construction, to the extent Agency self-performs all or any portion of such Major Construction, and (ii) all periods during which Agency's contractor(s) are on the Premises and Agency has failed to cause its contractor(s) to timely enter into and fully comply with BNSF's Right of Entry Agreement.

Agency must, at its sole cost and expense, procure and maintain the following insurance coverages:

1. **Commercial General Liability ("CGL") Insurance.**

   (a) This policy will provide a minimum coverage of $5,000,000 each occurrence and an aggregate limit of at least $10,000,000 but in no event will the coverage be in an amount less than the amount otherwise carried by Agency. Coverage must be purchased on a post 2004 ISO occurrence form or equivalent and include coverage for, but not limited to, the following:
   - Bodily Injury and Property Damage.
   - Personal Injury and Advertising Injury.
   - Fire legal liability.
   - Products and completed operations.
   - Contractual Liability for an "Insured Contract" consistent with the definition under the standard ISO general liability policy form.

   (b) This policy must also contain the following endorsements or language, which shall be indicated on or attached to the certificate of insurance:
   - The definition of "Insured Contract" must be amended to remove any exclusion or other limitation for any work being done within fifty (50) feet of BNSF property.
   - Waiver of subrogation in favor of and acceptable to BNSF.
   - Additional insured endorsement in favor of and acceptable to BNSF and Jones Lang LaSalle Brokerage, Inc.
   - Separation of insureds.
   - The policy shall be primary and non-contributing with respect to any insurance carried by BNSF.

   (c) The parties agree that workers' compensation and employers' liability related exclusions in the CGL policy(ies) are intended to apply to employees of the policy holder and will not apply to BNSF employees.

   (d) No other endorsements limiting coverage with respect to Agency's obligations under this Lease or services may be included on the policy.

2. **Business Automobile Insurance.**

   (a) This insurance will provide minimum coverage with a combined single limit of at least $1,000,000 per accident, and include coverage for, but not limited to, the following:
   - Bodily injury and property damage.
   - Any and all vehicles owned, used or hired.

   (b) The policy shall also contain the following endorsements or language, which shall be indicated on or attached to the certificate of insurance:
   - Waiver of subrogation in favor of and acceptable to BNSF.
   - Additional insured endorsement in favor of and acceptable to BNSF.
   - Separation of insureds.
   - The policy shall be primary and non-contributing with respect to any insurance carried by BNSF.

3. **Workers' Compensation and Employers' Liability Insurance.**

   (a) This policy will provide coverage of all employees performing any part of the services or work including coverage for, but not limited to:

- Agency's statutory liability under the workers' compensation laws of the state(s) in which the work or services will be performed. The policy will cover all of Agency's employees, regardless of whether such coverage is optional under the law of that state(s).
- Employers' Liability (Part B) with limits of at least $500,000 each accident, $500,000 by disease policy limit, $500,000 by disease each employee.

(b) This policy will include the following endorsements or language, which shall be indicated on or attached to the certificate of insurance:
- Waiver of subrogation in favor of and acceptable to BNSF.

4. **Railroad Protective Liability Insurance ("RPLI").**

This insurance shall name only BNSF as the Insured with coverage of at least $5,000,000 per occurrence and $10,000,000 in the aggregate. The policy will be issued on a standard ISO form CG 00 35 12 04 and include the following:
- Endorsed to include the Pollution Exclusion Amendment.
- Endorsed to include the Limited Seepage and Pollution Endorsement.
- Endorsed to include Evacuation Expense Coverage Endorsement.
- Endorsed to remove any exclusion for punitive damages.
- No other endorsements restricting coverage may be added.
- The original policy must be provided to BNSF and Agency shall not perform any services or work of any kind under this Lease until BNSF has reviewed and approved the policy.
- The definition of "Physical Damage to Property" will be endorsed to read: "means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured's care, custody, and control (including, but not limited to rolling stock and their contents, mechanical construction equipment or motive power equipment, railroad tracks, roadbeds, catenaries, signals, tunnels, bridges and buildings) arising out of the acts or omissions of the contractor named on the Declarations."

In lieu of providing a RPLI policy, Agency may participate in BNSF's Blanket Railroad Protective Liability Insurance Policy available to Agency or its contractor. The limits of coverage are the same as above. The cost is $_____.

☐ Agency **elects** to participate in BNSF's Blanket Policy for activities commencing as of the Effective Date (if any);

☐ Agency **declines** to participate in BNSF's Blanket Policy for activities commencing as of the Effective Date (if any).

5. **Other Requirements.**

(a) Where allowable by law, no exclusions for punitive damages may be included in any policy.

(b) Agency agrees to waive its right of recovery against BNSF for all claims and suits against BNSF. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against BNSF for all claims and suits. Agency further waives its right of recovery, and its insurers also waive their right of subrogation against BNSF for loss of its owned or leased property or property under Agency's care, custody or control.

(c) Allocated Loss Expense, including but not limited to defense costs and expenses, will be in addition to all policy limits for coverages under the insurance requirements.

(d) Agency is not allowed to self-insure without the prior written consent of BNSF. If BNSF allows Agency to self-insure, Agency shall directly cover any self-insured retention or other financial responsibility for claims in lieu of insurance. Any and all BNSF liabilities that would otherwise be covered by Agency's insurance in accordance with the provisions of this Lease, will be covered as if Agency elected not to include a deductible, self-insured retention or other financial responsibility for claims.

(e) Prior to commencing any services or other work under this agreement, Agency shall furnish to BNSF an acceptable certificate(s) of insurance from an authorized representative evidencing the required coverage(s), endorsements, and amendments.

(f) Contractor shall notify Railroad in writing at least thirty (30) days prior to any cancellation, non-renewal, substitution or material alteration.

(g) Any insurance policy shall be written by a reputable insurance company acceptable to BNSF or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.

(h) If the coverage provided by any of the insurance policies required by this Lease is purchased on a "claims made" basis, Agency hereby agrees to maintain coverage in force for a minimum of three years after expiration, cancellation or termination of this Lease.

(i) Contractor agrees to provide evidence to BNSF that it has the required coverage in place at least annually or in the event of a renewal or material change of coverage.

(j) Agency represents that this Lease has been thoroughly reviewed by Agency's insurance agent(s)/broker(s), and that Agency has instructed them to procure the insurance coverage required by this Lease.

(k) Not more frequently than once every five years, BNSF may, at its discretion, reasonably modify the insurance requirements herein to reflect the then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

(l) If Agency will subcontract any portion of the services or work, Agency shall require that the subcontractor provide and maintain insurance coverage(s) as set forth herein, naming BNSF as an additional insured. In addition, Agency shall require that the subcontractor release, defend and indemnify BNSF to the same extent and under the same terms and conditions as Agency is required to release, defend and indemnify BNSF under this Lease.

(m) Failure to provide evidence of insurance as required by this **Exhibit "C"** shall entitle, but not require, BNSF to terminate this Lease immediately. Acceptance of a certificate that does not comply with this **Exhibit "C"** shall not operate as a waiver of Agency's obligations hereunder.

(n) The fact that Agency obtains insurance (including, without limitation, self-insurance) shall not release or diminish Agency's liabilities or obligations including, without limitation, the liabilities and obligations under the indemnity provisions of this Lease. Damages recoverable by BNSF shall not be limited by the amount of the required insurance coverage.

(o) In the event of a claim or lawsuit involving BNSF arising out of this Lease, Agency will make the policy covering such claim or lawsuit available to BNSF.

(p) If Agency maintains broader coverage and/or higher limits than the minimum requirements in this Lease, BNSF requires and shall be entitled to the broader coverage and/or the higher limits. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to BNSF.

(q) These insurance provisions are intended to be a separate and distinct obligation on the part of Agency. Therefore, these provisions shall be enforceable and Agency shall be bound thereby regardless of whether or not indemnity provisions are determined to be enforceable in the jurisdiction in which the services or other work performed under this Lease is performed.

(r) For purposes of this **Exhibit "C"**, BNSF shall mean "Burlington Northern Santa Fe, LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

EXHIBIT "D"

CONTRACTOR'S RIGHT OF ENTRY AGREEMENT
FOR CONSTRUCTION PROJECTS ON OR ADJACENT TO PROPERTY OF
BNSF RAILWAY COMPANY

This Right of Entry Agreement ("**Agreement**") is made to be effective as of the date of the last signature hereto ("**Effective Date**"), by and between **BNSF RAILWAY COMPANY** ("**Railroad**"), a Delaware corporation, and _____, a(n) _____ ("**Contractor**").

WHEREAS, Railroad operates a freight transportation system by rail with operations throughout the United States and Canada; and

WHEREAS, Dallas Area Rapid Transit ("**Agency**") has leased the Premises under that certain Lease dated on or about the Effective Date of this Agreement at or near the City of Carrollton, railway station of Downton Carrollton, County of Dallas, State of Texas ("**Lease**"). Agency desires Contractor to perform certain construction services upon the Premises (defined herein), and Contractor is willing to perform such services.

NOW, THEREFORE, in consideration of Railroad entering this Agreement with Contractor and granting Contractor permission to enter upon the Premises, Contractor agrees with Railroad as follows:

SECTION 1. SCOPE OF SERVICES

[Contractor **/** Agency **/** Contractor and Agency **]** will perform the following services, hereinafter described as "**Work**": _____ at _____[city] _____[state].

Performance of the Work will necessarily require Contractor to enter Railroad's right of way and property as shown on Drawing No. _____, dated _____ marked Exhibit "A" attached hereto and incorporated herein ("**Premises**"). Contractor agrees that no work will be commenced on the Premises until (i) this Agreement is executed by both Contractor and Railroad, and (ii) Contractor provides Railroad with the insurance contemplated herein. Contractor further agrees that if this Agreement is not executed by the owner, general partner, president or vice-president of Contractor, Contractor will furnish Railroad with evidence certifying that the signatory is empowered to execute this Agreement.

SECTION 2. TERM; PAYMENT OF FEES

This Agreement is effective from the date of the mutual execution until the earlier to occur of (i) the completion of the Work; or (ii) termination or earlier expiration of the Lease; provided that if the Work is not complete by twelve (12) months after the Effective Date; Railroad shall have the right to terminate this Agreement upon written notice to Contractor. Contractor acknowledges and agrees that Agency will be solely responsible for paying Contractor for the Work. Contractor will be solely responsible for paying its subcontractors and materialmen (if any). Contractor shall promptly, and in any case no later than ten (10) days after notice of the filing thereof, pay and discharge any and all liens arising out of any portion of the Work performed by Contractor's subcontractors or materialmen, or any other activities done, suffered or permitted to be done on behalf of Contractor on the Premises, and shall indemnify, defend and hold harmless Railroad from any such liens. Railroad is hereby authorized to post any notices or take any other action upon or with respect to the Premises that is or may be permitted by law to prevent the attachment of any such liens to the Premises; provided, however, that failure of Railroad to take any such action shall not relieve Agency or Contractor of any obligation or liability under this **Section 2** or any other section of this Agreement.

SECTION 3. RELEASE OF LIABILITY AND INDEMNITY

(a) Contractor hereby waives, releases, indemnifies, defends and holds harmless Railroad for, from and against all judgments, awards, claims, demands, and expenses (including reasonable attorneys' fees), for injury or death to all persons, including Railroad's and Contractor's officers and employees, and for loss and damage to property belonging to any person, arising in any manner from Contractor's or any of Contractor's subcontractors' acts or omissions or any work performed on or about the Premises or Railroad's other property or right of way. **THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DESTRUCTION, DAMAGE, DEATH, OR INJURY WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF RAILROAD, ITS AGENTS, SERVANTS, EMPLOYEES OR**

OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE OF RAILROAD.

(b) **THE INDEMNIFICATION OBLIGATION ASSUMED BY CONTRACTOR INCLUDES ANY CLAIMS, SUITS OR JUDGMENTS BROUGHT AGAINST RAILROAD UNDER THE FEDERAL EMPLOYEE'S LIABILITY ACT INCLUDING CLAIMS FOR STRICT LIABILITY UNDER THE SAFETY APPLIANCE ACT OR THE LOCOMOTIVE INSPECTION ACT, WHENEVER SO CLAIMED.**

(c) Contractor further agrees, at its expense, in the name and on behalf of Railroad, that it will adjust and settle all claims made against Railroad, and will, at Railroad's discretion, appear and defend any suits or actions of law or in equity brought against Railroad on any claim or cause of action arising or growing out of or in any manner connected with any liability assumed by Contractor under this Agreement for which Railroad is liable or is alleged to be liable. Railroad will give notice to Contractor, in writing, of the receipt or pendency of such claims and thereupon Contractor must proceed to adjust and handle to a conclusion such claims, and in the event of a claim brought against Railroad, Railroad may forward summons and complaint or other process in connection therewith to Contractor, and Contractor, at Railroad's discretion, must defend, adjust, or settle such suits and protect, indemnify, and save harmless Railroad from and against all damages, judgments, decrees, reasonable attorneys' fees, costs, and expenses growing out of or resulting from or incident to any such claims or suits.

(d) It is mutually understood and agreed that the assumption of liabilities and indemnification provided for in this Agreement will survive any termination of this Agreement.

SECTION 4. ENVIRONMENTAL

(a) Contractor shall strictly comply with all federal, state and local environmental Legal Requirements (as defined in the Lease) and regulations in its use of the Premises, including, but not limited to, the Resource Conservation and Recovery Act, as amended (RCRA), the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, and the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §9601 et seq. (collectively referred to as the "**Environmental Laws**"). Contractor shall not maintain a treatment, storage, transfer or disposal facility, or underground storage tank, as defined by Environmental Laws, on the Premises. Contractor shall not release or suffer the release of oil or hazardous substances, as defined by Environmental Laws on or about the Premises.

(b) Contractor covenants that it will not handle or transport "hazardous waste" or "hazardous substances", as "hazardous waste" and "hazardous substances" may now or in the future be defined by any federal, state, or local governmental agency or body across or along Railroad's property. Contractor agrees to periodically furnish Railroad with proof, satisfactory to Railroad, that Contractor is in compliance with the provisions of this **Section 4**.

(c) Contractor shall give Railroad immediate notice to Railroad's Resource Operations Center at (800) 832-5452 of any known (i) release of hazardous substances on, from, or affecting the Premises, (ii) violation of Environmental Laws, or (iii) inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Contractor's use of the Premises. Contractor shall use the best efforts to promptly respond to any release on, from, or affecting the Premises. Contractor also shall give Railroad immediate notice of all measures undertaken on behalf of Contractor to investigate, remediate, respond to or otherwise cure such release or violation.

(d) Contractor recognizes and assumes all responsibility for all present and future environmental obligations imposed under applicable Environmental Laws, regulations or other such requirements relating to contamination of the Premises or groundwater thereunder arising from, caused by, contributed to, or in any way growing out of Contractor's operations. Contractor further agrees to undertake at its sole cost and expense any cleanup of any contamination of the Premises and groundwater thereunder arising from, caused by, contributed to, or in any way growing out of Contractor's operations as required by applicable laws and regulations.

(e) If Railroad has notice from Contractor or otherwise of a release or violation of Environmental Laws arising in any way with respect to the Work which occurred or may occur during the term of this Agreement, Railroad may require Contractor, at Contractor's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises or Railroad's right-of-way.

(f) Contractor shall promptly report to Railroad in writing any conditions or activities upon the Premises known to Contractor which create a risk of harm to persons, property or the environment and shall take whatever action is necessary to prevent injury to persons, property or the environment arising out of such conditions or activities; provided, however, that Contractor's reporting to Railroad shall not relieve Contractor of any obligation whatsoever imposed on it by this Agreement. Contractor shall promptly respond to Railroad's request for information regarding said conditions or activities.

(g) Contractor will promptly transmit to Railroad copies of all environmental reports, data boring logs, well completion and other information obtained from Contractor's Work on the Premises. Railroad shall have the option to obtain split samples and otherwise have reasonable access to groundwater monitoring well(s), if any, subject to this Agreement for the purpose of obtaining samples or other information from the monitoring well(s). Contractor shall also advise Railroad of any applicable health and safety plans or other similar programs in effect with respect to the Work on the Premises.

(h) Unless otherwise required by applicable law, Contractor shall keep confidential and shall not disclose any environmental reports, data boring logs, well completion and any other information obtained in connection with this Agreement to third parties with the exception of Agency without the prior written consent of Railroad.

SECTION 5. INSURANCE

Contractor must, at its sole cost and expense, procure and maintain during the term of this Agreement the following insurance coverages:

5.1 **Commercial General Liability ("CGL") Insurance.**

(a) This policy will provide a minimum coverage of $5,000,000 each occurrence and an aggregate limit of at least $10,000,000 but in no event will the coverage be in an amount less than the amount otherwise carried by Contractor. Coverage must be purchased on a post 2004 ISO occurrence form or equivalent and include coverage for, but not limited to, the following:

(i) Bodily Injury and Property Damage.
(ii) Personal Injury and Advertising Injury.
(iii) Fire legal liability.
(iv) Products and completed operations.
(v) Contractual Liability for an "Insured Contract" consistent with the definition under the standard ISO general liability policy form.

(b) This policy must also contain the following endorsements or language, which shall be indicated on or attached to the certificate of insurance:

(i) The definition of "Insured Contract" must be amended to remove any exclusion or other limitation for any work being done within fifty (50) feet of BNSF's property.
(ii) Waiver of subrogation in favor of and acceptable to BNSF.
(iii) Additional insured endorsement in favor of and acceptable to BNSF and Jones Lang LaSalle Brokerage, Inc.
(iv) Separation of insureds.
(v) The policy shall be primary and non-contributing with respect to any insurance carried by BNSF.

(c) The parties agree that the workers' compensation and employers' liability related exclusions in the CGL policy(ies) are intended to apply to employees of the policy holder and will not apply to BNSF employees.

(d) No other endorsements limiting coverage with respect to Contractor's obligations under this Agreement or the Work hereunder may be included on the policy.

5.2 **Business Automobile Insurance.**

(a) This insurance will provide minimum coverage with a combined single limit of at least $1,000,000 per accident, and include coverage for, but not limited to, the following:

(i) Bodily injury and property damage.
(ii) Any and all vehicles owned, used or hired.

(b) The policy shall also contain the following endorsements or language, which shall be indicated on or attached to the certificate of insurance:

(i) Waiver of subrogation in favor of and acceptable to BNSF.
(ii) Additional insured endorsement in favor of and acceptable to BNSF.
(iii) Separation of insureds.
(iv) The policy shall be primary and non-contributing with respect to any insurance carried by BNSF.

5.3 **Workers' Compensation and Employers' Liability Insurance.**

(a) This policy will provide coverage of all employees performing any part of the Work or any other services including coverage for, but not limited to:

(i) Contractor's statutory liability under the workers' compensation laws of the state(s) in which the work or services will be performed. The policy will cover all of Contractor's employees, regardless of whether such coverage is optional under the law of that state(s).
(ii) Employers' Liability (Part B) with limits of at least $500,000 each accident, $500,000 by disease policy limit, $500,000 by disease each employee.

(b) This policy will include the following endorsements or language, which shall be indicated on or attached to the certificate of insurance:

(i) Waiver of subrogation in favor of and acceptable to BNSF.

5.4 **Railroad Protective Liability Insurance ("RPLI").**

This insurance shall name only BNSF as the Insured with coverage of at least $5,000,000 per occurrence and $10,000,000 in the aggregate. The policy will be issued on a standard ISO form CG 00 35 12 04 and include the following:

(i) Endorsed to include the Pollution Exclusion Amendment.
(ii) Endorsed to include the Limited Seepage and Pollution Endorsement.
(iii) Endorsed to include Evacuation Expense Coverage Endorsement.
(iv) Endorsed to remove any exclusion for punitive damages.
(v) No other endorsements restricting coverage may be added.
(vi) The original policy must be provided to BNSF and Contractor shall not perform the Work or any other services or work of any kind under this Agreement until BNSF has reviewed and approved the policy.
(vii) The definition of "Physical Damage to Property" will be endorsed to read: "means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured's care, custody, and control (including, but not limited to rolling stock and their contents, mechanical construction equipment or motive power equipment, railroad tracks, roadbeds, catenaries, signals, tunnels, bridges and buildings) arising out of the acts or omissions of the contractor named on the Declarations."

In lieu of providing a RPLI policy, Contractor may participate in BNSF's Blanket Railroad Protective Liability Insurance Policy available to Contractor or its contractor. The limits of coverage are the same as above. The cost is $_____.

☐ Contractor **elects** to participate in BNSF's Blanket Policy for activities commencing as of the Effective Date (if any);

☐ Contractor **declines** to participate in BNSF's Blanket Policy for activities commencing as of the Effective Date (if any).

5.5 **Other Requirements.**

(a) Where allowable by law, no exclusions for punitive damages may be included in any policy.

(b) Contractor agrees to waive its right of recovery against BNSF for all claims and suits against BNSF. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against BNSF for all claims and suits. Contractor further waives its right of recovery, and its insurers also waive their right of subrogation against BNSF for loss of its owned or leased property or property under Contractor's care, custody or control.

(c) Allocated Loss Expense, including but not limited to defense costs and expenses, will be in addition to all policy limits for coverages under the insurance requirements.

(d) Contractor is not allowed to self-insure without the prior written consent of BNSF. If BNSF allows Contractor to self-insure, Contractor shall directly cover any self-insured retention or other financial responsibility for claims in lieu of insurance. Any and all BNSF liabilities that would otherwise be covered by Contractor's insurance in accordance with the provisions of this Agreement, will be covered as if Contractor elected not to include a deductible, self-insured retention or other financial responsibility for claims.

(e) Prior to commencing any services or other Work under this Agreement, Contractor shall furnish to BNSF an acceptable certificate(s) of insurance from an authorized representative evidencing the required coverage(s), endorsements, and amendments.

(f) Contractor shall notify Railroad in writing at least thirty (30) days prior to any cancellation, non-renewal, substitution or material alteration.

(g) Any insurance policy shall be written by a reputable insurance company acceptable to BNSF or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.

(h) If the coverage provided by any of the insurance policies required by this Agreement is purchased on a "claims made" basis, Contractor hereby agrees to maintain coverage in force for a minimum of three (3) years after expiration, cancellation or termination of this Agreement.

(i) Contractor agrees to provide evidence to BNSF that it has the required coverage in place at least annually or in the event of a renewal or material change of coverage.

(j) Contractor represents that this Agreement has been thoroughly reviewed by Contractor's insurance agent(s)/broker(s), and that Contractor has instructed them to procure the insurance coverage required by this Agreement.

(k) Not more frequently than once every five years, BNSF may, at its discretion, reasonably modify the insurance requirements herein to reflect the then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

(l) If Contractor will subcontract any portion of the services or Work, Contractor shall require that the subcontractor provide and maintain insurance coverage(s) as set forth herein, naming BNSF as an additional insured. In addition, Contractor shall require that the subcontractor release, defend and indemnify BNSF to the same extent and under the same terms and conditions as Contractor is required to release, defend and indemnify BNSF under this Agreement.

(m) Failure to provide evidence of insurance as required by this Agreement shall entitle, but not require, BNSF to terminate this Agreement immediately. Acceptance of a certificate that does not comply with this Agreement shall not operate as a waiver of Contractor's obligations hereunder.

(n) The fact that Contractor obtains insurance (including, without limitation, self-insurance) shall not release or diminish Contractor's liabilities or obligations including, without limitation, the liabilities and obligations under the indemnity provisions of this Agreement. Damages recoverable by BNSF shall not be limited by the amount of the required insurance coverage.

(o) In the event of a claim or lawsuit involving BNSF arising out of this Agreement, Contractor will make the policy covering such claim or lawsuit available to BNSF.

(p) If Contractor maintains broader coverage and/or higher limits than the minimum requirements in this Agreement, BNSF requires and shall be entitled to the broader coverage and/or the higher limits. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to BNSF.

(q) These insurance provisions are intended to be a separate and distinct obligation on the part of Contractor. Therefore, these provisions shall be enforceable and Contractor shall be bound thereby regardless of whether or not indemnity provisions are determined to be enforceable in the jurisdiction in which the services or other work performed under this Agreement is performed.

(r) For purposes of this **Section 5**, "BNSF" shall mean "Burlington Northern Santa Fe, LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

SECTION 6. CONTRACTOR REQUIREMENTS

(a) While on or about the Premises, Contractor must fully comply with Railroad's "Contractor Requirements", including (but not limited to) clearance requirements and personal protective equipment requirements. Contractor will be solely responsible for fully informing itself as to Railroad's "Contractor Requirements".

(b) Contractor must ensure that each of its employees, subcontractors, agents or invitees entering upon the Premises completes the safety training program at the following Internet Website: "www.BNSFcontractor.com" (the "**Safety Orientation**") within one year prior to entering upon the Premises. Additionally, Contractor must ensure that each and every employee of Contractor, its subcontractors, agents and invitees possess a card certifying completion of the Safety Orientation prior to entering the Premises. The Safety Orientation must be renewed annually.

(c) Prior to entering the Premises, Contractor must prepare and implement a safety action plan acceptable to Railroad. Contractor must audit compliance with that plan during the course of Contractor's work. A copy of the plan and audit results must be kept at the Premises and will be available for inspection by Railroad at all reasonable times.

(d) When not in use, Contractor's machinery and materials must be kept at least fifty (50) feet from the centerline of Railroad's nearest track. Contractor must not cross Railroad's tracks except at existing open public crossings.

SECTION 7. PROTECTION OF RAILROAD FACILITIES / FLAGGER SERVICES

(a) Railroad flagger and protective services and devices will be required and furnished when Railroad determines, in Railroad's sole discretion, that such services and devices are necessary for safety purposes, including but not limited to the following events:

(i) when Work is located over, under or within twenty-five (25) feet from the center line of the nearest track
(ii) when cranes or similar equipment are positioned outside of 25-foot horizontally from track center line but could foul the track in the event of tip-over or other catastrophic occurrence
(iii) when any excavation is performed below the bottom of tie elevation, if, in Railroad's sole opinion, track or other Railroad facilities may be subject to movement or settlement
(iv) when Work in any way interferes, or is likely to interfere, with the safe operation of trains at timetable speeds
(v) when persons, material, equipment, blasting or other hazardous activities in the vicinity present any actual or potential threat to Railroad's personnel, track, communications, signal, electrical, or other facilities.

Special permission must be obtained from Railroad before moving heavy or cumbersome objects or equipment which might result in damage, injury or making the track impassable.

(b) Contractor must give Railroad's Roadmaster (telephone _____) a minimum of thirty (30) working days' advance notice when flagging services will be required so that the Roadmaster can make appropriate arrangements (i.e., bulletin the flagger's position). If flagging services are scheduled in advance by Contractor and the parties hereto subsequently determine that such services are no longer necessary, Contractor must give the Roadmaster five (5) working days' advance notice so that appropriate arrangements can be made to abolish the position pursuant to union requirements.

(c) Flagging services will be performed solely by qualified Railroad flaggers. The costs for flaggers shall include, but not be limited to, the following: pay for at least an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays (as applicable); vacation allowance; paid holidays (as applicable); Railroad and unemployment insurance; public liability and property damage insurance; health and welfare benefits; transportation; meals; lodging and supervision. Negotiations for Railroad labor or collective

bargaining agreements and rate changes authorized by appropriate Federal authorities may increase flagging rates. The flagging rate in effect at the time of performance by Contractor will be used to calculate the costs of flagging pursuant to this **Section 7(c)**.

(i) A flagging crew generally consists of one employee. However, additional personnel may be required to protect the Premises and operations, if deemed necessary by Railroad's representative.

(ii) The cost of flagger services provided by Railroad, when deemed necessary by Railroad's representative, will be borne by **[** Agency / Contractor **]**.

SECTION 8. INDEPENDENT CONTRACTOR

Contractor is considered an independent contractor under this Agreement and neither Contractor nor any of its employees, subcontractors, agents or servants are considered employees of Railroad in any respect. Contractor has the exclusive right and duty to control the work of its employees. All persons employed by Contractor or any of its subcontractors under this Agreement are the sole employees of Contractor or its subcontractors. Contractor will be given general directions and instructions regarding the Work; however, direct supervision of Contractor's employees will be Contractor's responsibility and obligation.

SECTION 9. TRAIN DELAYS

Work performed by Contractor must not cause any interference with the constant, continuous and uninterrupted use of the tracks, property and facilities of Railroad, its lessees, licensees or others, unless specifically permitted under this Agreement, or specifically authorized in writing in advance by Railroad's representative. Additionally, Contractor must not, at any time, impair the safety of Railroad operations or the operations of Railroad's lessees, licensees or other Railroad invitees. Delays to freight or passenger trains affect Railroad's ability to fully utilize its equipment and to meet customer service and contract obligations. Contractor will be responsible to Railroad, including its subsidiaries, affiliated companies, partners, successors and assigns, for all economic losses resulting from unscheduled delays to freight or passenger trains in accordance with the following:

(a) Contractor will be billed for the economic losses arising from loss of use of equipment and train service employees, contractual incentive pay and bonuses and contractual penalties resulting from train delays, whether caused by Contractor, its subcontractors or by Railroad performing Work.

(b) The parties acknowledge that passenger, U.S. mail trains and certain other grain, intermodal, coal and freight trains operate under incentive/penalty contracts with Railroad. Under such arrangements, if Railroad does not meet its contract service commitments, Railroad may (i) suffer loss of performance or incentive pay, or (ii) be subject to a penalty payment. Contractor is responsible for any train performance and incentive penalties or other contractual economic losses actually incurred by Railroad which are attributable to a train delay caused by Contractor or its subcontractors.

(c) The contractual relationship between Railroad and its passenger customers is proprietary and confidential. In the event of a train delay covered by this Agreement, Railroad will share information relevant to any train delay to the maximum extent consistent with Railroad confidentiality obligations.

SECTION 10. ASSIGNMENT

This Agreement will inure to the benefit of and be binding upon the successors and approved assigns of the parties hereto; provided, however, that Contractor may not sell, assign, transfer, or hypothecate this Agreement without the prior written consent of Railroad, which consent shall not be unreasonably withheld.

SECTION 11. NOTICES

Any notice required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if (i) placed in the United States mail, certified, return receipt requested, or (ii) deposited into the custody of a nationally recognized overnight delivery service, addressed to the party to be notified at the address for such party specified below, or to such other address as the party to be notified may designate by giving the other party no less than thirty (30) days' advance written notice of such change in address.

If to Railroad: BNSF Railway Company
2301 Lou Menk Drive, GOB-3-W
Fort Worth, TX 76131
Attn.: CRE-D - Track Agreements

with a copy to: Jones Lang LaSalle Brokerage, Inc.
4200 Buckingham Road, Suite 110
Fort Worth, TX 76155-2670
Attn.: Track Agreements

If to Contractor: _____
_____
_____
Attn.: _____

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the Effective Date.

RAILROAD: **BNSF Railway Company**, a Delaware corporation

By: _____
Name: _____
Title: _____
Date: _____

CONTRACTOR: _____

By: _____
Name: _____
Title: _____
Date: _____

Agenda Report

Committee-of-the-Whole ☒
Board Meeting ☒

Attachment:	Voting Requirements:
1. Location Maps	Majority

DATE: **May 28, 2024**

SUBJECT: **Approval of a Lease with PSF I Knoll Trail Crossing, LLC Providing for Kiss-and-Ride Parking, Handicapped Parking, and Office Space at the Silver Line Knoll Trail Station**

RECOMMENDATION

Approval of a resolution authorizing the President & Chief Executive Officer or her designee to execute a lease agreement between DART and PSF I Knoll Trail Crossing, LLC providing for designated kiss-and-ride parking spaces, handicapped parking, and office space at the Silver Line Knoll Trail Station, in substantially the form shown in Exhibit 1 to the resolution, subject to DART legal review and Federal Transit Administration (FTA) approval.

COMMITTEE CONSIDERATIONS

. On May 14, 2024, the Committee-of-the-Whole unanimously moved this item to the May 28, 2024, Board of Directors meeting.

FINANCIAL CONSIDERATIONS

- The costs associated with this lease, which are detailed in a confidential packet provided under separate cover, are included in the Silver Line Regional Rail Corridor project budget, the FY 2024 Capital Budget, and the FY 2024 20-Year Financial Plan.

BUSINESS PURPOSE

- In planning the Knoll Trail Station located in north Dallas, handicapped parking and short-term parking for passenger pick-up/drop-off were desirable components to the station design but were difficult to achieve due to space constraints. Consequently, no dedicated parking or pick-up/drop-off areas were identified in the 2018 Final Environmental Impact Statement/Record of Decision.

- As the Silver Line project progressed, it became apparent that a kiss-and-ride area would be necessary to secure construction permits, address a community need, and aid in emergency access to the station. As a result, DART initiated discussions with the owner of 15400 Knoll Trail Drive, Dallas, (the property directly adjacent to the Knoll Trail Station site) to explore improving station access and providing some short-term, handicapped, and emergency vehicle parking at the Knoll Trail Station.

- Because the short-term and handicapped parking spaces for the Knoll Trail Station would consume 16 parking spaces allocated to tenants of 15400 Knoll Trail Drive, DART staff negotiated a bundle agreement with the property owner - a lease for office space and a license for the 16 parking spaces to be converted into the station kiss-and-ride area.

- The leased office space, which includes 15 dedicated parking spaces for DART use (in addition to the Knoll Trail Station parking), will initially be utilized by DART's on-call construction service contractor pursuant to a sublease agreement and with the property owner's consent. However, because the leased spaced is conveniently located in the northern sector of DART's service area, the offices are expected to serve as a useful site for DART commuter rail, maintenance of way, police, and other agency operations in the future, particularly after the Silver Line enters revenue service.

- General terms of the lease agreement:

  - Premises: Suite 501 - 4,146 square feet
  - Term: 120 months (10 years) commencing on June 1, 2024
  - Renewal Options: Two additional five-year terms. Each renewal term shall be at then-existing market rental rate

- The license agreement for the kiss-and-ride area, included as an exhibit to the lease agreement, permits DART to convert 16 office tenant parking spaces on the parking garage deck at 15400 Knoll Trail Drive (located directly adjacent to the station platform) into a circular drive to facilitate free-flowing traffic, handicapped parking, short-term parking for DART passengers, operations personnel, and emergency vehicles, and pedestrian access to Knoll Trail Station. The lease agreement also provides for the installation of security arms, at DART's expense, to limit ingress to the office building's parking to tenants and prevent egress through the kiss-and-ride area. The license agreement will remain in effect, at a minimum, until the expiration or termination of the lease agreement.

- Approval of this real estate transaction will help achieve Board Strategic Priority 5: Enhance DART’s role as a recognized local, regional, and national transportation leader.

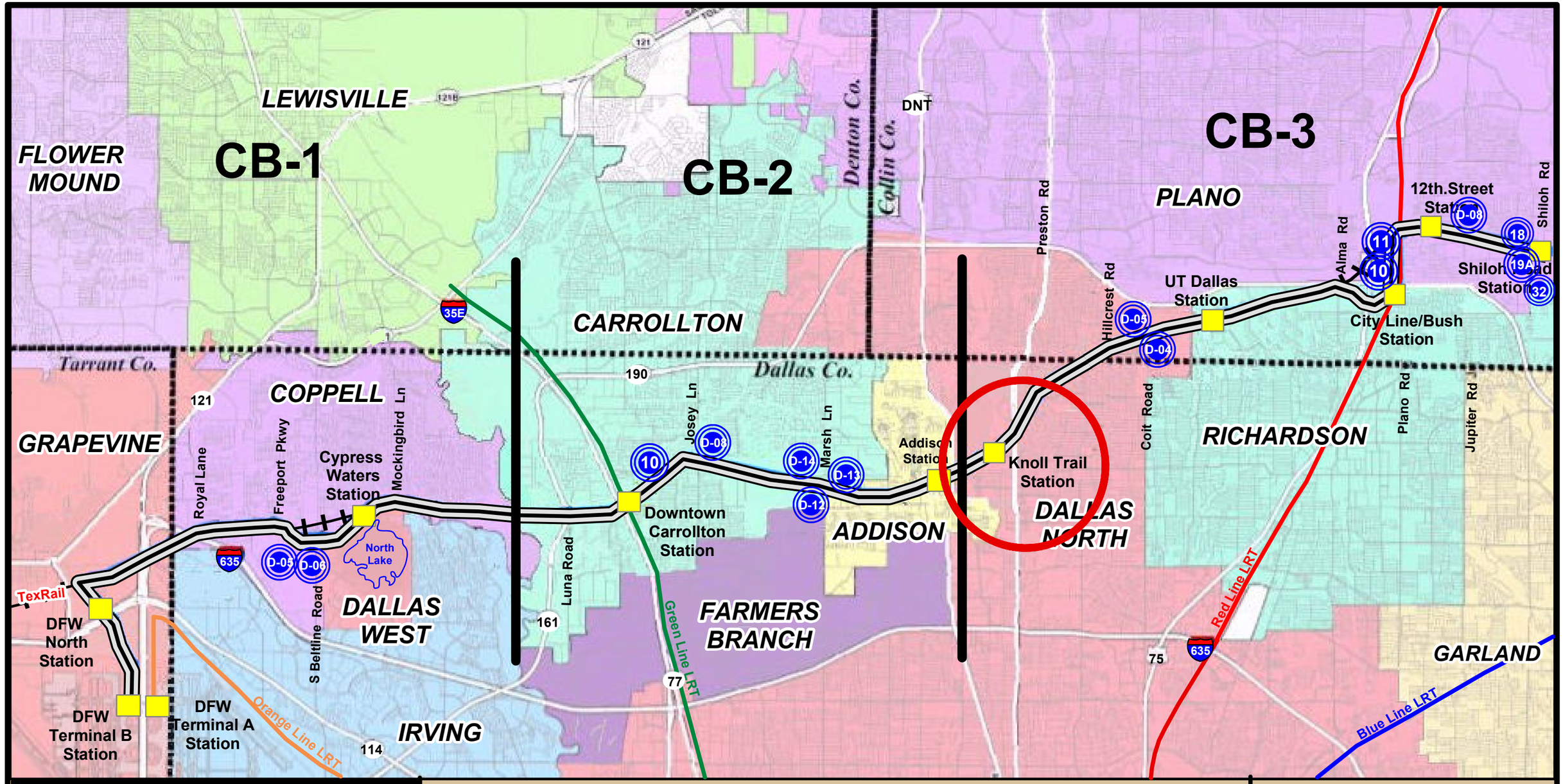
- The Board has been provided a confidential packet under separate cover outlining the details of the proposed transaction.

APPRAISAL INFORMATION

- The lease's monthly rate has been reviewed by DART's Chief Appraiser, a Texas State Certified Real Estate Appraiser, and approved as consistent with market rate.

LEGAL CONSIDERATIONS

- Section 452.054 of the Texas Transportation Code grants Dallas Area Rapid Transit (DART) authority to acquire real property.



Legend

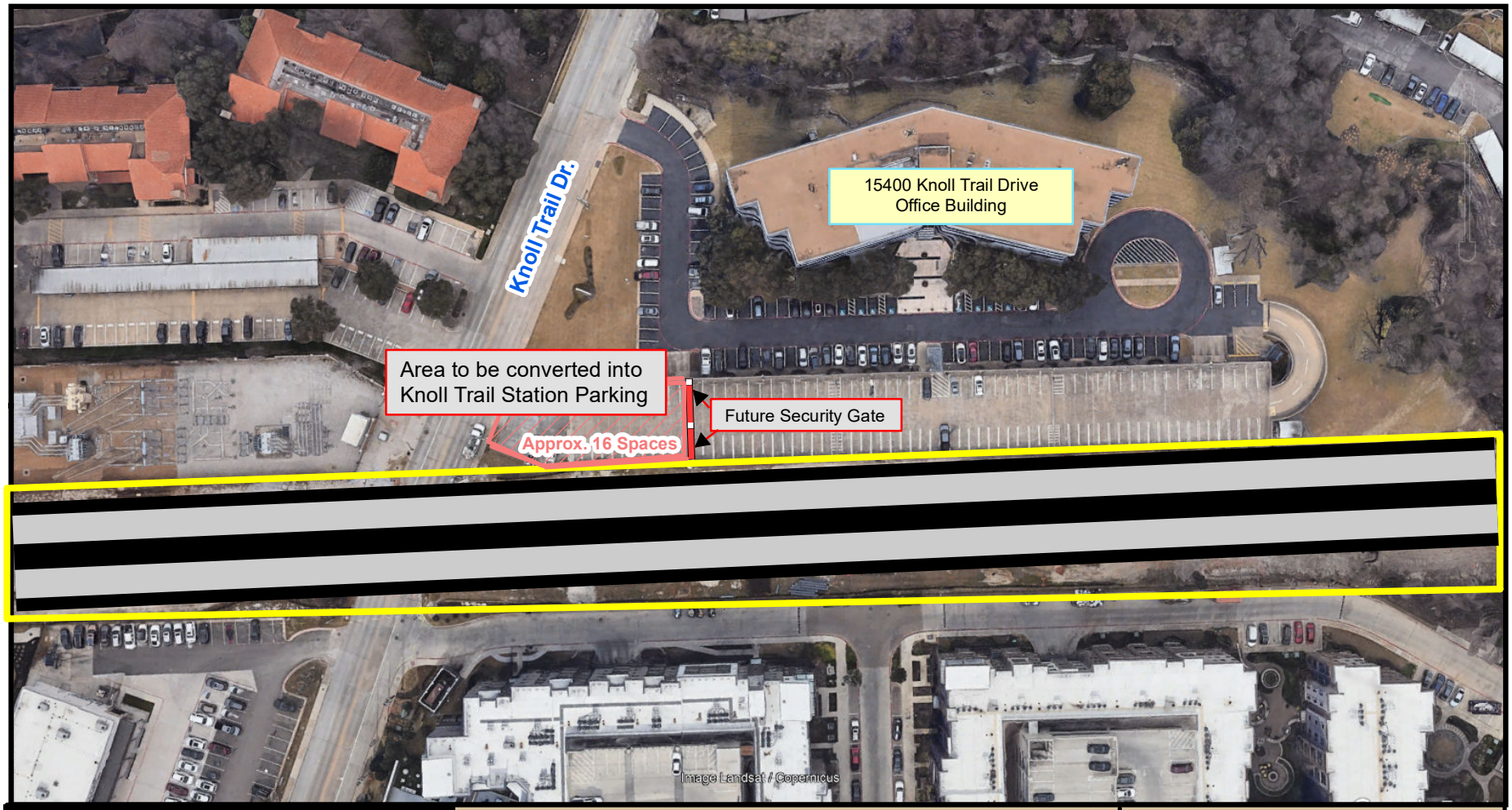
- Silver Line Corridor
- Parcel Locations
- Station Locations

DALLAS AREA RAPID TRANSIT

Approval of a Lease with PSF I Knoll Trail Crossing, LLC Providing for Kiss-and-Ride Parking, Handicapped Parking, and Office Space at the Silver Line Knoll Trail Station

N

DART



Legend

- Leased Parking Spaces
- Leased Office Spaces
- DART Owned Property
- Silver Line Corridor

DALLAS AREA RAPID TRANSIT

Approval of a Lease with PSF I Knoll Trail Crossing, LLC Providing for Kiss-and-Ride Parking, Handicapped Parking, and Office Space at the Silver Line Knoll Trail Station

0 320 640 1,280 1,920 2,560 Meters

DART

DRAFT

RESOLUTION

of the

DALLAS AREA RAPID TRANSIT BOARD

(Executive Committee)

Approval of a Lease with PSF I Knoll Trail Crossing, LLC Providing for Kiss-and-Ride Parking, Handicapped Parking, and Office Space at the Silver Line Knoll Trail Station

WHEREAS, Dallas Area Rapid Transit (DART) was created to provide a regional public transportation system, and the acquisition of real property and the planning, design, engineering, and construction of improvements thereon are functions fundamental to the provision of a public transportation system; and

WHEREAS, handicapped parking and short-term parking for DART passenger pick-up and drop-off, operations personnel, and emergency vehicles are valuable additions to the Silver Line Knoll Trail Station and are necessary for the issuance of construction permits; and

WHEREAS, under the lease agreement between DART and PSF I Knoll Trail Crossing, LLC, DART will gain handicapped and short-term parking at the Knoll Trail Silver Line Station and conveniently located office space in the northern segment of its service area for its contractors, operations personnel, police officers and other agency employees; and

WHEREAS, funding for this lease agreement is within current budget and FY 2024 20-Year Financial Plan allocations.

NOW, THEREFORE, BE IT RESOLVED by the Dallas Area Rapid Transit Board of Directors that the President & Chief Executive Officer or her designee is authorized to execute a lease with PSF I Knoll Trail Crossing, LLC providing for kiss-and-ride parking, handicapped parking, and office space at the Silver Line Knoll Trail Station, in substantially the form shown in Exhibit 1 to the resolution, subject to DART legal review and Federal Transit Administration (FTA) approval.

Approval of a Lease with PSF I Knoll Trail Crossing, LLC Providing for Kiss-and-Ride Parking, Handicapped Parking, and Office Space at the Silver Line Knoll Trail Station

	/s/ Dee Leggett
Prepared by:	Dee Leggett Executive Vice President Chief Development Officer
	/s/ Gene Gamez
Approved as to form:	Gene Gamez General Counsel
	/s/ Nadine S. Lee
Approved by:	Nadine S. Lee President & Chief Executive Officer

BASIC LEASE INFORMATION

LEASE EXECUTION DATE:	_____, 2024
TENANT:	Dallas Area Rapid Transit, a Texas Regional Transportation Authority
ADDRESS OF TENANT:	1401 Pacific Avenue Dallas, Texas 75202 ATTN: Assistant Vice President, Real Estate
TENANT CONTACT:	Leticia Delgado *ldelgado@dart.org* Telephone: (214) 749-2633
LANDLORD:	PSF I Knoll Trail Crossing, LLC, a Delaware limited liability company
ADDRESS OF LANDLORD:	c/o Prescott Realty Group, Inc. 3100 Monticello Avenue, Suite 600 Dallas, Texas 75205
LANDLORD CONTACT:	Property Manager Telephone: (214) 269-0620
PREMISES:	Suite No. 501 in the office building (**"Building"**) located on the land described as 15400 Knoll Trail Drive, City of Dallas, Dallas County, Texas and known as Knoll Trail Crossing, as more particularly described on Exhibit "A" (**"Land"**). The Premises are outlined on the plan attached to the Lease as Exhibit "B" and are deemed to contain 4,146 square feet of Rentable Space.
LEASE TERM:	One Hundred Twenty (120) months, commencing June 1, 2024 (**"Commencement Date"**) and ending One Hundred Twenty (120) months after the Commencement Date (at 5:00 p.m., May 31, 2034), subject to adjustment as provided in the Lease. If the Commencement Date is not the first day of a calendar month, then the Lease Term shall be extended by the number of days between the Commencement Date and the first day of the next month.
BASE RENTAL: ****See Rider No. 106***	$__*__ per month, which is based on an annual Base Rental of $__*__ per rentable square foot per year, which Tenant agrees to pay to Landlord via its online payment system (or at such other place as Landlord from time to time may designate in writing) in advance and without demand on the first day of each calendar month during and throughout the Lease Term.
PREPAID RENTAL:	$7,946.50
SECURITY DEPOSIT:	$9,563.44
SOLE PERMITTED USE:	General Office.
TENANT'S PROPORTIONATE SHARE:	4.295972%, which is the percentage obtained by dividing (i) the 4,146 rentable square feet in the Premises by (ii) the 96,509 rentable square feet in the Building.

The foregoing Basic Lease Information is incorporated into and made a part of the Lease identified above. If any conflict exists between any Basic Lease Information and the Lease, then the Lease shall control.

LANDLORD:

PSF I Knoll Trail Crossing, LLC,
a Delaware limited liability company
By: PB Knoll Trail JV, LLC,
a Delaware limited liability company,
its sole member

By: PSF I Knoll Trail MM, LLC
a Texas limited liability company

By: _____
Name: _____
Title: _____

TENANT:

Dallas Area Rapid Transit,
a Texas Regional Transportation Authority

By: _____
Name: Caitlin Holland
Title: VP, Real Estate & Economic Development
Development Department

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Exhibit "A"	Legal Description
Exhibit "B"	Floor Plan
Exhibit "C"	Holidays
Exhibit "D"	Landlord’s Consent to Sublease to Stacy and Witbeck, Inc.
Exhibit "E"	Acceptance of Premises Memorandum
Exhibit "F"	Building Rules and Regulations
Exhibit “G”	Parking Agreement
Rider No. 101	Parking Facilities
Rider No. 102	Tenant’s Option to Renew
Rider No. 106	Schedule of Base Rental

LEASE AGREEMENT

THIS LEASE AGREEMENT (**"Lease"**) is made and entered into as of the ___ day of June, 2024 (the "Effective Date"), by and between PSF I Knoll Trail Crossing, LLC, a Delaware limited liability company ("**Landlord**") and Dallas Area Rapid Transit, a Texas Regional Transportation Authority ("**Tenant**").

1. **Definitions and Basic Provisions**. The definitions and basic provisions set forth in the Basic Lease Information ("**Basic Lease Information**") executed by Landlord and Tenant contemporaneously herewith are incorporated herein by reference for all purposes. The additional terms defined below shall have the respective meanings stated when used elsewhere in this Lease, and such terms and the following basic provisions constitute an integral part of this Lease:

(a) **"Normal Business Hours":** From 7:00 a.m. until 6:00 p.m. on weekdays (except Holidays, as defined on Exhibit "C" attached hereto and made a part hereof for all purposes).

(b) **"Rentable Space":** (i) in the case of a single tenancy floor, all floor area measured at the floor from the inside surface of the outer glass line of the Building to the inside surface of the opposite outer glass line excluding only the areas (**"Service Areas"**) used for Building stairs, fire towers, elevator shafts, flues, vents, stacks, pipe shafts and vertical ducts (which Service Areas shall be measured from the mid-point of walls enclosing such Service Areas), but including any such Service Areas which are for the specific use of the particular tenant such as special stairs or elevators, plus an allocation of the square footage of the Building's elevator machine rooms, mechanical and electrical rooms, and public lobbies, and (ii) in the case of a floor to be occupied by more than one tenant, all floor areas within the inside surface of the outer glass walls enclosing the Premises and measured to either (A) the mid-point of the walls separating areas leased by or held for lease to other tenants and/or (B) to the tenant's side of walls adjacent to corridors, elevator foyers, restrooms, mechanical rooms, janitor closets, vending areas and other similar facilities for the use of all tenants on any particular floor (**"Common Areas"**), but including a proportionate part of the Common Areas located on such floor based upon the ratio which the tenant's rentable space (excluding Common Areas) on such floor bears to the aggregate rentable space (excluding Common Areas) on such floor, or other reasonable basis determined by Landlord, plus an allocation of the square footage of the Building's elevator machine rooms, mechanical and electrical rooms, and public lobbies. No deductions from Rentable Space shall be made for columns or projections necessary to the Building. The Rentable Space in the Premises has been calculated on the basis of the foregoing definition and is hereby stipulated for all purposes hereof to be as stated in the Basic Lease Information, whether the same should be more or less as a result of minor variations resulting from actual construction and completion of the Premises for occupancy so long as such work is done in substantial accordance with the terms and provisions hereof.

(c) **"Rider":** Collectively, Riders No. 101, 102, and 106, which are attached hereto, contain additional provisions of this Lease, and are hereby incorporated in, and made a part of, this Lease.

(d) **"Exhibits":** The following Exhibits are attached to and made a part of this Lease for all purposes:

A - Land
B - Premises
C - Holidays
D – Landlord's Consent to Sublease to Stacy and Witbeck, Inc.
E - Acceptance of Premises Memorandum
F - Building Rules and Regulations
G-Parking Agreement

2. **Lease of Premises**.

(a) In consideration of the obligation of Tenant to pay rent as herein provided and in consideration of the other terms, covenants, and conditions hereof, Landlord hereby demises and leases to Tenant, and Tenant hereby leases and takes from Landlord, the Premises, together with the right to use in common with others the Common Areas, for the Lease Term specified herein, all upon and subject to the terms and conditions set forth herein. This Lease and the obligations of Landlord hereunder are conditioned upon faithful performance by Tenant of all of the agreements and covenants herein set out and agreed to by Tenant. Tenant agrees and acknowledges that there is excluded from

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LANDLORD:_____
TENANT:_____

Tenant's use of the Premises (whether the Premises are or include one or more full floors within the Building) and Landlord hereby expressly reserves for its sole and exclusive use, any and all mechanical, electrical, telephone and similar rooms, janitor closets, elevator, pipe and other vertical shafts and ducts, flues, stairwells, any area above the acoustical ceiling, and any other areas not specifically shown on Exhibit "B" as being part of the Premises.

(b) Landlord as Licensor shall grant Tenant as Licensee a license for the use of Landlord's property for a License for Parking Lot ("Parking Agreement") serving the Silver Line Knoll Trail Station. The Parking Agreement shall commence on the Effective Date and remain in place, at a minimum, so long as this Lease is in effect. In the event Landlord terminates the Parking Agreement pursuant to its terms, Tenant may terminate this Lease Agreement with one hundred eighty (180) days written notice to Landlord; provided, however, Tenant shall be required to pay all Rent and other amounts due to Landlord under this Lease prior to termination. The Parking Agreement is attached hereto as Exhibit "G". In the event the Building is sold, the Parking Agreement shall be assigned to be the new owner as a condition of the sale for the remainder of the Term that the Lease is in effect or would have been in effect but for the sale.

3. **Services by Landlord**. Landlord agrees to furnish the following services to the Premises, as long as Tenant is not in default, all of such services to be reimbursed in accordance with the terms of Paragraph 4 below:

(a) Cold water (at the normal temperature of the supply of water to the Building) for lavatory, water fountain and toilet purposes, and hot water (from the regular Building supply at prevailing temperatures) for lavatory purposes, all of such water service to be supplied from the regular supply of water to the Building at points of supply provided for general use of tenants of the Building through fixtures installed by Landlord or by Tenant with Landlord's consent; provided, however, nothing contained herein shall require Landlord to furnish hot water to any kitchen, bar or other such lavatory facility in the Premises.

(b) Heated and refrigerated air conditioning in season during Normal Business Hours, and at such reasonable office temperature and in such amounts as are considered by Landlord to be standard. Landlord shall make reasonable efforts to adjust such services within its determined range. Such services at all other times shall be furnished only at the request of Tenant, who shall bear the entire cost thereof. Whenever machines or equipment that generate abnormal heat and affect the temperature otherwise maintained by the air conditioning system are used in the Premises, Landlord shall have the right to install supplemental air conditioning units in the Premises, and the cost thereof, including the cost of installation, operation, use and maintenance, shall be paid by Tenant to Landlord from time to time promptly on demand.

(c) Operatorless passenger elevator service in common with other tenants for ingress and egress from the Premises, provided that Landlord may reasonably limit the number of elevators to be in operation at times other than Normal Business Hours, and service elevator(s) in common with other tenants but only when scheduled through the management of the Building.

(d) Such janitorial cleaning services as may, in the judgment of Landlord, be standard for office use.

(e) Electric current in the manner and to the extent deemed by Landlord to be standard for office use.

(f) Non-standard services specific to the needs of Tenant or requested by Tenant ("Non-standard Services") shall be solely borne by Tenant and furnished at the sole discretion of Landlord. These Non-standard Services include, but are not limited to, security provided at non-standard hours, additional security, additional or specialized janitorial services, janitorial services at non-standard hours, additional personnel time utilized in supervising, coordinating or performing Non-standard Services or required to work non-standard hours regarding said services, additional HVAC or utilities required beyond standard office use, HVAC or utilities required for non-standard hours (for example after hours HVAC if the Building does not normally have HVAC at all hours). Payment for all such Non-standard Services shall be considered as Additional Rent and shall be billed to Tenant by Landlord and paid in accordance with the provisions of this Lease regarding Rent. The minimum cost for after-hours HVAC is $100.00 per hour with a 2-hour minimum.

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LANDLORD:_____
TENANT:_____

Failure to any extent to furnish or any stoppage of these defined utilities and services resulting from any cause whatsoever shall not render Landlord liable in any respect for damages to either person, property or business, nor be construed as an eviction of Tenant, nor entitle Tenant to any abatement of rent, nor relieve Tenant from fulfillment of any covenant or agreement contained herein. Should any malfunction of the Building improvements or facilities (which by definition do not include any improvements or facilities of Tenant besides Building standard improvements) occur for any reason, Landlord shall use reasonable diligence to repair same promptly, but Tenant shall have no claim for rebate or abatement of rent or damages on account of such malfunction or of any interruptions in service occasioned thereby or resulting therefrom.

Notwithstanding any provision contained herein to the contrary, if Tenant is prevented from using the Premises (and Tenant does not occupy the Premises or any portion thereof) because of the unavailability of any utility or service provided for herein for a period of five (5) consecutive business days following Landlord's receipt from Tenant of a written notice regarding such unavailability and (i) the restoration of which is within Landlord's reasonable control within such period, (ii) such unavailability was not caused (in whole or in part) by Tenant or a governmental directive, (iii) the unavailability is caused solely by the negligence or willful misconduct of Landlord, and (iv) the unavailability is not caused by fire, casualty or condemnation, then Tenant shall, as its exclusive remedy be entitled to a reasonable abatement of Rent for each consecutive day (after such 5-day period) that Tenant is so prevented from using the Premises.

Notwithstanding any provision contained herein to the contrary, during the Term of this Lease and any extensions, Tenant shall, save and except for the event of a natural disaster or emergency (including a weather emergency), have access to, and use of, the Premises, common areas and parking facilities twenty-four (24) hours per day, seven (7) days per week, fifty-two (52) weeks per year in accordance with the terms and conditions contained herein.

4. **Additional Rental.**

(a) In addition to Base Rental, Tenant shall during the Lease Term, pay an amount per square foot of Rentable Space within the Premises (**"Tenant's Additional Rental"**) equal to Tenant's Proportionate Share of the Operating Expenses grossed up to one hundred percent (100%) occupancy if the building is less than one hundred percent (100%) occupied. Tenant shall have a 2024 calendar year Base Year Expense Stop ("**Base Year Expense Stop**") for Operating Expenses which shall be grossed up to one hundred percent (100%) occupancy if the building is less than one hundred percent (100%) occupied for the 2024 calendar year Base Year Expense Stop. Prior to the commencement of each calendar year of Tenant's occupancy, Landlord may make a good faith estimate of the anticipated amount of Tenant's Additional Rental above the Base Year Expense Stop (**"Tenant's Forecast Additional Rental"**) and Tenant agrees to pay Tenant's Forecast Additional Rental in equal monthly installments in advance and without demand on the first day of each calendar month during and throughout the Lease Term and any renewal or extension thereof, subject to adjustment of Tenant's Forecast Additional Rental pursuant to any audit conducted pursuant to paragraph 4(c) hereof.

(b) Within 150 days after the end of each calendar year during the Lease Term and any renewal or extension thereof, or as soon as reasonably possible thereafter, Landlord shall provide Tenant a statement showing the Operating Expenses for said calendar year and a statement prepared by Landlord comparing Tenant's Forecast Additional Rental theretofore paid by Tenant with Tenant's Additional Rental. In the event that Tenant's Forecast Additional Rental paid by Tenant exceeds Tenant's Additional Rental for said calendar year, Landlord, at Landlord's option, shall either pay Tenant an amount equal to such excess by direct payment to Tenant within thirty (30) days of the date of such statement, or credit such excess payment against the next accruing installment(s) of Tenant's Forecast Additional Rental. In the event that the Tenant's Additional Rental exceeds Tenant's Forecast Additional Rental for said calendar year, Tenant shall pay Landlord, within thirty (30) days of receipt of the statement, an amount equal to such difference. Such obligation of Landlord to refund and of Tenant to pay shall survive expiration or termination of this Lease. Landlord's statement showing Operating Expenses shall be conclusive and binding for all purposes on Tenant as to any and all items contained therein to which Tenant has not objected in writing to Landlord within thirty (30) days after Tenant's receipt of such statement, which writing shall specify each item objected to and the detailed reason for each such objection.

(c) Tenant at its sole expense shall have the right during the Lease Term, but no more frequently than once per calendar year following prior written notice to Landlord, to audit Landlord's books and records relating to Operating Expenses, or at Landlord's sole election, Landlord will provide at Tenant's reasonable expense a copy of such audit

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TENANT:_____

prepared by an independent certified public accountant. Any such audit must be conducted by an independent nationally or regionally recognized accounting firm that is not being compensated by Tenant on a contingency fee basis.

(d) The term **"Operating Expenses"** shall mean all costs of management, operation (specifically excluding the cost of electricity to the Building and related improvements), and maintenance of the Land, the Building, and all other improvements on the Land and any and all appurtenances thereto (**"Common Facilities"**), all accrued and based on an annual period consisting of a calendar year. By way of illustration but not limitation, Operating Expenses shall include expenditures for maintenance and repairs; amortization of any capital expenditures in accordance with generally accepted accounting practices and principles which are incurred by Landlord to (i) attempt to effect a reduction in the Operating Expenses of the Building, or (ii) keep the Building in compliance with all applicable governmental rules and regulations from time to time; assessments and governmental charges (including taxes on rents or services); ad valorem property taxes with respect to the Land and/or the Building or any part of either thereof; charges for water, sewerage, and gas; cleaning, including supplies, janitorial services and pest control; licenses, permits and inspection fees; refuse collection; insurance; administrative expenses, including salaries, benefits, taxes and other expenses for labor and management, office equipment, telephone, and supplies; management fees payable by Landlord with respect to the Land, Building and Common Facilities; fire protection; snow and ice removal; landscape maintenance; professional services (including legal services, property-related consulting and accounting expenses); and security services.

Operating expenses shall also include, (i) all costs and expenses of repairing, operating and maintaining the Building, ventilating and air conditioning system for the Building, including the cost of all utilities required in the operation thereof, except those paid directly by tenants of the Building and including the cost of replacements of equipment used in connection with such repair and maintenance work and all costs and expenses incurred in making alterations or additions to the heating, ventilating and air conditioning system in order to comply with governmental rules, regulations and statutes; (ii) the costs of capital improvements and structural repairs and replacements made in or to the Building (a) in order to conform to changes subsequent to completion of the original construction of the Building in any applicable laws, ordinances, rules, regulations or orders of any governmental or quasi-governmental authority having jurisdiction over the Building (herein "Required Capital Improvements"), and/or (b) that are designed primarily to reduce Operating Expenses or to reduce the rate of increase in Operating Expenses (herein "Cost Savings Improvements"). The expenditures for Required Capital Improvements and Cost Savings Improvements shall be amortized and reimbursed to Landlord in equal installments over the useful life of such capital improvement or structural repair or replacement (as reasonably determined by Landlord in accordance with standard real estate accounting principles consistently applied) together with interest on the balance of the unreimbursed expenditure at a rate equal to the floating commercial loan rate announced from time to time by US Bank, a national banking association, or its successor, as its prime rate, plus 2% per annum (the "Prime Rate")which is in effect on the date the expenditure was incurred by Landlord; provided, however, the amount to be reimbursed for any Cost Savings Improvements shall be limited in any year to the estimated reduction or estimated savings in Operating Expenses as a result thereof; (iii) all costs and expenses incurred by Landlord in providing standard services and utilities to tenants of the Building, including office janitorial services, window washing, and utilities not separately metered and not charged by Landlord directly to specific tenants; together with the cost of replacement of building standard electric light bulbs and fluorescent tubes and ballasts, which Landlord shall have the exclusive right to provide and install; and (iv) All costs and expenses incurred by Landlord in operating, managing, repairing and maintaining the Building and Property, including all sums expended in connection with the Common Areas for general maintenance and repairs, resurfacing, painting, restriping, cleaning, sweeping and janitorial services, window washing, maintenance and repair of elevators, stairways, sidewalks, curbs and Building signs, sprinkler systems, planting and landscaping, lighting and other utilities, maintenance and repair of any fire protection systems, automatic sprinkler systems, lighting systems, emergency back-up utility systems, storm drainage systems and any other utility systems, personnel to implement such services and to police the Common Areas, rental and/or depreciation of machinery and equipment used in such maintenance and services, police and fire protection services, trash removal services, all costs and expenses pertaining to snow and ice removal, security systems, utilities, premiums and other costs for workers' compensation insurance, wages, withholding taxes, social security taxes, personal property taxes, fees for required licenses and permits, supplies, and charges for management of the Building and Common Areas, including (x) the cost of any management fees reasonably and customarily paid to independent third party management companies by landlords of comparable buildings and (y) the fair rental value of any office space provided thereunder.

Costs and expenses incurred by Landlord in operating, managing, repairing and maintaining the Building and Real Property which are incurred exclusively for the benefit of specific tenants of the Building will be billed accordingly and will not be included within the general Operating Expenses. The following shall be excluded from Operating Expenses: depreciation; capital expenditures other than those referenced hereinabove; cost of Building alterations or renovations specifically for

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LANDLORD:_____
TENANT:_____

other tenants in the Building; advertising; commissions or fees paid for leasing; cost of repairs occasioned by fire, windstorm, or other casualty (but only to the extent reimbursed by insurance proceeds); and wages, salaries, or other compensation paid to any executive above the grade of building manager

Tenant shall have a 2024 calendar base year expense stop (the "Base Year Expense Stop").

5. **Electricity**.

(a) Notwithstanding anything contained in this Lease to the contrary, Operating Expenses shall not include the cost of electricity to the Building and Tenant shall be solely responsible for Tenant's Proportionate Share of the costs of electrical consumption to the Building and the Additional Rental hereunder shall be increased by such amount ("**Electricity Charge**"). The costs of electricity to the Building and Common Areas used to calculate the Electricity Charge shall not include the cost of any electrical use payable by another tenant of the Building on account of that tenant's specific use that is in excess of that Tenant's Proportionate Share. Landlord may from time to time deliver to Tenant an invoice and Tenant shall make payment of the Electricity Charge to Landlord within ten (10) days of delivery of the invoice. Landlord from time to time shall also have the option to make a good faith estimate of the annual Electricity Charge for each upcoming year and, upon thirty (30) days' written notice to Tenant, may require the monthly payment of Base Rental to be adjusted in accordance with such estimated annual Electricity Charge. Any amounts paid based on such an estimate shall be subject to adjustment as hereafter provided when the actual cost of electricity to the Building and Common Areas is available for such year. Periodically, but in no event less often than once each calendar year, Landlord shall furnish to Tenant a statement of the actual cost of electricity to the Building and Common Areas for the period since the last such statement. If the Electricity Charge collected for the prior year, as a result of Landlord's estimate of the cost of electricity, is in excess of the Electricity Charge actually due during such prior year, then Landlord shall refund to Tenant any overpayment (or at Landlord's option, apply such amount against the Electricity Charge to become due hereunder). Likewise, Tenant shall pay to Landlord, within ten (10) days after demand, any underpayment with respect to the prior year. Tenant shall be responsible for the payment of all of the Electricity Charge up to and including the date of expiration or termination of this Lease, whether such costs have been billed to Tenant or not at the time of the termination of this Lease. Landlord shall, within forty-five (45) days after the expiration or termination of this Lease or as soon thereafter as practical, deliver to Tenant an invoice for all such Electricity Charge up to and including the date of expiration or termination of this Lease.

(b) If Landlord in its reasonable discretion believes that Tenant is consuming substantially more than its proportionate share of electrical power supplied to the Building and Common Areas (whether by reason of type of usage, hours of operation, heat generation or otherwise) and subject to Landlord providing Tenant with reasonable documentation of such excess usage, Landlord may have an electric power consumption survey conducted with respect to the Premises by a qualified electrical engineer selected by Landlord for the purpose of establishing as closely as reasonably possible Tenant's average monthly consumption of electricity (including its proportionate share of electrical power attributable to all Common Areas of the Building, including lobbies, corridors, elevators and restrooms), which consumption shall be expressed by such engineer in terms of kilowatt hours per month. Tenant agrees to pay to Landlord within thirty (30) days after receipt of any such monthly statement, the amount, if any, by which (i) the product of the number of kilowatt hours estimated by such engineer to be consumed by Tenant, multiplied by the average rate paid by Landlord for one kilowatt hour, exceeds (ii) the amount of Tenant's Electricity Charge for such month, as provided above. Additionally, Landlord in its sole discretion, may require the Premises to be submetered, with the cost of such submetering to be at the sole cost and expense of Tenant.

(c) Without Landlord's prior written consent, which consent shall not be unreasonably withheld, Tenant shall not install any equipment (such as, without limitation, tabulating or computing equipment) in the Premises that will require any electrical current or equipment for its use other than that supplied by Landlord for normal office usage, and the cost of special electrical installations approved by Landlord shall be paid by Tenant to Landlord on demand.

6. **Payments and Performance**. Tenant agrees to pay, via Landlord's online payment system, all rents and sums provided to be paid by Tenant hereunder at the times and in the manner herein provided, without any setoff, deduction or counterclaim whatsoever. Should this Lease commence on a day other than the first day of a calendar month or terminate on a day other than the last day of a calendar month, the rent for such partial month shall be proportionately reduced. The Base Rental for the first partial month, if any, shall be payable at the beginning of said period or as Prepaid Rental. The obligation of Tenant to pay such rent is an independent covenant, and no act or

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circumstance whatsoever, whether such act or circumstance constitutes a breach of covenant by Landlord or not, shall release Tenant from the obligation to pay rent. Landlord reserves the right to refuse payments not made via its online payment system, inclusive of, but not limited to cash and Tenant's personal or corporate check. Time is of the essence in the performance of all of Tenant's obligations hereunder. Any amount which becomes owing by Tenant to Landlord hereunder shall bear interest at the highest lawful rate per annum from the due date until paid, unless there is no highest lawful rate of interest provided by law with respect to such amount, in which event such amount shall bear interest at the rate of one and one-half percent (1-1/2%) per month from the due date until paid. In addition, at Landlord's option, but only to the extent allowed by applicable law and not in excess of the amount allowed by applicable law, Tenant shall pay a late charge in the amount not to ten percent (10%) of any installment of rental hereunder which is not paid within five (5) days of the date on which it is due in order to compensate Landlord for the additional expense involved in handling delinquent payments. Further, if Tenant fails in two (2) consecutive months to make rental payments within ten (10) days after the due date, Landlord in order to reduce its administrative costs, may require, by giving written notice to Tenant (and in addition to any other rights and remedies accruing pursuant to any other term, provision or covenant of this Lease), that Base Rental payments be paid quarterly in advance instead of monthly and/or that all future Additional Rent payments be made on or before the due date. Any acceptance of a monthly Base Rental payment or of payment other than via Landlord's online payment system thereafter by Landlord will not be construed as a subsequent waiver of said rights or requirements.

7. **Signage**. Landlord will provide building directory and standard suite signage for Tenant at Tenant's entrance at Landlord's sole cost and expense.

8. **Completion of Improvements and Commencement of Rent.** Subject to the terms and conditions of this Lease, by moving into the Premises or taking possession thereof, Tenant accepts the Premises on an "as is basis" and as suitable for the purposes for which the same are leased and accepts the Building and every appurtenance thereof, and on request from Landlord, Tenant shall promptly execute and deliver to Landlord an Acceptance of Premises Memorandum in the form attached hereto as Exhibit "E" and made a part hereof for all purposes.

9. **Relocation of Premises**. Landlord reserves the right to designate another location in the Building for the Premises at any time during the Lease Term, and if Landlord elects to so designate a new location for the Premises, Tenant will vacate the old Premises and move into the new Premises (which will contain substantially the same number of square feet of Rentable Space as the old Premises) when the finish-out improvements therein are substantially completed; provided, however, that Tenant shall be notified in writing at least sixty (60) days prior to said relocation, and Landlord shall pay all reasonable out-of-pocket moving expenses and all reasonable expenses for redesigning the new Premises in a manner reasonably comparable to the design of the old Premises. In the event the Premises are relocated, Base Rental and Tenant's Additional Rental shall thereafter be calculated hereunder on the basis of the total Rentable Space of the new Premises.

10. **Repairs and Reentry**. Tenant will, at Tenant's own cost and expense, maintain and keep the Premises and any alterations and additions thereto in sound condition and good repair, and shall pay for the repair of any damage or injury done to the Building or any part thereof by Tenant or Tenant's agents, employees and invitees; provided, however, that Tenant shall make no repairs to the Premises without the prior written consent of Landlord. The performance by Tenant of its obligation to maintain and make repairs shall be conducted only by contractors approved by Landlord after plans and specifications therefor have been approved by Landlord. In the event Landlord specifically consents to the performance of any maintenance or the making of any repairs or replacements by Tenant and Tenant fails to promptly commence and diligently pursue the performance of such maintenance or the making of such repairs or replacements, then Landlord, at its option, may perform such maintenance or make such repairs and Tenant shall reimburse Landlord, on demand, after Tenant receives an invoice therefor, the cost thereof plus fifteen percent (15%) of the actual costs to cover a fee for Landlord's agent or manager. Tenant will not commit or allow any waste or damage to be committed on any portion of the Premises, and upon the termination of this Lease by lapse of time or otherwise, Tenant shall deliver up the Premises to Landlord in as good condition as at date of possession, ordinary wear and tear excepted. Upon such termination of this Lease, Landlord shall have the right to reenter and resume possession of the Premises. Notwithstanding the foregoing provisions of this Paragraph 10, any repairs to the Premises or the Building that are necessitated because of any damage caused by fire or other casualty shall be governed by the provisions of Paragraph 22 below.

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Landlord shall be responsible for maintenance and repairs to the exterior, structural/foundation and Common Areas of the Building, including but not limited to the roof and exterior walls of the Building, and the basic plumbing, electrical, mechanical and heating, ventilating and air-conditioning systems serving the Building to the exterior of the Premises.

11. **Assignment and Subletting**. In the event that Tenant desires to encumber this Lease, assign this Lease or sublet all or any part of the Premises or grant any license, concession or other right of occupancy of any portion of the Premises, Tenant shall notify Landlord in writing and shall state the name of the proposed assignee, sublessee or other transferee and the terms of the proposed assignment, sublease or transfer. Tenant shall also provide financial information and state and provide information requested by Landlord as to the nature and character of the business of the proposed assignee, sublessee or transferee. Landlord shall have the option to retake possession of the Premises or portion thereof if not for the entire Premises (i.e., a sublease) and terminate this Lease as of the date on which the proposed assignment, sublease or other transfer was to become effective. Landlord must exercise such option to retake the Premises by giving written notice to Tenant within thirty (30) days after receipt of Tenant's notice or Landlord will be deemed to have rejected its option to retake the Premises. Tenant shall have the right, within five (5) business days after receipt of Landlord's written notice to terminate to rescind its request for said assignment, sublease or other transfer, in which this Lease shall continue in full force and effect. If Landlord fails to exercise its option to retake the Premises, Tenant shall not assign this lease or any right hereunder or interest herein, and Tenant shall not sublet the Premises in whole or in part or grant any license, concession or other right of occupancy of any portion of the Premises, without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed. Any such assignment, mortgage or subletting without such consent shall be void and shall, at the sole option of the Landlord, be deemed an event of default by Tenant under this Lease. Notwithstanding any assignment or subletting consented to by Landlord, Tenant and any guarantor of Tenant's obligations under this Lease and each assignee shall at all times remain fully responsible and liable for the payment of the rent herein specified and for compliance with all of Tenant's other covenants and obligations under this Lease. No consent to any assignment or mortgage of this Lease or any subletting of the Premises shall constitute a waiver of the provisions of this Paragraph except as to the specific instance covered thereby. In the event that the monthly rental per square foot of space subleased which is payable by any sublessee to Tenant shall exceed the monthly rental per square foot for the same space payable for the same month by Tenant to Landlord (including any bonuses or any other consideration paid directly or indirectly by the sublessee to Tenant), Tenant shall be obligated to pay fifty percent (50%) of the amount of such excess to Landlord as Additional Rent hereunder on the same date it is received by Tenant from the sublessee, with Tenant being allowed to deduct any of its reasonable out-of-pocket expenses incurred for such sublease so long as written documentation of said expenses is provided to Landlord. In the event Tenant shall receive any consideration from an assignee other than the assumption by the assignee of Tenant's obligations hereunder, Tenant shall be obligated to pay the full amount of such consideration to Landlord as additional rent hereunder on the same date it is received by Tenant. Landlord, at Landlord's option, may elect to require that rental payable by any sublessee be paid directly to Landlord and offset Tenant's rent obligations accordingly. At no time during the Lease Term shall Tenant be entitled to (i) advertise the Premises for sublease without the prior written consent of Landlord, such consent not to be unreasonably withheld, (ii) market the Premises for sublease to another tenant of the Building or person or entity with whom Landlord is negotiating to lease space in the Building, and (iii) market the Premises for sublease at a rate less than the fair market value of the Premises subject to Landlord's consent, which consent shall not be unreasonably withheld, conditioned or delayed. If Tenant is a corporation or partnership, an assignment prohibited by this Paragraph 11 shall be deemed to include one or more sales or transfers, by operation of law or otherwise, or creation of new stock or partnership interests, by which a majority of the voting shares of the corporation or interests in the partnership shall be vested in a party or parties who are not owners of a majority of the voting shares or partnership interests of Tenant as of the date hereof; provided, however, that the foregoing provisions of this sentence shall not be applicable if (i) Tenant's stock is listed on a recognized securities exchange or (ii) at least eighty percent (80%) of Tenant's stock is owned by a corporation whose stock is listed on a recognized securities exchange. For the purposes hereof, stock ownership shall be determined in accordance with the principles set forth in section 544 of the Internal Revenue Code of 1986, as amended to the date hereof. Any transfer by operation of law shall also constitute an assignment prohibited by this Paragraph 11. Tenant shall reimburse Landlord, on demand, for its reasonable attorneys' fees and other expenses incurred in connection with considering any request for Landlord's consent to an assignment or sublease of the Premises not to exceed a maximum of $2,500 in the aggregate for said reasonable attorneys' fees and other expenses. Notwithstanding the foregoing, if Tenant is not in an uncured event of default, Tenant shall have the right, upon written notice and required documentation, to assign the Lease to affiliated companies and through corporate mergers, re-organizations, and/or recapitalization and will not require Landlord's consent, provided the

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assignee has a tangible net worth equal to or greater than the Tenant at the time of the Lease execution ("Tenant Affiliate"), Tenant and Tenant Affiliate execute Landlord's assignment documentation and Tenant/Guarantor(s) are not released from Lease liability. In order to verify compliance with this provision Landlord is entitled to receive audited financials from such proposed assignee upon request prior to the assignment as well as documentation of a name change/merger/acquisition where applicable. Any assignment made without providing such financials, if requested, shall be void.

In accordance with the above paragraph, Tenant has notified Landlord of its desire to sublet the Premises to Stacy and Witbeck, Inc. and Landlord has consented to the sublease. A copy of Landlord's consent to the sublease is included with this Lease as Exhibit "H".

12. **Alterations and Additions by Tenant**. Tenant shall make no alterations in or additions to the Premises without the prior written consent of Landlord which shall not be unreasonably withheld, conditioned, or delayed; provided, however, with regard to alterations or additions that would affect the Building's structure or its HVAC, plumbing, electrical or mechanical systems, Landlord's consent shall be in its sole and absolute discretion. All alterations, additions, and improvements made to or fixtures or improvements placed in or upon the Premises by either party (except only moveable trade fixtures of Tenant) shall be deemed a part of the Building and the property of the Landlord at the time they are placed in or upon the Premises, and they shall remain upon and be surrendered with the Premises as a part thereof at the termination of this Lease, unless Landlord shall elect otherwise, whether such termination shall occur by the lapse of time or otherwise. In the event Landlord shall elect that certain alterations, additions and improvements made by Tenant in the Premises shall be removed by Tenant, Tenant shall remove them and Tenant shall restore the Premises to its condition as received on the Commencement Date, at Tenant's own cost and expense, prior to the termination of the Lease Term, ordinary wear and tear, and damage due to fire or other casualty, excepted . Alterations and additions to the Premises will be performed by Landlord at Tenant's cost and expense. Tenant acknowledges that Landlord's approval of any alterations or additions shall not be a representation by Landlord that such alterations, additions or improvements comply with applicable laws. Landlord shall be entitled to a construction management fee of ten percent (10%) of the actual costs of any such work to cover the fee for Landlord's agent or manager in supervising and coordinating such work.

13. **Legal Use; Violations of Insurance Coverage; Nuisance**. Tenant will not occupy or use any portion of the Premises for any purpose other than the Sole Permitted Use or for any purpose which is unlawful or which, in the reasonable judgment of Landlord, is disreputable or which is hazardous due to risk of fire, explosion or other casualty, nor permit anything to be done which will in any way (i) increase the rate of fire and casualty insurance on the Building or its contents, or (ii) tend to lower the first-class character and reputation of the Building, or (iii) create unreasonable elevator loads or otherwise interfere with standard Building operations, or (iv) affect the structural integrity or design capabilities of the Building or (v) result in the storage of any hazardous materials or substances at the Building. In the event that, by reason of any act or conduct of business of Tenant, there shall be any increase in the rate of insurance on the Building or its contents created by Tenant's acts or conduct of business, then Tenant hereby agrees to pay Landlord the amount of such increase on demand. Tenant shall not erect, place, or allow to be placed any sign, advertising matter, stand, booth or showcase in, upon or visible from the vestibules, halls, corridors, doors, outside walls, outside windows or pavement of the Building or the Land without the prior written consent of Landlord. Tenant will conduct its business, and control its agents, employees, and invitees in such a manner as not to create any nuisance or interfere with, annoy or disturb other tenants or Landlord in the management of the Building. If any conflict shall develop between Tenant and Landlord or Tenant and any other tenant regarding Tenant's use of the Premises or creation of a nuisance, Landlord shall be the sole reasonable arbiter of such conflict and its decision shall be binding on Tenant, and Landlord shall incur no liability to Tenant as a result thereof; provided that Tenant shall not be in default of this Lease as a result of Landlord's decision in connection with such conflict unless Landlord provides Tenant with a written notice of such Default and an opportunity to cure in accordance with the non-monetary default provisions of the Lease. Landlord's delay or failure to notify Tenant of non-permitted use shall not constitute any waiver of Landlord's rights nor permission for Tenant to conduct such use. Tenant must promptly notify Landlord in writing of any known water leaks, mold, electrical problems, malfunctioning lights, broken or missing locks, or any other condition that might pose a hazard to property, health, or safety within the Premises without any obligation of inquiry or investigation. Tenant will keep the Premises and all fixtures in good condition and repair subject to the terms and conditions of this Lease. Landlord and any agent thereof does not represent or warrant that the Premises or Building conforms to applicable restrictions, ordinances, requirements, or other matters that may relate to Tenant's intended use, or with respect to the presence on, in or near the Premises or Building of hazardous substances, biological

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matter (including, but not limited to, mold, mildew and fungi) or materials which are categorized as hazardous or toxic. It is generally understood that mold spores are present essentially everywhere and that mold can grow in most any moist location. Emphasis is properly placed on prevention of moisture and on good housekeeping and ventilation practices. Tenant acknowledges the necessity of housekeeping, ventilation, and moisture control (especially in kitchens, janitor's closets, bathrooms, break rooms and around outside walls) for mold prevention. Tenant has visually inspected the Premises and certifies that it has not observed mold, mildew or moisture within the Premises. Tenant agrees to immediately notify Landlord and Landlord's property manager if it observes mold/mildew and/or moisture conditions (from any source, including leaks), and allow management to evaluate and make recommendations and/or take appropriate corrective action. Tenant releases Landlord, Landlord's property manager and their agents, contractors, and employees, from any liability for any personal injury or damages to property caused by or associated with moisture or the growth of or occurrence of mold or mildew on the Premises or otherwise in the Building unless due to Landlord's grossly negligent acts. Tenant acknowledges that control of moisture and mold prevention are integral to its obligations under this Lease. *Landlord does not make any representations as to the suitability, condition, layout, square footage, expenses or operation of the Premises and Building, except as specifically set forth herein, and Tenant expressly acknowledges that no such representations have been made. Landlord makes no other warranties, express or implied, or merchantability, marketability, or fitness for a particular purpose, and any implied warranties are hereby expressly disclaimed.* Tenant must satisfy itself that the Premises may be used as Tenant intends by independently investigating all matters related to its intended use. Subject to Tenant's prior written consent, which consent Tenant may withhold in its reasonable discretion, Tenant agrees that the Landlord, its subsidiaries, and its agents may publicize and use Tenant's image, likeness, name, as well as the terms of the Lease, for any press releases, industry publications, advertising, social media, and promotion purposes in any type of marketing including its websites.

14. **Laws and Regulations**. Tenant at its sole expense will maintain the Premises in a clean, safe and healthful condition and will comply with all laws, ordinances, orders, rules and regulations of any governmental authority having jurisdiction over the use, conditions or occupancy of the Premises.

15. **Indemnity, Waiver, Defense, Liability and Loss or Damage**. Landlord shall not be liable to Tenant or Tenant's agents, employees, representatives, guests, invitees or any person claiming by, through or under Tenant for any injury to person, loss of or damage to property (collectively "Tenant Parties"), or for loss of or damage to Tenant's business, occasioned by or through the acts or omissions of Landlord, Landlord's employees or agents, or employees or agents of Landlord's management company ("collectively "Landlord Parties") or by any cause whatsoever except for a material breach of this Lease or an act or omission arising solely from or out of Landlord Parties' gross negligence or willful wrongdoing. Landlord Parties shall not be liable for, and Tenant shall defend, indemnify Landlord Parties and save them harmless from, all suits, actions, damages, liability and expense in connection with loss of life, bodily or personal injury or property damage arising from or out of any occurrence in, upon, at or from the Premises during the term of this Lease and Building or the occupancy or use by Tenant of the Premises and Building or any part thereof, or occasioned wholly or in part by any action or omission of Tenant and Tenant Parties. Tenant Parties waive governmental immunity to the extent permitted by the Constitution and laws of the State of Texas but only to the extent necessary to satisfy the indemnity, waiver and defense obligations to Landlord under this Lease. **TENANT ACKNOWLEDGES AND AGREES THAT ITS DEFENSE, INDEMNITY AND WAIVER OBLIGATIONS HEREUNDER COVER AND RELATE TO, WITHOUT LIMITATION, ANY NEGLIGENT ACTION AND/OR OMISSION (WHETHER JOINT, COMPARATIVE OR CONCURRENT) OF LANDLORD AND LANDLORD'S AGENTS AND EMPLOYEES AND ARE INTENDED TO WAIVE CONSEQUENCES OF CLAIMS AGAINST THESE PARTIES FOR THEIR OWN NEGLIGENCE AND FAULT BUT NOT GROSS NEGLIGENCE OR WILLFUL WRONGDOING.** If Landlord Parties shall be made a party to any action commenced by Tenant Parties or against Tenant, Tenant shall defend, protect and hold Landlord Parties harmless therefrom and on demand shall pay all costs, expenses, and reasonable attorney's fees incurred by Landlord Parties in connection therewith. In addition to the foregoing, the following shall act as an addition to, but not in any way a limitation upon, Tenant's waiver, defense and indemnity obligations. Landlord Parties and its garage operator will not be responsible for money, jewelry or other personal property lost or stolen in or from the parking garage, uncovered parking areas or public areas regardless of whether such loss or theft occurs when the garage or such area is locked or otherwise secured against entry or not. Landlord Parties and its garage operator will not be responsible for any damages to any vehicle or injury to persons in or from the parking garage, uncovered parking areas or public areas regardless of whether such loss or incident occurs when the garage or such area is locked or otherwise secured against entry or not. While Landlord Parties may, at its option, take measures to attempt to counteract some effects of natural weather

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events in or around the Building, and parking areas or parking garage and facilities, Tenant acknowledges and understands that Landlord's efforts are not required or guaranteed and are not a substitute for Tenant and Tenant Parties' own judgment in avoidance of and advising of avoidance of travel in weather conditions which may be hazardous to personal property and may result in personal injury or death

16. **Rules of the Building**. Tenant will comply fully, and will cause Tenant's agents, employees, and invitees to comply fully with all Rules and Regulations of the Building which are attached hereto as Exhibit "F" and made a part hereof as though fully set out herein. As more particularly provided therein, Landlord shall at all times have the right to change such Rules and Regulations or to amend them in such reasonable manner as Landlord may deem advisable for the safety, protection, care and cleanliness of the Building and appurtenances and for preservation of good order therein provided that any new or modified Rules and Regulations shall not materially affect Tenant's business operations, all of which Rules and Regulations, changes and amendments will be forwarded to Tenant in writing and shall be complied with and observed by Tenant and Tenant's agents, contractors, employees and invitees. Notwithstanding any provision contained in the Rules and Regulations, Tenant shall have the right to install, at Tenant's sole cost and expense, electric keypad/keyfob locks to the doors in the Premises, subject to the approval of Landlord, which approval shall not be unreasonably withheld, conditioned or delayed.

17. **Entry for Repairs and Inspection**. Landlord and its agents and representatives shall have the right to enter into and upon any and all parts of the Premises at all reasonable hours upon a minimum of twenty-four (24) hours attempt of advance notice (or, in an emergency, at any hour) to inspect same or clean or make repairs or alterations or additions to the Building and the Premises (whether structural or otherwise) as Landlord may deem necessary, and during the continuance of any such work, Landlord may temporarily close doors, entryways, public spaces and corridors and interrupt or temporarily suspend Building services and facilities, and Tenant shall not be entitled to any abatement or reduction of rent by reason thereof. During the Lease Term, Landlord may exhibit the Premises to prospective purchasers and lenders at reasonable hours and upon prior notice to Tenant. Furthermore, during the one-year period prior to the expiration date of this Lease, Landlord and Landlord's agents may exhibit the Premises to prospective tenants during Normal Business Hours and upon prior notice to Tenant. Landlord shall use commercially reasonable efforts to conduct its activities in the Premises in a manner that will minimize (i) inconvenience with Tenant's use of, or access to, the Premises, and (ii) any interference with Tenant's business without incurring additional expense to Landlord. Landlord and its agents and employees shall provide Tenant with proper identification prior to entering the Premises, and while within the Premises, an employee, agent or representative of Tenant shall at all times have the right to accompany Landlord or its agents and employees, except in case of an emergency.

18. **Condemnation**. If all of the Premises, or so much thereof as would materially interfere with Tenant's use of the remainder, shall be taken or condemned for any public use or purpose by right of eminent domain, with or without litigation, or be transferred by agreement in connection with or in lieu of or under threat of condemnation, then the Lease Term and the leasehold estate created hereby shall terminate as of the date title shall vest in the condemnor or transferee. If all or any portion of the Building is taken or condemned or transferred as aforesaid, Landlord shall have the option to terminate this Lease effective as of the date title shall vest in the condemnor or transferee. Landlord shall receive the entire award from any taking or condemnation (or the entire compensation paid because of any transfer by agreement), and Tenant shall have no claim thereto.

19. **Waiver of Landlord's Lien and Security Interest**. Notwithstanding anything to the contrary contained in this Lease, Landlord subordinates its lien and or security interest in, any of Tenant's personal property (including furniture, trade fixtures, and equipment) located in, on or about the Premises or the Building to any secured lender of Tenant.

20. **Abandoned Property**. All personal property of Tenant remaining in the Premises after the termination or expiration of the Lease Term or after the abandonment of the Premises by Tenant may be treated by Landlord as having been abandoned by Tenant and Landlord may, at its option and election, thereafter take possession of such property and either (i) declare same to be the property of Landlord, or (ii) at the cost and expense of Tenant, store and/or dispose of such property in any manner and for whatever consideration, Landlord, in its sole discretion, shall deem advisable. Tenant shall be presumed conclusively to have abandoned the Premises if the amount of Tenant's property removed by Tenant from the Premises is substantial enough to indicate a probable intent to abandon the Premises and such removal is not in the normal course of Tenant's business, or if Tenant removes any material amount of Tenant's personal property from the Premises, at a time when Tenant is in default in the payment of rental due

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hereunder or in the performance of any other obligation of Tenant hereunder and such removal is not in the normal course of Tenant's business. Nothing contained in this Paragraph shall prejudice or impair Landlord's rights as a lienholder and secured party under Paragraph 19 hereof, and the rights granted to Landlord under this Paragraph shall be cumulative of its rights as a lienholder and secured party.

21. **Holding Over**. Should Tenant continue to hold the Premises after this Lease terminates, whether by lapse of time or otherwise, such holding over shall, unless otherwise agreed by Landlord in writing, constitute and be construed as a tenancy at will at a daily rental equal to one-thirtieth (1/30) of an amount equal to 150% of the amount of the monthly base rental payable during the last month prior to the termination of this Lease, and upon and subject to all of the other terms and provisions set forth herein except any right to renew this Lease, expand the Premises or lease additional space. This provision shall not be construed, however, as permission by Landlord for Tenant to holdover. No payments of money by Tenant to Landlord after the termination of this Lease shall reinstate, continue, or extend the Lease Term and no extension of this Lease after the termination hereof shall be valid unless and until the same shall be reduced to writing and signed by both Landlord and Tenant. Tenant shall be liable to Landlord for all damage which Landlord shall suffer by reason of any holding over by Tenant, and Tenant shall indemnify Landlord against all damages incurred by Landlord in connection with any claims made by any other tenant or prospective tenant against Landlord resulting from delay by Landlord in delivering possession of the Premises (or any portion thereof) to such other tenant or prospective tenant.

22. **Fire and Casualty**.

(a) If the Premises are damaged by fire or other casualty and if such damage is not susceptible of repair within 180 days (as estimated, as soon as reasonably practicable after the occurrence of such damage, by an architect of recognized good reputation selected by Landlord), then in such event this Lease, at the option of Landlord, exercised by giving written notice thereof to Tenant within thirty (30) days after receipt of such written estimate of the architect so selected, shall terminate as of the date of such loss, and Tenant shall pay the rent hereunder apportioned to the time of such loss and shall pay all other obligations of Tenant owing on the date of termination, and Tenant shall immediately surrender the Premises to Landlord. Rentals and other charges paid in advance for any such periods shall be credited on the next ensuing payments, if any, but if no further payments are to be made, any such advance payments shall be refunded to Tenant. Landlord will use best efforts to minimize business interruption and provide Tenant temporary space comparable to the Premises to utilize during the repair of the Premises if the Premises are susceptible to repair, or if such temporary space is not available, rent hereunder shall be reduced or abated as shall be equitable in proportion to the amount of space rendered untenantable. If Landlord fails to exercise its option to terminate this Lease, the Premises remain untenantable for more than 180 days, and Landlord fails to provide Tenant comparable temporary space to utilize during the repair of the Premises, Tenant shall have the right to terminate the Lease.

(b) If the damage described above is susceptible of repair within 180 days, or if the damage is not susceptible of repair within 180 days but Landlord fails to exercise its option to terminate this Lease, and so long as Landlord does not elect to terminate the Lease pursuant to Subparagraph (c) below, Landlord shall enter and make the necessary repairs without affecting this Lease, but the rent hereunder shall be reduced or abated as shall be equitable in proportion to the amount of space rendered untenantable, until such repairs are made unless such damage has been so slight that Tenant's occupancy of the Premises is not materially interfered with, in which case the rent hereunder shall not be abated or reduced. Notwithstanding the foregoing, Landlord shall have the option to terminate this Lease and shall not be obligated to repair the Premises or the Building if the damage is not covered by insurance or if Landlord's mortgagee applies any portion of the insurance proceeds to the unpaid balance of its loan, in which instance Tenant shall pay rent hereunder apportioned to the date the Premises or the Building incurred damage.

(c) In the event the Building is so badly damaged or injured by fire or other casualty, even though the Premises is not rendered untenantable, that Landlord decides, within ninety (90) days after such destruction, not to rebuild or repair the Building (such decision being vested exclusively in the discretion of Landlord), then in such event Landlord shall so notify Tenant in writing and this Lease shall terminate as of the date specified for termination in the notice from Landlord to Tenant, and the Tenant shall pay rent hereunder apportioned to the date of such termination and shall pay all other obligations of Tenant owing on the date of termination, and Tenant shall immediately surrender the Premises to Landlord.

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(d) Notwithstanding the foregoing provisions of this Paragraph 22, Tenant agrees that if the Premises or any other portion of the Building is damaged by fire or other casualty resulting from the fault or negligence of Tenant or any of its agents, employees, or invitees, then the cost of restoring the property damage in excess of any property insurance proceeds paid to Landlord shall be paid by Tenant on demand, and there shall be no abatement of rent before or during the repair of such damage.

(e) In the event the Lease is terminated by Landlord or Tenant pursuant to this section, the Parking Agreement shall continue, at a minimum, for the full term of the Lease had the fire or other casualty not occurred, subject to the terms and conditions of the Parking Agreement; provided, however, the Parking Agreement shall not continue if the termination arises from an event of default by Tenant, as set out in Section 25 of this Lease. In the event the Parking Agreement survives the termination of this Lease pursuant to this paragraph, Landlord shall assess a fair and reasonable license fee for Tenant's continued use of the parking area only.

23. **Entire Agreement and Amendment; No Representations or Warranties; No Memorandum of Lease**. This Lease contains the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes any and all prior and contemporaneous agreements, understandings, promises, and representations made by either party to the other concerning the subject matter hereof and the terms applicable hereto. It is expressly agreed by Tenant, as a material consideration to Landlord for the execution of this Lease, that there have been no representations, understandings, stipulations, agreements or promises pertaining to the Premises, the Building or this Lease not incorporated in writing herein. This Lease shall not be altered, waived, amended or extended, except by a written agreement signed by the parties hereto, unless otherwise expressly provided herein. **LANDLORD'S DUTIES AND WARRANTIES ARE LIMITED TO THOSE SET FORTH IN THIS LEASE, AND SHALL NOT INCLUDE ANY IMPLIED DUTIES OR WARRANTIES, ALL OF WHICH ARE HEREBY DISCLAIMED BY LANDLORD AND WAIVED BY TENANT. LANDLORD AND TENANT EXPRESSLY DISCLAIM ANY IMPLIED WARRANTY THAT THE PREMISES ARE SUITABLE FOR TENANT'S INTENDED COMMERCIAL PURPOSE, AND TENANT'S OBLIGATION TO PAY RENT HEREUNDER IS NOT DEPENDENT UPON THE CONDITION OF THE PREMISES OR THE PERFORMANCE BY LANDLORD OF ITS OBLIGATIONS HEREUNDER, AND, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, TENANT SHALL CONTINUE TO PAY THE RENT, WITHOUT ABATEMENT, SETOFF OR DEDUCTION, NOTWITHSTANDING ANY BREACH BY LANDLORD OF ITS DUTIES OR OBLIGATIONS HEREUNDER, WHETHER EXPRESS OR IMPLIED.** Neither this Lease nor a memorandum of this Lease shall be recorded in the public records of the county in which the Building is located without the prior written consent of Landlord. All indemnity and defense obligations of Tenant arising under this Lease shall survive the expiration or earlier termination of this Lease.

24. **Transfer of Landlord's Rights**. In the event Landlord transfers its interest in the Building, upon the successor-in-interest's assumption of the obligations and liabilities of Landlord under this Lease and the Parking Agreement, Landlord shall thereby automatically be released from any further obligations hereunder, and Tenant agrees to look solely to the successor in interest of Landlord for the performance of such obligations.

25. **Default and Remedies**.

(a) The following events shall be deemed to be events of default (herein so called) by Tenant under this Lease (subject to applicable notice and cure periods as set forth herein):

(i) Tenant shall fail to pay any rental or other sum payable by Tenant hereunder or under the Parking License as and when such rental or other sum becomes due and payable and such failure is not cured within five (5) business days after Tenant's receipt of written notice from Landlord; provided, however, Tenant shall only be entitled to two (2) written notices of failure to pay during any twelve (12) month period;

(ii) Tenant shall fail to comply with any other provision, condition or covenant of this Lease and any such failure is not cured within ten (10) days after Landlord gives written notice of such failure to Tenant (or if such default cannot reasonably be remedied within such ten (10) days, within such time as may reasonably be required to remedy the default up to an aggregate of sixty (60) days, provided Tenant diligently commences curing such default within the first ten (10) days and diligently proceeds to cure such default subject to reasonable documentation of such efforts);

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(iii) Tenant shall, while in default of any Rent obligation hereunder, desert, vacate or fail to physically occupy any substantial portion of the Premises. Abandonment shall be presumed should the conditions under this section be satisfied for any ten (10) consecutive days;

(iv) Tenant shall assign this Lease or sublet all or any part of the Premises or grant any license, concession or other right of occupancy of any portion of the Premises, without the prior written consent of Landlord;

(v) Any petition shall be filed by or against Tenant or any guarantor of Tenant's obligations under this Lease pursuant to any section or chapter of the present federal Bankruptcy Act or under any future federal Bankruptcy Act or under any similar law or statute of the United States or any state thereof (which as to any involuntary petition shall not be and remain discharged or stayed within a period of sixty (60) days after its entry), or Tenant or any guarantor of Tenant's obligations under this Lease shall be adjudged bankrupt or insolvent in proceedings filed under any section or chapter of the present federal Bankruptcy Act or under any future federal bankruptcy act or under any similar law or statute of the United States or any state thereof;

(vi) Tenant or any guarantor of Tenant's obligations under this Lease shall become insolvent or make a transfer in fraud of creditors;

(vii) Tenant or any guarantor of this Lease shall make an assignment for the benefit of creditors; or

(viii) A receiver or trustee shall be appointed for Tenant or any guarantor of this Lease or for any of the assets of Tenant or any guarantor of this Lease.

(b) Upon the occurrence of any event of default (subject to applicable notice and cure rights), Landlord shall have the option to do any one or more of the following without any further notice or demand, in addition to and not in limitation of any other remedy permitted by law or by this Lease:

(i) Enforce, by all legal suits and other means, its rights hereunder, including the collection of Base Rental, Tenant's Additional Rental and other sums payable by Tenant hereunder and the reimbursement for all unamortized tenant allowances and concessions, without reentering or resuming possession of the Premises and without terminating this Lease.

(ii) Terminate this Lease by issuing written notice of termination to Tenant, in which event Tenant shall immediately surrender the Premises to Landlord, but if Tenant shall fail to do so, Landlord may without notice and without prejudice to any other remedy Landlord may have, enter upon and take possession of the Premises and expel or remove Tenant and its effects without being liable to prosecution or any claim for damages therefor, and upon any such termination, Tenant agrees that in addition to its liability for the payment of arrearages of Base Rental, Tenant's Additional Rental and other sums due and owing by Tenant to Landlord under this Lease upon such termination, Tenant shall be liable to Landlord for damages. Tenant shall pay to Landlord as damages on the same days as Base Rental, Tenant's Additional Rental and other payments which are expressed to be due under the provisions of this Lease, the total amount of such Base Rental, Tenant's Additional Rental and other payments plus a reimbursement for all unamortized tenant allowances and concessions, less such part, if any, of such payments that Landlord shall have been able to collect from a new tenant upon reletting; provided, however, that Landlord shall have no obligation to relet the Premises so as to mitigate the amount for which Tenant is liable. Landlord shall have the right at any time to demand final settlement. Upon demand for a final settlement, Landlord shall have the right to receive, and Tenant hereby agrees to pay, as damages for Tenant's breach, the difference between the total rental provided for in this Lease for the remainder of the Lease Term and the reasonable rental value of the Premises for such period ("Differential Rent Value") which shall be discounted to present value at a rate equal to the rate of interest allowed by law (at the time the demand for final settlement is made) when the parties to a contract have not agreed on any particular rate of interest (or, in the absence of such law, at the agreed upon rate of 3% per annum). However, to avoid uncertainty such Differential Rent Value shall be calculated using the rate per square foot at which Base Rental is then being charged or would be charged throughout the Lease term or any extension thereof for the reasonable rental value per RSF but in no event shall the dollar figure used as the reasonable rental value of the premises exceed a maximum of $5.00 per RSF as used for the reasonable rental value calculation to determine damages and the Differential Rent Value

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(iii) Enter upon and take possession of the Premises without terminating this Lease and expel or remove Tenant and its effects therefrom without being liable to prosecution or any claim for damages therefor, and Landlord may relet the Premises for the account of Tenant. Tenant shall pay to Landlord all arrearages of Base Rental, Tenant's Additional Rental and other sums due and owing by Tenant to Landlord, and Tenant shall also pay to Landlord during each month of the unexpired Lease Term the installments of Base Rental, Tenant's Additional Rental and other sums due hereunder, less such part, if any, that Landlord shall have been able to collect from a new tenant upon reletting; provided, however, that Landlord shall have no obligation to relet the Premises so as to mitigate the amount for which Tenant is liable. In the event Landlord exercises the rights and remedies afforded to it under this Paragraph 25(b)(iii) and then subsequently elects to terminate this Lease, Tenant shall be liable to Landlord for damages as set forth in Paragraph 25(b)(ii) above and Landlord shall have the right at any time to demand final settlement as provided therein.

(iv) Landlord may do whatever Tenant is obligated to do by the provisions of this Lease and may enter the Premises in order to accomplish this purpose. Tenant agrees to reimburse Landlord immediately upon demand for any expenses which Landlord may incur in its actions pursuant to this Subparagraph, and Tenant further agrees that Landlord shall not be liable for damages resulting to Tenant from such action, whether caused by the negligence of Landlord or otherwise.

(v) Landlord may enter upon the Premises and change, alter, or modify the door locks on all entry doors of the Premises, and permanently or temporarily exclude Tenant, and its agents, employees, contractors, representatives and invitees, from the Premises. In the event that Landlord either permanently excludes Tenant from the Premises or terminates this Lease on account of Tenant's default, Landlord shall not be obligated thereafter to provide Tenant with a key to the Premises at any time, regardless of any amounts subsequently paid by Tenant. If Landlord elects to exclude Tenant from the Premises temporarily without permanently repossessing the Premises or terminating this Lease, then Landlord shall not be obligated to provide Tenant with a key to reenter the Premises until such time as all delinquent rent and other amounts due under this Lease have been paid in full and all other defaults, if any, have been cured and Tenant shall have given Landlord evidence reasonably satisfactory to Landlord that Tenant has the ability to comply with its remaining obligations under this Lease; and if Landlord temporarily excludes Tenant from the Premises, Landlord shall have the right thereafter to permanently exclude Tenant from the Premises or terminate this Lease at any time before Tenant pays all delinquent rent, cures all other defaults and furnishes such evidence to Landlord. A key to the Premises will be furnished to Tenant only during Landlord's Normal Business Hours. Landlord's exclusion of Tenant from the Premises shall not constitute a permanent exclusion of Tenant from the Premises or a termination of this Lease unless Landlord so notifies Tenant in writing. Landlord shall not be obligated to place a written notice on the Premises on the front door thereof explaining Landlord's action or stating the name, address or telephone number of any individual or company from which a new key may be obtained. In the event Landlord permanently or temporarily excludes Tenant from the Premises or terminates this Lease, and Tenant owns property that has been left in the Premises but which is not subject to any statutory or contractual lien or security interest held by Landlord as security for Tenant's obligations, Tenant shall have the right to promptly so notify Landlord in writing, specifying the items of property not covered by any such lien or security interest and which Tenant desires to retrieve from the Premises. Landlord shall have the right to either (i) escort Tenant to the Premises to allow Tenant to retrieve Tenant's property not covered by any such lien or security interest, or (ii) remove such property itself and make it available to Tenant at a time and place designated by Landlord. In the event Landlord elects to remove such property itself as provided in the immediately preceding clause (ii), Landlord shall not be obligated to remove such property or deliver it to Tenant unless Tenant shall pay to Landlord, in advance, an amount of cash equal to the amount that Landlord estimates Landlord will be required to expend in order to remove such property and make it available to Tenant, including all moving or storage charges theretofore or thereafter incurred by Landlord with respect to such property. If Tenant pays such estimated amount to Landlord and the actual amount incurred by Landlord differs from the estimated amount, Tenant shall pay any additional amounts to Landlord on demand or Landlord shall refund any excess amounts paid by Tenant to Tenant on demand.

Pursuit of any of the foregoing remedies shall not preclude pursuit of any of the other remedies herein provided or any other remedies provided by law or equity. Any entry by Landlord upon the Premises may be by use of a master or duplicate key or electronic pass card or any locksmith's entry procedure or other means. Any reletting by Landlord shall be without notice to Tenant, and if Landlord has not terminated this Lease, the reletting may be in the name of Tenant or Landlord, as Landlord shall elect. Any reletting shall be for such term or terms (which may be greater or less than the period which, in the absence of a termination of this Lease, would otherwise constitute the balance of the Lease Term) and on such terms and conditions (which may include free rent, rental concessions or tenant inducements

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of any nature) as Landlord in its absolute discretion may determine, and Landlord may collect and receive any rents payable by reason of such reletting. In the event of any reletting, Tenant shall pay to Landlord on demand the cost of renovating, repairing and altering the Premises for a new tenant or tenants, and the cost of advertisements, brokerage fees, reasonable attorneys' fees and other costs and expenses incurred by Landlord in connection with such reletting. In the event any rentals actually collected by Landlord upon any such reletting for any calendar month are in excess of the amount of rental payable by Tenant under this Lease for the same calendar month, the amount of such excess shall belong solely to Landlord and Tenant shall have no right with respect thereto. In the event it is necessary for Landlord to institute suit against Tenant in order to collect the rental due hereunder or any deficiency between the rental provided for by this Lease for a calendar month and the rental actually collected by Landlord for such calendar month, Landlord shall have the right to allow such deficiency to accumulate and to bring an action upon several or all of such rental deficiencies at one time. No suit shall prejudice in any way the right of Landlord to bring a similar action for any subsequent rental deficiency or deficiencies.

26. **Waiver; Attorney's Fees**. No act or thing done by Landlord or its agents during the Lease Term shall be deemed an acceptance of an attempted surrender of the Premises, and no agreement to accept a surrender of the Premises shall be valid unless made in writing and signed by Landlord. No reentry or taking possession of the Premises by Landlord shall be construed as an election on its part to terminate this Lease, unless a written notice of such intention, signed by Landlord, is given by Landlord to Tenant. Notwithstanding any such reletting or reentry or taking possession, Landlord may at any time thereafter elect to terminate this Lease for a previous event of default. Landlord's acceptance of rent following an event of default hereunder shall not be construed as Landlord's waiver of such event of default. No waiver by Landlord of any violation or breach of any of the terms, provisions and covenants herein contained shall be deemed or construed to constitute a waiver of any other violation or breach of any of the terms, provisions and covenants herein contained. Forbearance by Landlord to enforce one or more of the remedies herein provided upon an event of default shall not be deemed or construed to constitute a waiver of any other violation or default. The failure of Landlord to enforce any of the Rules and Regulations described in Paragraph 16 against Tenant or any other tenant in the Building shall not be deemed a waiver of any such Rules and Regulations. No provision of this Lease shall be deemed to have been waived by Landlord unless such waiver is in writing and is signed by Landlord. The rights granted to Landlord in this Lease shall be cumulative of every other right or remedy which Landlord may otherwise have at law or in equity, and the exercise of one or more rights or remedies shall not prejudice or impair the concurrent or subsequent exercise of other rights or remedies. No waiver of any default of Landlord or Tenant hereunder shall be implied from any omission to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver and that only for the time and to the extent therein stated. One or more waivers by Landlord or Tenant shall not be construed as a waiver of a subsequent breach of the same covenant, term or condition. In the event that it shall become necessary for Landlord or Tenant to employ the services of an attorney to enforce any of its rights under this Lease or to collect any sums due to it under this Lease or to remedy the breach of any covenant of this Lease on the part of the other party the prevailing party in any such action shall be entitled to recover all reasonable attorney’s fees and costs.

27. **Quiet Possession**. Landlord hereby covenants that Tenant, upon paying rent as herein reserved, and performing all covenants and agreements herein contained on the part of Tenant, shall and may peacefully and quietly have, hold and enjoy the Premises without any disturbance from Landlord or from any other person claiming by, through or under Landlord, subject to the terms, provisions, covenants, agreements and conditions of this Lease, specifically including, but without limitation, the matters described in Paragraph 34 hereof.

28. **Severability**. If any clause or provision of this Lease is illegal, invalid or unenforceable under present or future laws effective during the Lease Term, then and in that event, it is the intention of the parties hereto that the remainder of this Lease shall not be affected thereby, and it is also the intention of the parties to this Lease that in lieu of each clause or provision that is illegal, invalid or unenforceable, there be added as a part of this Lease a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

29. **Security Deposit**. The Security Deposit shall be held by Landlord without liability for interest and as security for the performance by Tenant of Tenant's covenants and obligations under this Lease, it being expressly understood that the Security Deposit shall not be considered an advance payment of rental or a measure of Landlord's damages in case of default by Tenant upon the occurrence of any event of default by Tenant or upon termination of

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this Lease. Landlord may commingle the Security Deposit with other funds. Landlord may, from time to time, without prejudice to any other remedy, use the Security Deposit to the extent necessary to make good any arrearages of rent or to satisfy any other covenant or obligation of Tenant hereunder. Following any such application of the Security Deposit, Tenant shall pay to Landlord on demand the amount so applied in order to restore the Security Deposit to its original amount. If Tenant is not in default at the termination of this Lease, the balance of the Security Deposit remaining after any such application shall be returned by Landlord to Tenant within thirty (30) days following the expiration of the Lease Term. If Landlord transfers its interest in the Premises during the Lease Term, Landlord may assign the Security Deposit to the transferee and thereafter shall have no further liability for the return of, or any other matter relating to, such Security Deposit.

30. **No Subrogation; Insurance**.

(a) TENANT HEREBY WAIVES ANY CAUSE OF ACTION IT MIGHT HAVE AGAINST LANDLORD PARTIES ON ACCOUNT OF ANY LOSS OR DAMAGE THAT IS INSURED AGAINST UNDER ANY INSURANCE POLICY THAT COVERS THE PREMISES, TENANT'S FIXTURES, PERSONAL PROPERTY, LEASEHOLD IMPROVEMENTS OR BUSINESS AND WHICH NAMES TENANT AS A PARTY INSURED. LANDLORD HEREBY WAIVES ANY CAUSE OF ACTION IT MIGHT HAVE AGAINST TENANT BECAUSE OF ANY LOSS OR DAMAGE THAT IS INSURED AGAINST UNDER ANY INSURANCE POLICY THAT COVERS THE BUILDING OR ANY PROPERTY OF LANDLORD USED IN CONNECTION WITH THE BUILDING AND WHICH NAMES LANDLORD AS A PARTY INSURED. HOWEVER, IF COST OF RESTORING THE LOSS OR DAMAGE OF TENANT'S FIXTURES, PERSONAL PROPERTY, OR LEASEHOLD IMPROVEMENTS EXCEEDS THE AMOUNT OF INSURANCE PROCEEDS PAID TO LANDLORD ON ACCOUNT OF SUCH LOSS OR DAMAGE TO TENANT'S FIXTURES, PERSONAL PROPERTY, OR LEASEHOLD IMPROVEMENTS, THEN TENANT SHALL REMAIN LIABLE TO LANDLORD FOR SUCH EXCESS, PROVIDED THAT THE LOSS OR DAMAGE ARISES SOLELY FROM OR OUT OF TENANT'S NEGLIGENCE OR WILLFUL WRONGDOING.

(b) Tenant will Indemnify and hold harmless Landlord and Landlord Parties from and against any third-party liability claims, loss, damages, injuries or expenses occasioned by or resulting from any Event of Default or any negligent act on the part of Tenant or Tenant Parties on or at the Premises and Property as a result of Tenant's operations or use of the Premises. Tenant agrees to maintain at Tenant's sole cost and expense, Commercial General Liability insurance policies, or self-insurance, covering Tenant's aforesaid indemnity with respect to Tenant's use and operations at the Premises, including coverage for unintentional third-party bodily injury or property damage. Such policies shall indemnify Landlord and Landlord's property management company, as their interest may appear, with limits of liability of at least TWO MILLION DOLLARS ($2,000,000.00) per occurrence for bodily injury and property damage. In no event shall Tenant's liability under this License be limited by the amount of insurance required to be carried by Tenant. Further, Tenant's insurance shall provide primary coverage without contribution from any other insurance carried by or for the benefit of Landlord or Landlord Parties and Tenant shall obtain contractual liability coverage to insure its indemnity obligations as set forth in this License. This indemnity and waiver obligation shall survive the termination or expiration of the License.

(c) The insurance required to be carried by Tenant shall provide thirty (30) days' notice of cancellation or modification, and be from a reputable insurer permitted to do business in the State of Texas.

(d) On or prior to the Commencement Date, Tenant shall deliver to Landlord a certificate of insurance, including waiver of subrogation pursuant to this License, and evidencing that Landlord and the Landlord's then property management company are named as "indemnified parties" under commercial general liability insurance provided by Texas Municipal League Intergovernmental Risk Pool. DART will also provide a certificate of insurance to evidence self-insurance limits for commercial general liability of $100,000 per person, $300,000 per accident, and $100,000 property damage, based on DART's tort liability cap as a government agency under Texas Transportation Code 452.

31. **Binding Effect**. The provisions of this Lease shall be binding upon and inure to the benefit of Landlord and Tenant, respectively, and to their respective heirs, personal representatives, successors and assigns, subject to the provisions of Paragraphs 11, 24 and 41 hereof.

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32. **Notices**. Any Notice required or permitted to be given under this Agreement must be in writing and may be served by: (1) depositing same in the United States mail, addressed to the party to be notified below, certified with return receipt requested; (2) by delivering the same in person to such party via a hand-delivery or (3) by Federal Express or any courier service that provides a return receipt showing the date of actual delivery of same to the addressee thereof. Notice given in accordance with this section shall be effective upon receipt.

LANDLORD: PSF I Knoll Trail, LLC
Prescott Realty Group, Inc.
3100 Monticello Avenue, Suite 600
Dallas, Texas 75205
Attn: Peter Kofoed, Head of Asset Management
Email: PKofoed@prescottgroup.com
Phone Number: (214) 750-0009

With a copy to: Prescott Realty Group, Inc.
3100 Monticello Avenue, Suite 600
Dallas, Texas 75205
Attn: Nancy Gapen, Senior Property Manager
Email: NGapen@prescottgroup.com
Phone Number: (214) 725-7472

TENANT: Dallas Area Rapid Transit
1401 Pacific Avenue
Dallas, Texas 75202
ATTN: Assistant Vice President, Real Estate
Email: DART_RE@dart.org
Phone Number: (214) 749-2633

33. **Brokerage**. Tenant warrants that it has not had any dealings with any broker or agent in connection with the negotiation or execution of this Lease other than Landlord's broker. Said commission with the broker named hereinabove, if any, or any broker representing either party shall be paid by Landlord and shall be documented by separate agreement.

34. **Subordination**. This Lease and all rights of Tenant hereunder are subject and subordinate to any deed of trust, mortgage or other instrument of security which does now or may hereafter cover the Building and the Land or any interest of Landlord therein, and to any and all advances made on the security thereof, and to any and all increases, renewals, modifications, consolidations, replacements and extensions of any of such deed of trust, mortgage or instrument of security and so long as Tenant is not in default under any of the terms, covenants and conditions of this Lease beyond any applicable grace or cure period, Tenant shall not be disturbed in the quiet and peaceful possession of the Premises and the rights of Tenant shall remain in full force and effect and undisturbed during the Term of this Lease and all extensions hereof. This provision is hereby declared by Landlord and Tenant to be self-operative and no further instrument shall be required to effect such subordination of this Lease. Tenant shall, however, within ten (10) days after receipt of written notice from Landlord, execute, acknowledge and deliver to Landlord any and all customary and commercially reasonable instruments and certificates that, in the reasonable judgment of Landlord, may be necessary or proper to confirm or evidence such subordination. However, notwithstanding the generality of the foregoing provisions of this Paragraph 34, Tenant agrees that any such mortgagee shall have the right at any time to subordinate any such deed of trust, mortgage or other instrument of security to this Lease on such terms and subject to such conditions as such mortgagee may deem appropriate in its discretion. Tenant further covenants and agrees upon demand by Landlord's mortgagee at any time, before or after the institution of any proceedings for the foreclosure of any such deed of trust, mortgage or other instrument of security, or sale of the Building pursuant to any such deed of trust, mortgage or other instrument of security or voluntary sale, to attorn to the purchaser upon any such sale and to recognize and attorn to such purchaser as Landlord under this Lease. The agreement of Tenant to attorn upon demand of Landlord's mortgagee contained in the immediately preceding sentence shall survive any such foreclosure sale or trustee's sale. Tenant hereby agrees to execute, acknowledge and deliver to Landlord's mortgagee any and all customary and commercially reasonable instruments and certificates that Landlord's mortgagee may reasonably

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request in order to confirm or evidence such attornment. In addition, Tenant acknowledges that following any foreclosure by Landlord's lender, such lender shall not be: (1) liable for any previous act or omission of the Landlord under such Lease; (2) subject to any credit, demand, claim, counterclaim, offset or defense which theretofore accrued to such tenant against Landlord, (3) unless consented to by such lender (which consent shall not be unreasonably withheld, conditioned or delayed) or permitted without such lender's consent under the terms of any loan documents, bound by any modification of this Lease made post foreclosure, or by any previous prepayment of more than one month's fixed rent or additional rent [any lease modification made by Landlord (or a successor landlord) and Tenant (or a Tenant Affiliate) prior to a foreclosure by Landlord's lender shall not be subject to any requirement of lender's consent]; (4) bound by any covenant or obligation of Landlord to perform, undertake or complete any work in the Premises required to prepare it for initial occupancy; (5) required to account for any security deposit of Tenant other than any security deposit actually delivered to such lender by Landlord; (6) bound by any obligation to make any payment to Tenant or grant any credits, except for services, repairs, maintenance and restoration provided for under this Lease to be performed by Landlord after the date of such attornment; and (7) responsible for any monies owing by Landlord to Tenant. Tenant will give written notice to Landlord's lender of any default by Landlord hereunder by mailing a copy of the same by certified mail, postage prepaid, to any lender of which it has received notice. Notwithstanding any provision contained herein, at any time after a foreclosure by Landlord's lender, Landlord's lender or successor-in-interest shall be subject to all obligations and liabilities under this Lease, including but not limited to any ongoing act or omission of the previous Landlord provided that Landlord's lender and/or successor-in-interest received notice of such act or omission.

35. **Joint and Several Liability**. If there is more than one Tenant, the obligations hereunder imposed upon Tenant shall be joint and several. If there is a guarantor(s) of Tenant's obligations hereunder, the obligations of Tenant shall be joint and several obligations of Tenant and each such guarantor, and Landlord need not first proceed against Tenant hereunder before proceeding against each such guarantor, nor shall any such guarantor be released from its guarantee for any reason whatsoever, including, without limitation, any amendment of this Lease, any forbearance by Landlord or waiver of any of Landlord's rights, the failure to give Tenant or any such guarantor any notices, or the release of any party liable for the payment or performance of any of Tenant's obligations hereunder.

36. **Building Name and Address**. Landlord reserves the right at any time to change the name by which the Building is designated and its address, and Landlord shall have no obligation or liability whatsoever for costs or expenses incurred by Tenant as a result of such name change or address change of the Building.

37. **Estoppel Certificates; Financial Statements**.

(a) Tenant agrees to furnish from time to time, within ten (10) business days following the written request by Landlord or any successor to Landlord or by the holder of any deed of trust or mortgage covering the Land and Building or any interest of Landlord therein, an estoppel certificate signed by Tenant to the effect that this Lease is then presently in full force and effect and specifying any modifications; that the Lease Term has commenced and the full rental is then accruing hereunder; that Tenant has accepted possession of the Premises and that any improvements required by the terms of this Lease to be made by Landlord have been completed to the satisfaction of Tenant; that no rent under this Lease has been paid more than thirty (30) days in advance of its due date; that the address for notices to be sent to Tenant is as set forth in this Lease; that Tenant, as of the date of such certificate, has no charge, lien or claim of offset under this Lease or otherwise against rents or other charges due or to become due hereunder; and that to the knowledge of Tenant, Landlord is not then in default under this Lease. To the extent that Tenant believes any of the foregoing to be inaccurate, Tenant shall specifically enumerate in the certificate the alleged inaccuracy and Tenant's basis for refusing to certify to such facts. At Landlord's option, any such certificate may also contain an acknowledgment by Tenant of receipt of notice of the assignment of this Lease to such holder and the agreement by Tenant with such holder that from and after the date of such certificate, Tenant will not pay any rent under this Lease more than thirty (30) days in advance of its due date, will not surrender or consent to the modification of any of the terms of this Lease nor to the termination of this Lease by Landlord, and will not seek to terminate this Lease by reason of any act or omission of Landlord until Tenant shall have given written notice of such act or omission to the holder of such deed of trust or mortgage (at such holder's last address furnished to Tenant) and until a reasonable period of time shall have elapsed following the giving of such notice, during which period such holder shall have the right, but shall not be obligated, to remedy such act or omission; provided, however, that (i) the agreement of Tenant described in this sentence will be of no effect under such certificate unless Tenant is furnished by such holder with a copy of any assignment to such holder of Landlord's interest in this Lease within ninety (90) days after the date of

INITIALED:
LANDLORD:_____
TENANT:_____

such certificate, and (ii) the agreement of Tenant with such holder that is embodied in such certificate shall terminate upon the subsequent termination of any such assignment. In the event Tenant shall fail or neglect to execute, acknowledge and deliver any such certificate, Landlord may, as the agent and attorney-in-fact of Tenant, execute, acknowledge and deliver the same, and Tenant hereby irrevocably nominates, constitutes and appoints Landlord as Tenant's proper and legal agent and attorney-in-fact for such purpose. Such power of attorney shall not terminate on disability of the principal.

(b) Tenant shall also furnish to Landlord within thirty (30) days following a written request by Landlord, but no more often than one time per calendar year, a statement of the financial condition of Tenant prepared by an independent certified public accountant in a form reasonably satisfactory to Landlord.

38. **Mechanic's Liens**. Nothing contained in this Lease shall authorize Tenant to do any act which shall in any way encumber the title of Landlord in and to the Premises or the Building or any part thereof; and if any mechanic's or materialman's lien is filed or claimed against the Premises or Building or any part thereof in connection with any work performed, materials furnished or obligation incurred by or at the request of Tenant, Tenant will promptly pay same or cause it to be released of record. If the lien is not released of record within, or default in payment thereof shall continue for, ten (10) days after written notice thereof from Landlord to Tenant, without limiting or otherwise affecting any of Landlord's other rights or remedies and without waiving any event of default by Tenant, Landlord shall have the right and privilege at Landlord's option of paying the same or any portion thereof without inquiry as to the validity thereof, and any amounts so paid, including expenses and interest, shall be so much additional rent hereunder from Tenant to Landlord and shall be repaid to Landlord immediately on demand therefor.

39. **Taxes and Tenant's Property**. Tenant shall be liable for all taxes levied or assessed against personal property, furniture or fixtures placed by Tenant in the Premises. If any such taxes for which Tenant is liable are levied or assessed against Landlord or Landlord's property and if Landlord elects to pay the same or if the assessed value of Landlord's property is increased by inclusion of personal property, furniture or fixtures placed by Tenant in the Premises, and Landlord elects to pay the taxes based on such increase, Tenant shall pay Landlord upon demand that part of such taxes for which Tenant is primarily liable hereunder.

40. **Constructive Eviction**. Tenant shall not be entitled to claim a constructive eviction from the Premises unless Tenant shall have first notified Landlord in writing of the condition or conditions giving rise thereto, and, if the complaints be justified, unless Landlord shall have failed to remedy such conditions within a reasonable time after receipt of said notice.

41. **Landlord's Liability**. The liability of Landlord to Tenant for any default by Landlord under the terms of this Lease shall be limited to Tenant's actual direct, but not consequential, damages therefor and shall be recoverable only from the interest of Landlord in the Building and the Land, and Landlord shall not be personally liable for any deficiency. This clause shall not be deemed to limit or deny any remedies which Tenant may have in the event of default by Landlord hereunder which do not involve the personal liability of Landlord. Notwithstanding anything to the contrary contained in this Lease, in the event Landlord sells, assigns, transfers or conveys its interest in the Building and the Land, Landlord shall have no liability for any acts or omissions that occur after the date of said sale, assignment, transfer or conveyance provided the successor-in-interest assumes the Lease. Notwithstanding any provision contained herein, neither party shall be responsible to the other party for consequential or special damages unless expressly stated herein.

42. **Execution by Landlord.** The submission of this Lease to Tenant shall not be construed as an offer, and Tenant shall not have any rights with respect hereto unless and until Landlord shall, or shall cause its managing agent to, execute a copy of this Lease already executed and delivered by Tenant to Landlord, and deliver the same to Tenant.

43. **No Waiver**. No waiver by Landlord of any of its rights or remedies hereunder, or otherwise, shall be considered a waiver of any other or subsequent right or remedy of Landlord; no delay or omission in the exercise or enforcement by Landlord of any rights or remedies shall ever by construed as a waiver of any right or remedy of Landlord; and no exercise or enforcement of any such rights or remedies shall ever be held to exhaust any right or remedy of Landlord.

INITIALED:
LANDLORD:_____
TENANT:_____

44. **No Third-Party Beneficiary**. This Lease is for the sole benefit of Landlord, its successors and assigns, and Tenant, its permitted successors and assigns, and it is not for the benefit of any third party.

45. **Number and Gender.** Words of any gender used in this Lease shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

46. **Force Majeure.** Whenever a period of time is herein prescribed for action to be taken by Landlord or Tenant, Landlord or Tenant, as applicable, shall not be liable or responsible for, and there shall be excluded from the computation for any such period of time, any delays due to strikes, riots, acts of God, shortages and/or unavailability of labor or materials, war, governmental laws, regulations or restrictions, pandemics, epidemics, or any other cause of any kind whatsoever which are beyond the reasonable control of Landlord or Tenant, as applicable. A party's financial inability to perform its obligations shall in no event constitute Force Majeure. Notwithstanding the foregoing, nothing in this Section shall excuse or delay Tenant's obligation to pay Rent or other charges due under this Lease.

47. **Telecommunications.** Tenant and its telecommunications companies, including but not limited to local exchange telecommunications companies and alternative access vendor services companies shall have no right of access to and within the Building, for the installation and operation of telecommunications systems including but not limited to voice, video, data, and any other telecommunications services provided over wire, fiber optic, microwave, wireless, and any other transmission systems, for part or all of Tenant's telecommunications within the Building and from the Building to any other location without Landlord's prior written consent. Tenant expressly understands and agrees that Landlord reserves the right to grant or deny access (to the Building or any portion thereof, including, without limitation, the Premises) to any telecommunications service provider whatsoever, and that Tenant shall have no right to demand or attempt to require Landlord to grant any access to any such telecommunications service provider. Moreover, Tenant acknowledges and agrees that, in the event any such telecommunications service provider desires access to the Building to serve any or all tenants thereof, such access shall be prescribed and governed by the terms and provisions of Landlord's standard Telecommunications License Agreement, which must be executed and delivered to Landlord by such telecommunications service provider before it is allowed any access whatsoever to the Building.

48. **Landlord's Fees.** Whenever Tenant requests Landlord to take any action or give any consent required or permitted under this Lease, Tenant will reimburse Landlord for Landlord's reasonable costs incurred in reviewing the proposed action or consent, including without limitation reasonable attorneys', engineers' or architects' fees, within ten (10) days after Landlord's delivery to Tenant of a statement of such costs. Tenant will be obligated to make such reimbursement without regard to whether Landlord consents to any such proposed action.

49. **APPLICABLE LAW; CONSENT TO JURISDICTION**. **THIS LEASE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND THE LAWS OF THE UNITED STATES APPLICABLE TO TRANSACTIONS IN THE STATE OF TEXAS. TENANT HEREBY IRREVOCABLY AGREES THAT ANY LEGAL ACTION OR PROCEEDING AGAINST IT WITH RESPECT TO THIS LEASE MAY BE MAINTAINED IN THE COURTS OF DALLAS COUNTY, TEXAS OR IN THE U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, AND TENANT HEREBY CONSENTS TO THE JURISDICTION AND VENUE OF SUCH COURTS.**

50. **Reserved.**

51. **Confidentiality.** Landlord acknowledges that Tenant is subject to the Texas Public Information Act. Tenant acknowledges that the terms and conditions of this Lease are to remain confidential for Landlord's benefit, and may not be disclosed by Tenant to anyone, by any manner or means, directly or indirectly, without Landlord's prior written consent, unless required by law. The consent by Landlord to any disclosures shall not be deemed to be a waiver on the part of Landlord of any prohibition against any future disclosure. Tenant agrees that any press releases regarding Tenant's intended occupancy and/or actual occupancy at the Building must be mutually satisfactory to both Landlord and Tenant prior to the publication of such press release.

52. **Americans with Disabilities Act.** Tenant agrees to comply with all requirements of the Americans with Disabilities Act (Public Law 101-336 (July 26, 1990)) and the Texas Architectural Barriers Act (Article 9102, Tex. Rev. Civ. St. (1991)) applicable to the Premises (referred to herein collectively as the "ADA"). Tenant agrees to defend, indemnify and hold Landlord, its agents, employees and invitees harmless from any and all expenses, liabilities,

INITIALED:
LANDLORD:_____
TENANT:_____

costs or damages suffered by Landlord , its agents, employees and invitees as a result of additional obligations which may be imposed on the Premises under either of such acts by virtue of Tenant's operations. Tenant acknowledges that it will be wholly responsible for any accommodations or alterations which need to be made to the Premises to accommodate disabled employees and invitees of Tenant. No provision in this Lease will be construed in any manner as permitting, consenting to, or authorizing Tenant to violate requirements under either such act, and any provision of the Lease which could arguably be construed as authorizing a violation of either act will be interpreted in a manner which permits compliance with such act and is hereby amended to permit such compliance. All indemnity and defense obligations of Tenant arising under this Lease shall survive the expiration or earlier termination of this Lease.

53. **Hazardous Substances.** For purposes of this Lease, the term "hazardous material" means any explosives, radioactive material, hazardous wastes, or hazardous substances, including without limitation substances defined as "hazardous substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended; Hazardous Materials Transportation Act of 1975, as amended; the Resource Conservation and Recovery Act of 1976, as amended; or any other federal, state, or local statute, law, ordinance, code, rule, regulation, order, or decree, relating to, or imposing liability or standards of conduct concerning hazardous materials, waste, or substances now or at any time hereinafter in effect (collectively, "Hazardous Materials Laws"). Tenant will not cause or permit the storage, use, generation, or disposition of any hazardous materials in, on, or about the Premises or the Building, by Tenant, its agents, employees, or contractors. Tenant will not permit the Premises to be used or operated in any manner that may cause the Premises or the project to be contaminated by any hazardous materials in violation of any Hazardous Materials Laws. Tenant will immediately advise the Landlord in writing of (a) any and all enforcement, cleanup, remedial, removal, or other governmental or regulatory actions instituted, completed, or threatened pursuant to any Hazardous Materials Laws relating to any hazardous materials affecting the Premises; and (b) all claims made or threatened by any third party against Tenant, Landlord, or the Premises relating to damage, contribution, cost recovery, compensation, loss, or injury resulting from any hazardous materials on or about the Premises. Without Landlord's prior written consent, Tenant will not take any remedial action or enter into any agreements or settlements in response to the presence of any hazardous materials in, on or about the Premises. Tenant will be solely responsible for and will defend, indemnify and hold Landlord, its agents, and employees harmless from and against all claims, costs, and liabilities, including attorneys' fees and costs, arising out of or in connection with Tenant's breach of its obligations on this section. To the extent the Premises is contaminated by any hazardous materials to the extent caused by Tenant, Tenant will be solely responsible for and will defend, indemnify, and hold Landlord, its agents, and employees harmless from and against any and all claims, costs, and liabilities, including attorneys' fees and costs, arising out of or in connection with the removal, cleanup, and restoration work and materials necessary to return the Premises and any other property or whatever nature located at the Building to their condition existing prior to the appearance of Tenant 's hazardous materials on the Premises. Tenant 's obligations under this section will survive the expiration or earlier termination of this Lease.

54. **Electronic Signatures and Records.** This Lease may be executed by electronic signature only and may be executed in multiple counterparts. Tenant further hereby consents to Landlord storing this Lease and any future related documents by electronic means only. Each such document to be an original and given the same weight as a wet ink hardcopy document.

IN WITNESS WHEREOF, this Lease Agreement is entered into by the parties hereto on the day and year first set forth above.

LANDLORD: **TENANT:**

INITIALED:
LANDLORD:_____
TENANT:_____

PSF I Knoll Trail Crossing, LLC,
a Delaware limited liability company
By: PB Knoll Trail JV, LLC,
a Delaware limited liability company,
its sole member

By: PSF I Knoll Trail MM, LLC
a Texas limited liability company

By: _____
Name: _____
Title: _____

Dallas Area Rapid Transit,
a Texas Regional Transportation Authority

By: _____
Name: Caitlin Holland
Title: VP, Real Estate & Economic Development
Development Department

INITIALED:
LANDLORD:_____
TENANT:_____

EXHIBIT "A" TO LEASE AGREEMENT

Legal Description of the Land

BEING all of Lot 5 situated in the City of Dallas Block 8707 of Knoll Place, an addition to the City of Dallas as recorded in Volume 81036, Page 0704, Deed Records, Dallas County, Texas, and being more particularly described as follows:

BEGINNING at an iron rod found at the intersection of the East line of Knoll Trail Drive (a 64' R.O.W.) and the Northerly line of St.Louis & Southwestern Railroad (a 100' R.O.W.);

THENCE N00 53'30"W along the East line of said Knoll Trail Drive, a distance of 357.40 feet to an iron rod found for corner, said iron rod being the beginning of a curve to the left having a central angle of 24 49'44", a radius of 338.43 feet, a tangent of 74.50 feet and a tangent bearing N84 38'56" E;

THENCE along said curve to the left an arc distance of 146.66 feet to an iron rod found for the point of reverse curve to the right having a central angle of 9 26'10" a radius of 668.67 feet and a tangent of 55.19 feet;

THENCE along said curve to the right an arc distance of 110.12 feet to an iron rod found for the point of tangency;

THENCE N69 15'22"E a distance of 146.39 feet to an iron rod found for corner;

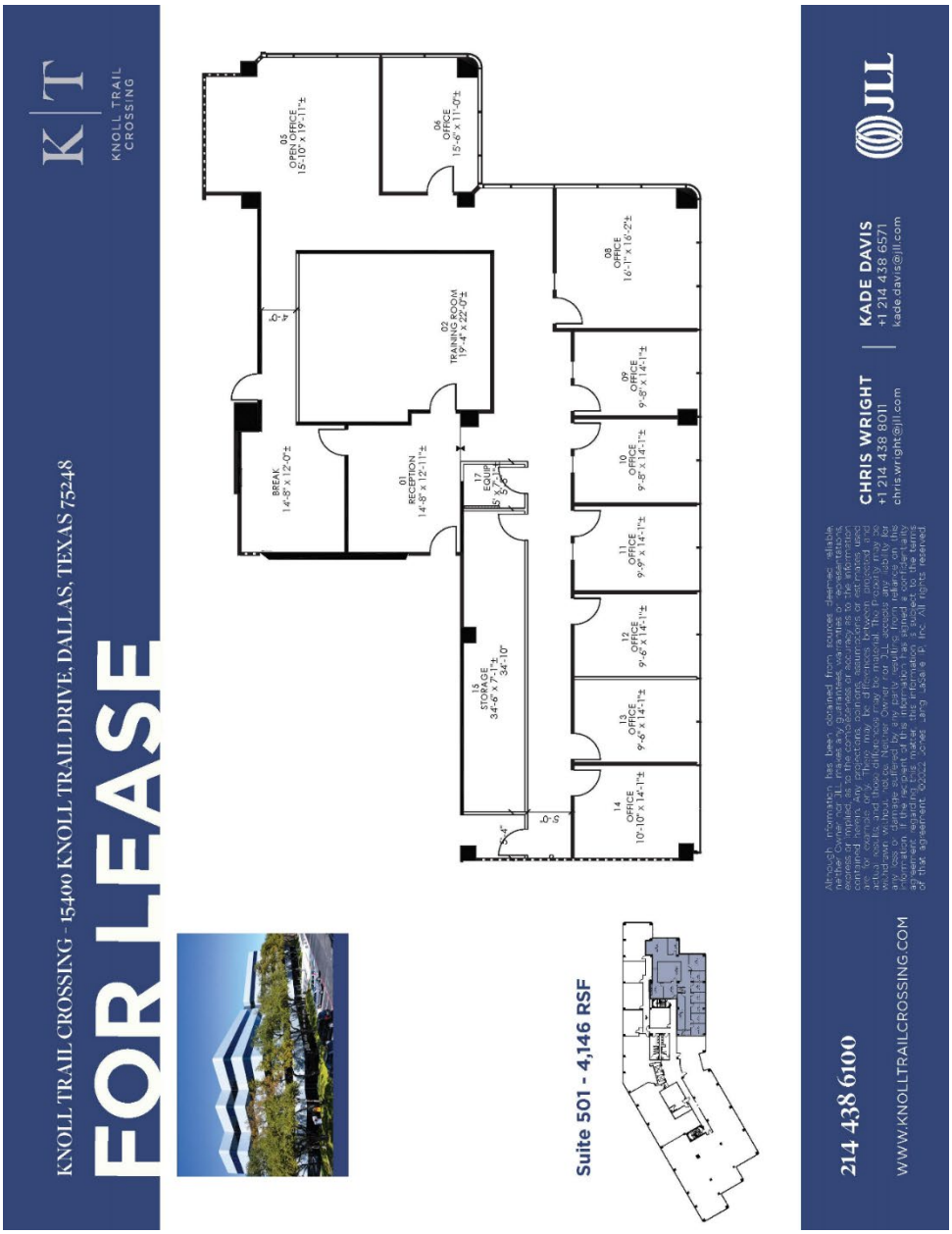
THENCE S70 16'02"E a distance of 428.28 feet to an iron rod found for corner;

THENCE S49 22'55"E a distance of 8.28 feet to an iron rod found for corner in the Northerly line of said St.Louis & Southwestern Railroad;

THENCE S65 44'30"W along the Northerly line of the St.Louis & Southwestern Railroad a distance of 854.06 feet to the POINT OF BEGINNING and containing 196,660 square feet or 4.5147 acres of land.

INITIALED:
LANDLORD:_____
TENANT:_____

EXHIBIT "B" TO LEASE AGREEMENT



INITIALED:
LANDLORD:_____
TENANT:_____

EXHIBIT "C" TO LEASE AGREEMENT

Holidays

January 1st	New Year's Day
Last Monday in May	Memorial Day
July 4th*	Independence Day
First Monday in September	Labor Day
Fourth Thursday in November plus Friday following	Thanksgiving Holidays
December 25th	Christmas Day

**or date legally celebrated*

INITIALED:
LANDLORD:_____
TENANT: ~~5/24/2024 9:19:14~~ AM

EXHIBIT "D" TO LEASE AGREEMENT

[Insert Landlord's Consent]

INITIALED:
LANDLORD:_____
TENANT:_____

EXHIBIT "E" TO LEASE AGREEMENT

Acceptance of Premises Memorandum

THIS ACCEPTANCE OF PREMISES MEMORANDUM ("**Memorandum**") is entered into on this ___ day of _____, 2024 by and between PSF I Knoll Trail Crossing, LLC, as Landlord ("**Landlord**"), and Dallas Area Rapid Transit, a Texas Regional Transportation Authority as Tenant ("**Tenant**"). Unless otherwise defined herein, all capitalized terms used herein shall have the same meaning ascribed to such terms in the Lease (as hereinafter defined).

R E C I T A L S:

WHEREAS, on _____, 2024, Landlord and Tenant entered into that certain Lease Agreement (the "**Lease**") whereby Landlord leased certain Premises located in the Building to Tenant pursuant to certain terms and provisions more particularly described therein; and

WHEREAS, as provided in Paragraph 8 of the Lease, Tenant desires to take possession of and accept the Premises on an "as is" basis and subject to the terms and provisions hereof.

NOW, THEREFORE, for and in consideration of the premises, and the mutual covenants and agreements contained herein and in the Lease, Landlord and Tenant hereby expressly covenant, acknowledge and agree as follows:

1. Except for the specific items described in the "punch list" attached hereto as Exhibit "E-1" and incorporated herein by reference for all purposes, which Landlord shall endeavor to remedy within fourteen (14) business days hereof, Tenant is taking the Premises in its AS-IS condition subject to the terms of the Lease.

2. The Premises are tenantable and ready for immediate occupancy by Tenant, Landlord has no further obligation to install or construct any leasehold improvements, modifications or alterations to the Premises (except as described in Exhibit "E-1" attached hereto), and, except as described in Exhibit "E-1" attached hereto, the Premises are satisfactory to Tenant in all respects.

3. The Commencement Date shall be May 1, 2024 and ending April 30, 2034. Pursuant to the provisions of the Lease, the first monthly installment of Base Rental shall become due and payable on May 1, 2024.

4. The expiration date of the Lease shall be One Hundred Twenty (120) months after the Commencement Date (at 12:00 a.m., April 30, 2034 for a May 1, 2024 Commencement Date).

5. The Premises contain approximately 4,146 square feet of Rentable Space.

6. Except as specifically set forth herein, as of the date of this Memorandum the Lease has not been modified, altered, supplemented, superseded or amended in any respect.

7. All terms, provisions and conditions of the Lease are and remain in full force and effect, and are hereby expressly ratified, confirmed, restated and reaffirmed in each and every respect.

IN WITNESS WHEREOF, this Memorandum is entered into by Landlord and Tenant on the date first set forth above.

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INITIALED:
LANDLORD:_____
TENANT:_____

LANDLORD:

PSF I Knoll Trail Crossing, LLC,
a Delaware limited liability company
By: PB Knoll Trail JV, LLC,
a Delaware limited liability company,
its sole member

By: PSF I Knoll Trail MM, LLC
a Texas limited liability company

By: _____
Name: _____
Title: _____

TENANT:

Dallas Area Rapid Transit,
a Texas Regional Transportation Authority

By: _____
Name: Caitlin Holland
Title: VP, Real Estate & Economic Development

INITIALED:
LANDLORD:_____
TENANT:_____

EXHIBIT "F" TO LEASE AGREEMENT

Building Rules and Regulations

1. Sidewalks, doorways, vestibules, corridors, stairways and other similar areas shall not be obstructed by Tenant or used by Tenant for any purpose other than ingress and egress to and from the Premises and for going from or to another part of the Building.

2. Plumbing fixtures and appliances shall be used only for the purposes for which designed, and no sweepings, rubbish, rags or other unsuitable materials shall be thrown or placed therein. Damage resulting to any such fixtures or appliances or surrounding areas from misuse by Tenant shall be repaired at the sole cost and expense of Tenant, and Landlord shall not in any case be responsible therefor.

3. No signs, advertisements or notices shall be painted or affixed on or to any windows or doors or other parts of the Building except of such color, size and style and in such places as shall be first approved in writing by Landlord. No nails, hooks or screws shall be driven or inserted in any part of the Building except by the Building maintenance personnel nor shall any part of the Building be defaced by Tenant.

4. Landlord will provide and maintain an alphabetical directory of each Tenant's firm name on the first floor (main lobby) of the Building and no other directory shall be permitted unless previously consented to by Landlord in writing.

5. Tenant shall not place any additional lock or locks on any doors in or to the Premises without Landlord's prior written consent. Two keys to the locks on the doors which access the Premises from the Common Areas shall be furnished by Landlord to Tenant, and Tenant shall not have any duplicate keys made. Additional keys required by Tenant shall be made by Landlord at Tenant's sole expense. Upon termination of the Lease, Tenant shall return all keys to Landlord and shall provide to Landlord a means of opening all safes, cabinets and vaults being left with the Premises.

6. With respect to work being performed by Tenant in the Premises with the approval of Landlord, Tenant will refer all contractors, contractor's representatives and installation technicians rendering any service to them to Landlord for Landlord's supervision, approval and control before the performance of any contractual services. This provision shall apply to work performed in the Building including, but not limited to, installation of telephones, telegraph equipment, electrical devices and attachments, and any and all installation of every nature affecting floors, walls, woodwork, trim, windows, ceilings, equipment and any other physical portion of the Building. Tenant must have Landlord's written approval prior to employing any contractor. Any and all such contractors shall comply with these Rules and Regulations for such services including, but not limited to, insurance requirements. All work in or on the Building shall comply with any and all codes. Tenant shall take no action which would disturb the ceiling tiles or cause any work to be performed above the acoustical ceiling in the Building.

7. Movement in or out of the Building of furniture or office equipment, or dispatch or receipt by Tenant of any bulky materials, merchandise or materials which require use of elevators or stairways, or movement through the Building entrances or lobby shall be restricted to such hours as Landlord shall designate. All such movement shall be under the supervision of Landlord and in the manner agreed between Tenant and Landlord by prearrangement before performance. Such prearrangement initiated by Tenant will include determination by Landlord, and subject to its decision and control, as to the time, method and routing of movement and as to limitations for safety or other concerns which may prohibit any article, equipment or any other item from being brought into the Building. Tenant is to assume all risk as to damage to articles moved and injury to person or public engaged or not engaged in such movement, including equipment, property and personnel of Landlord and other tenants if damaged or injured as a result of acts in connection with carrying out this service for Tenant from the time of entering the property to completion of work; and Landlord shall not be liable for acts of any person engaged in, or any damage or loss to any of said property or persons resulting from any act in connection with such service performed for Tenant.

8. Landlord shall have the power to prescribe the weight and position of safes and other heavy equipment, which shall, in all cases, be positioned to distribute the weight and stand on supporting devices approved

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LANDLORD:_____
TENANT: ~~5/24/2024 9:19:1~~4 AM

by Landlord. All damage done to the Building by taking in or putting out any property of Tenant, or done by Tenant's property while in the Building, shall be repaired at the expense of Tenant.

9. Corridor doors, when not in use, shall be kept closed.

10. Tenant shall cooperate with Landlord's employees in keeping its Premises neat and clean. Tenant shall not employ any person for the purpose of such cleaning other than the Building's cleaning and maintenance personnel. Landlord shall be in no way responsible to Tenant, its agents, employees or invitees for any loss of property from the Premises or public areas or for any damage to any property thereon from any cause whatsoever.

11. To insure orderly operation of the Building, no ice, mineral or other water, towels, newspapers, etc. shall be delivered to the Premises except by persons approved by Landlord in writing.

12. Should Tenant require telegraphic, telephonic, annunciator or other communication service, Landlord will direct the electrician where and how wires are to be introduced and placed and none shall be introduced or placed except as Landlord shall direct. Electric current shall not be used for power in excess of standard office use or heating without Landlord's prior written permission.

13. Tenant shall not make or permit any improper noises in the Building or otherwise interfere in any way with other tenants or persons having business with them.

14. Nothing shall be swept or thrown into the corridors, halls, elevator shafts or stairways. No animals shall be brought into or kept in, on or about the Premises.

15. No machinery other than standard office equipment shall be operated by Tenant in its Premises without the prior written consent of Landlord, nor shall Tenant use or keep in the Building any flammable or explosive fluid or substance. Tenant shall not permit its employees to install or utilize space heaters in the Premises.

16. No portion of the Premises shall at any time be used or occupied as sleeping or lodging quarters.

17. Landlord will not be responsible for money, jewelry or other personal property lost or stolen in or from the Premises or public areas regardless of whether such loss or theft occurs when the area is locked against entry or not.

18. The Premises shall not be continuously occupied by an average of more than one (1) person per 150 square feet of Rentable Space in the Premises without the prior written consent of Landlord.

19. Subject to the terms and conditions of the Lease, Landlord reserves the right to rescind any of these rules and regulations and to make such other and further rules and regulations as in its judgment shall from time to time be advisable for the safety, protection, care and cleanliness of the Building, the use and operation thereof, the preservation of good order therein and the protection and comfort of the tenants and their agents, employees and invitees, which rules and regulations, when made and written notice thereof is given to Tenant, shall be binding upon Tenant in like manner as if originally herein prescribed.

Rider No. 101

PARKING FACILITIES

At all times during the Lease Term and any renewal or extension thereof, and so long as this Lease and any renewal or extension thereof is in full force and effect and no event of default shall have occurred and be continuing under this Lease, Tenant shall be permitted the use of the parking garage associated with the Building for parking automobiles owned by Tenant and its employees, agents and invitees. Landlord hereby agrees to make available to Tenant, and Tenant hereby agrees to pay for and take, subject to the further provisions of this Rider No. 101, during the Lease Term, and any extension or renewal thereof, all or some of the following permits to park automobiles in the parking garage:

Parking shall generally be provided at the rate of 3.5/1000 rsf of Premises resulting in sixteen (16) total unreserved and unassigned spaces attributable to this Lease (in addition to the spaces provided for under the Parking Agreement). Of the sixteen (16) total spaces Tenant may have, at the rate of .5/1000 covered, unreserved and unassigned parking which under the present Lease would result in up to three (3) spaces of the sixteen (16) spaces being eligible for such conversion.

At least thirty (30) days prior to occupancy of the Premises by Tenant under this Lease, Tenant shall notify Landlord of the exact number of parking permits which it will initially need, and Tenant shall thereafter pay for such permits at the rates provided hereinbelow in the manner established by Landlord or its garage operator from time to time. Whenever Tenant desires to pay for and take additional parking permits to which it is entitled hereunder, but as to which Tenant has not heretofore notified Landlord it will need, Tenant shall give Landlord at least thirty (30) calendar days' prior written notice of the number of additional parking permits Tenant shall pay for and take and the date on which it will need such permits. Tenant's right to such additional permits shall be subject to the availability of parking stalls in the parking garage at the time the request is made, such determination of availability to be made by Landlord in Landlord's sole discretion. Tenant shall not have the right to more parking permits than the number set forth above. All parking permit payments shall be payable to Landlord, or if Landlord so desires, to the independent contractor which Landlord hires from time to time to operate the parking garage and/or uncovered parking areas. Except as set forth above, Tenant shall not be assigned to designated parking stalls, but shall be permitted to use whatever unassigned and unreserved stalls are available, on a first come, first serve, unassigned and unreserved basis, in areas of the parking garage designated by Landlord. Landlord reserves the right in its sole discretion to designate specific areas within the uncovered parking areas and/or the parking garage for the exclusive use of visitors and invitees to the Building and others. The designation of all such areas shall be made by Landlord in its sole discretion, and Landlord reserves the right to change such designation from time to time.

Landlord and its garage operator shall have the right from time to time to reconfigure the parking garage and to promulgate reasonable rules and regulations regarding the parking permits available to Tenant hereunder and others, including, but not limited to, the flow of traffic to and from various parking areas, angles and direction of parking, and the like. Tenant agrees to comply, and to cause its employees, agents and visitors to comply, with such rules and regulations (and reasonable additions and amendments thereto) as Landlord and its garage operator may promulgate from time to time. Landlord and its garage operator will not be responsible for money, jewelry or other personal property lost or stolen in or from the parking garage, uncovered parking areas or public areas regardless of whether such loss or theft occurs when the garage or such area is locked or otherwise secured against entry or not. Landlord and its garage operator will not be responsible for any damages to any vehicle or injury to persons in or from the parking garage, uncovered parking areas or public areas regardless of whether such loss or incident occurs when the garage or such area is locked or otherwise secured against entry or not. While Landlord may, at its option, take measures to attempt to counteract some effects of natural weather events, Tenant acknowledges and understands that Landlord’s efforts are required or guaranteed and are not a substitute for Tenant’s own judgment in avoidance of and advising of avoidance of travel in weather conditions which may be hazardous to personal property and may result in personal injury or death. Tenant accepts full responsibility for itself, its employees, representatives, vendors and invitees for any personal property lost, stolen or damaged, any claims for personal injury or death and any claim whatsoever in or around the Building or any parking area, garage or parking facility.

The rates for such parking permits shall be determined from time to time by Landlord, in Landlord's sole and absolute discretion. Pursuant to this Lease, the permit rates which are in effect as of the execution date hereof are as follows: $0.00 charge for unreserved surface lot parking and $75.00 per month (plus sales tax) for each permit for unassigned and non-reserved covered parking.

INITIALED:
LANDLORD:_____
TENANT: ~~5/24/2024 9:19:1~~4 AM

Rider No. 102

TENANT'S OPTION TO RENEW

Tenant may, at its option and subject to the terms hereof, renew the Lease Term as to the Premises for two (2) additional terms of five (5) years, provided that this Lease must be in full force and effect and no event of default, or event or conditions which, with the giving of notice, the passage of time, or both, could mature into an event of default, may exist under this Lease at the time of exercise of such option or at the time the renewal term would begin. Such renewal shall be upon the same terms and conditions as provided elsewhere in this Lease, except that (i) this Lease may not be renewed more often than as set forth above, (ii) Landlord shall have no obligation to install improvements in the Premises, and (iii) the annual Base Rental for such renewal period(s), and each monthly installment thereof, shall be determined as provided below. Each such option shall be exercised by Tenant giving notice to Landlord by certified mail, return receipt requested, at least twelve (12) months prior to the end of the then-existing term, and, if not so exercised, such option not so exercised and any subsequent option to renew shall automatically expire and terminate. Notwithstanding anything to the contrary contained herein, Tenant's option herein shall be subject to a determination by Landlord, at Landlord's sole discretion, that Tenant's financial condition at the time it makes such election is comparable or better than the financial condition of Tenant at the time Tenant had executed the Lease. If Tenant so elects to renew the Lease Term, following Tenant's exercise of such renewal option, upon request from Landlord, Tenant and Landlord will enter into a renewal agreement by which this Lease will be renewed in accordance with the terms set forth in this Rider. This option shall be personal to Tenant and not be assignable or otherwise transferrable to any other Tenant for any reason.

The annual Base Rental for the renewal period shall be at the Prevailing Building Rental Rate, which shall mean the annual rental rate (not to be less that Tenant’s then existing rent structure) then being charged by Landlord in the Building for space comparable to the Premises, as determined by Landlord, taking into consideration use, location and floor level within the Building, rental concessions then being granted by Landlord under similar circumstances, base year and/or expense stop calculations, the date the particular rate under consideration is to become effective, and the term of the lease under consideration. However, it is specifically agreed that for the purposes of Tenant's renewal option only, no concession or allowance for installation of Tenant improvements or moving expenses will be included in determining the Prevailing Building Rental Rate, inasmuch as Tenant will already be in possession and leasehold improvements will already have been installed in Tenant's Premises.

INITIALED:
LANDLORD:_____
TENANT:_____

Rider No. 106

SCHEDULE OF BASE RENTAL

Base Rental shall be payable as follows:

Months	Cost Per Rentable Square Foot Per Annum	Monthly Installment
6/1/24 through 5/31/25	$ 23.00	$7,946.50
6/1/25 through 5/31/26	$ 23.25	$8,032.875
6/1/26 through 5/31/27	$ 23.50	$8,119.25
6/1/27 through 5/31/28	$ 23.75	$8,205.625
6/1/28 through 5/31/29	$ 24.00	$8,292.00
6/1/29 through 5/31/30	$ 24.25	$8,378.375
6/1/30 through 5/31/31	$ 24.50	$8,464.75
6/1/31 through 5/31/32	$ 24.75	$8,551.125
6/1/32 through 5/31/33	$ 25.00	$8,637.50
6/1/33 through 5/31/34	$ 25.25	$8,723.875

This schedule only denotes Base Rental and does not indicate in the cost above for Additional Rental and Electricity, which are applicable throughout the Lease Term. Electricity for calendar year 2023 is estimated to be $2.10 psf.

INITIALED:
LANDLORD:_____
TENANT:_____

EXHIBIT "G" TO LEASE AGREEMENT

AGREEMENT NO. _____

LICENSE FOR PARKING LOT

This License for Parking Lot ("Agreement" or "License") is made effective as of _____, 2024 ("Commencement Date") by and between PSF I Knoll Trail Crossing, LLC, a Delaware limited liability company with an address of c/o Prescott Realty Group; 3100 Monticello Avenue, Suite 600; Dallas, Texas 75205 ("Licensor") and Dallas Area Rapid Transit, a regional transportation authority, created, organized and existing pursuant to Chapter 452, Texas Transportation Code, as amended, ("Licensee"), acting herein by and through its duly authorized official, whose address is 1401 Pacific Avenue, Dallas Texas, 75202 for the license of parking spaces at the building known as Knoll Trail Crossing and located at 15400 Knoll Trail Drive, Dallas, Texas, 75248 ("Property"), under the following terms and conditions:

1. **Available Spaces.** Licensor hereby grants a license to Licensee for the purposes of utilizing 16 parking spaces from Licensor's parking lot located at the Property, which area but not specific final configuration is set forth in Exhibit "A" attached hereto, for a kiss-and-ride area serving Licensee's Silver Line Knoll Trail Station ("Premises").

2. **Term.** This License shall remain in effect so long as the Lease Agreement (executed by Licensor and Licensee contemporaneously with this License) remains in effect, or for so long as the Lease Agreement would have remained in effect but for fire or other casualty, as more specifically addressed in Sec. 22 of the Lease Agreement. At such time as this License may expire or be terminated for an Event of Default, Licensee, upon written request by Licensor, shall remove all improvements and appurtenances placed upon the Property and Premises as a result of this Agreement, situated in, on, under or attached to the Property, regardless of whether or not such improvements were placed thereon by Licensee, and shall restore the Premises and Property to a condition satisfactory to Licensor, at Licensee's sole expense.

3. **Payment of License Fee**. License Fee will accrue hereunder from the Commencement Date, and will be payable to Licensor without deduction, setoff, prior notice or demand at Licensor's address for payment of License Fee or to any other place designated by notice given by Licensor to Licensee. Licensee agrees to pay by Licensor's online payment system, check, EFT, cashier's check or certified funds only.

4. **Base License Fee**. The Base License Fee shall be one dollar ($1.00) annually. In the event this License continues beyond the term of the Lease Agreement, Licensor may increase this Base License Fee by a fair and reasonable amount.

5. **Additional License Fee.** Wherever this License requires Licensee to make any payment to Licensor in addition to Base License Fee, such payment will be deemed to be Additional License Fee and all remedies applicable to the non-payment of Base License Fee will be applicable thereto. Any additional License Fee shall be invoiced on a monthly basis and due on or before the first day of each month for which it is outstanding. The term "License Fee" includes any amounts payable to Licensor under this License. It is the intention of the parties hereto that Licensee shall in no event be entitled to any abatement of or reduction in Base License Fee, or Additional License Fee payable under this License, except as expressly provided herein. The covenants of Licensor and Licensee hereunder are independent, except that Licensee's performance of its obligations under this License shall be a condition to Licensor's performance under this License. Any present or future law to the contrary shall not alter this agreement of the parties.

6. **Late Fee**. If License Fee is not received by Licensor on or before the ten (10) days past the date it is due Licensee shall pay Licensor a late fee equal to five percent (5%) of the cumulative amount of License Fee due, including the Base License Fee and all other amounts payable by Licensee under this License, including any charges and previously assessed late fees, which shall be paid by Licensee to Licensor immediately upon

written notice from Licensor. Failure by Licensee to make immediate payment of the delinquent License Fee plus the late fee shall constitute an Event of Default. This provision, expressly, does not relieve the Licensee's obligation to pay License Fee when due.

7. **Interest on Late Payments.** Other remedies hereunder notwithstanding, if any installment of License Fee is not received by Licensor on or before the tenth day of the month for which it is due, or if any payment of Additional License Fee or other payment by Licensee pursuant to this License is not received by Licensor on or before the tenth day of the month next following the month in which Licensee was invoiced, then any such payment will bear interest until paid at the lesser of (i) eighteen percent (18%) per annum or (ii) the maximum lawful rate per annum, which amount will constitute additional License Fee hereunder.

8. **Use of Premises.** The Premises shall be used by Licensee solely for the purpose of operating and maintaining Licensee's Silver Line Knoll Trail Station parking spaces as a kiss-and-ride area ("Permitted Use"), as shown on Exhibit "A". Licensee and Licensee's agents, employees, contractors, invitees, customers, and patrons (collectively "Licensee Parties") right to enter upon and use the Property shall be limited solely to the Permitted Use and the Premises, except as permitted under the Lease Agreement. Vehicles which are abandoned, unattended or not within those allowed to utilize the Premises for the Permitted Use shall be promptly removed. Licensee shall not: use or occupy the Premises for any purpose which in Licensor's sole reasonable discretion is unlawful, dangerous, immoral, unseemly, offensive, or otherwise undesirable; permit the maintenance of any nuisance, disturb the quiet enjoyment for all of the Premises and Property, emit offensive odors or conditions into the Premises or Property, use any apparatus which might create undue noise or vibrations or otherwise breach the covenant of quiet enjoyment for the other Licensees, Tenants and/or neighbors. Licensee shall not permit anything to be done which would increase any insurance rates on the Premises or Property, and if there is any increase directly attributable to Licensee's use of the Premises pursuant to this Parking Agreement, then Licensee agrees to pay such increase promptly upon demand therefor by Licensor; however, any such payment shall not waive Licensee's duty to comply with this License. Licensor and any agent thereof does not represent or warrant that the Premises or Property conforms to applicable restrictions, ordinances, requirements, or other matters that may relate to Licensee's intended use, or with respect to the presence on, in or near the Premises or Premises of hazardous substances, biological matter or materials which are categorized as hazardous or toxic. Licensee must satisfy itself that the Premises may be used as Licensee intends by independently investigating all matters related to its intended use.

9. **NO SECURITY PROVIDED BY LICENSOR. LICENSEE EXPRESSLY UNDERSTANDS AND AGREES THAT LICENSEE WILL BEAR SOLE RESPONSIBILITY FOR THE SECURITY OF THE PREMISES, AND FOR THE SECURITY OF LICENSEE, LICENSEE PARTIES AND ALL OTHER PERSONS WHOMSOEVER WHO COME ON OR ABOUT THE PREMISES OR PROPERTY AS A RESULT OF LICENSEE'S PRESENCE OR USE OF THE PROPERTY. LICENSOR WILL NOT BE OBLIGATED TO PROVIDE SECURITY PERSONNEL, SECURITY LIGHTING, OR ANY OTHER FORM OF SECURITY FOR THE PREMISES OR PROPERTY. LICENSEE SHALL PROVIDE, AT ALL TIMES DURING THE HOURS OF EACH DAY OF ITS USE OF THE PREMISES, REASONABLE PATROLS BY DART SECURITY OFFICERS, WHOSE DUTIES SHALL INCLUDE, BUT NOT BE LIMITED TO PROTECTION OF PERSONS ON OR ABOUT THE PREMISES FROM HARM OR INJURY, PROTECTION OF THE LICENSOR'S PROPERTY AND PREMISES FROM VANDALISM AND WASTE, THE MONITORING AND REMOVAL OF UNATTENDED VEHICLES AND INTERVENTION REGARDING TRESSPASSERS OR UNSHELTERED INDIVIDUALS.**

10. **Construction Requirements and ADA**. All design and construction of the Premises shall be done by Licensor's contractor in such a manner so as not to unreasonably interfere in any way with the operations of Licensor or its tenants. The Premises shall be operated by Licensor. Licensee or Licensee's contractor shall be responsible for and shall obtain, any and all permits, associated with construction at the Premises. Licensee shall obtain Licensor's written approval for all construction plans, changes to plans, improvements, and the

installation of any fixture or signage at the Premises. Licensor shall use reasonable discretion in consideration of such approvals and shall not unreasonably withhold, delay, or condition such approvals. Exhibit "A", attached hereto, represents Licensor's proposed construction as of the date of this Agreement. Exhibit "A" does not represent the final approved construction plans but does represent the area defined as the Premises. Licensee may not commence with construction of the Premises until Licensor has approved the final 100% design, which approval shall not be unreasonably withheld, delayed or conditioned. Licensor does approve Licensee's proposed signage as set forth in Exhibit "A" hereto. At the time of this Agreement, Licensee is reworking construction plans to include replacement of the asphalt at the entrance to the Premises and the construction of a circular drop off servicing the Premises. Licensee is also reworking construction plans to include an ADA compliant ramp. The final 100% design shall provide for installation of an access control system barring entry to Licensor's parking garage at the Property and allowing only for exit from the parking garage, through the kiss-and-ride area as shown on Exhibit "A", by authorized individuals. Licensee shall be responsible for construction and maintenance of the Premises in compliance with all requirements of the Americans with Disabilities Act (Public Law 101-336 (July 26, 1990)) and the Texas Architectural Barriers Act (Article 9102, Tex. Rev. Civ. St. (1991)) applicable to the Premises. Licensee agrees to defend, indemnify and hold Licensor and Licensor's property management company, agents, employees, or invitees (collectively "Licensor Parties") harmless from any and all claims, expenses, liabilities, costs or damages suffered by Licensor or Licensor Parties as a result of additional obligations which may be imposed on the Premises under either of such acts by virtue of Licensee's operations or its construction. Licensee acknowledges that it will be wholly responsible for any accommodations or alterations which need to be made to the Premises to accommodate disabled employees and invitees of Licensee. No provision in this License will be construed in any manner as permitting, consenting to, or authorizing Licensee to violate requirements under either such act, and any provision of the License which could arguably be construed as authorizing a violation of either act will be interpreted in a manner which permits compliance with such act and is hereby amended to permit such compliance. The waivers and indemnifications in this section shall be in addition to and not in limitation of any other waivers and indemnifications. All indemnity and defense obligations of Licensee arising under this License shall survive the expiration or earlier termination of this License.

11. **Premises Maintenance and Damage**. Licensee accepts the Premises in an "as-is" condition and without requiring any work except for the installation of the access control system by Licensor. Licensee will not damage the Premises or Property and will pay the cost of repairing any damage done by Licensee or Licensee Parties by remitting the amount due to repair all damages to Licensor's reasonable satisfaction to Licensor within seven (7) days of written notice therefor. Licensee will keep the Premises, in good condition and free of waste and nuisance. If Licensee fails to keep the Premises in good condition and free of waste and nuisance as stated, Licensor shall have the right, after giving Licensee twenty-four (24) hours notice, to have the Premises cleaned and back charge Licensee for the cost of such cleaning. The Premises shall be maintained by the Licensee in such a manner as to keep the Premises in a good and safe condition with respect to Licensee's use.

12. **Mechanic's Liens**. Nothing contained in this License shall authorize Licensee to do any act which shall in any way encumber the title of Licensor in and to the Premises or the Property or any part thereof; and if any mechanic's or materialman's lien is filed or claimed against the Premises or Property or any part thereof in connection with any work performed, materials furnished or obligation incurred by or at the request of Licensee, Licensee will promptly pay same or cause it to be released of record. If the lien is not released of record within, or default in payment thereof shall continue for, ten (10) days after written notice thereof from Licensor to Licensee, without limiting or otherwise affecting any of Licensor's other rights or remedies and without waiving any event of default by Licensee, Licensor shall have the right and privilege at Licensor's option of paying the same or any portion thereof without inquiry as to the validity thereof, and any amounts so paid, including expenses and interest, shall be so much additional rent hereunder from Licensee to Licensor and shall be repaid to Licensor immediately on demand therefor.

13. **Access Control System**. As an Additional License Fee, Licensee shall pay all costs for the installation of an

access control system, as shown in Exhibit "B" attached hereto, less $18,100.00. Licensor or Licensor's contractor shall procure and install the access control system. Licensee shall be responsible for the payment for the maintenance and upkeep of said access control system during the term of this License, to include replacement and repair of inoperable, damaged or obsolete equipment. Licensor or Licensor's contractor shall be responsible for and shall obtain, any and all permits, associated with the installation of the access control system or any replacements and repairs. Cost of all permits shall be reimbursed by Licensee within thirty (30) business days.

14. **Licensee's Insurance Covenant**. (a) Licensee will indemnify and hold harmless Licensor and Licensor Parties from and against any third party liability claims, loss, damages, injuries or expenses occasioned by or resulting from any Event of Default or any negligent act on the part of Licensee or Licensee Parties on or at the Premises and Property as a result of Licensee's operations or use of the Premises. Licensee agrees to maintain at Licensee's sole cost and expense, Commercial General Liability insurance policies, or self insurance, covering Licensee's aforesaid indemnity with respect to Licensee's use and operations at the Premises, including coverage for unintentional third-party bodily injury or property damage. Such policies shall indemnify Licensor and Licensor's property management company, as their interest may appear, with limits of liability of at least TWO MILLION DOLLARS ($2,000,000.00) per occurrence for bodily injury and property damage. In no event shall Licensee's liability under this License be limited by the amount of insurance required to be carried by Licensee. Further, Licensee's insurance shall provide primary coverage without contribution from any other insurance carried by or for the benefit of Licensor or Licensor Parties and Licensee shall obtain contractual liability coverage to insure its indemnity obligations as set forth in this License. This indemnity and waiver obligation shall survive the termination or expiration of the License.
(b) The insurance required to be carried by Licensee shall provide thirty (30) days notice of cancellation or modification, and be from a reputable insurer permitted to do business in the State of Texas.
(c) On or prior to the Commencement Date, Licensee shall deliver to Licensor a certificate of insurance, including waiver of subrogation pursuant to this License, and evidencing that Licensor and the Licensor's then property management company are named as "indemnified parties" under commercial general liability insurance provided by Texas Municipal League Intergovernmental Risk Pool. DART will also provide a certificate of insurance to evidence self-insurance limits for commercial general liability of $100,000 per person, $300,000 per accident, and $100,000 property damage, based on DART's tort liability cap as a government agency under Texas Transportation Code 452.

15. **Indemnity.** Licensor and Licensor Parties shall not be liable for and Licensee will defend, indemnify and hold harmless Licensor and Licensor Parties from all claims, fines, suits, demands, losses, and actions, including attorney's fees, for any injury to persons or damage to or loss of property on or about the Premises and Property caused by the Licensee or Licensee Parties or by any other person entering the Premises or Property under express or implied invitation of the Licensee, or arising out of Licensee's use of Premises or Property. Licensee releases and waives any claim against Licensor and Licensor Parties arising from Licensor and Licensor Parties' maintenance of the Premises or Property, or caused by fire, flood, water leaks, wind, ice, snow, hail, explosion, smoke, riot, strike, interruption of utilities, theft, burglary, robbery, assault, vandalism, other persons, environmental contaminants, or other occurrences or casualty losses. This provision is intended to waive any claims against Licensor and Licensor Parties for the consequences of their own negligence or fault, but not the consequences of their own gross negligence or intentional misconduct. The waivers and indemnifications in this section shall be in addition to and not in limitation of any other waivers and indemnifications. This waiver and indemnity obligation shall survive the termination or expiration of the License.

16. **Mortgages.** Licensee accepts this License subordinate to any deeds of trust, mortgages or other security interests which might now or hereafter constitute a lien upon the Premises or the Property, and shall attorn to the lender thereunder, with such attornment to be effective upon lender's acquisition of the Property. Furthermore, such Lender, as successor Licensor, shall not be liable for any act, omission or obligation of any prior Licensor, and lender shall have the option to reject such attornment. Licensee shall, immediately upon

request, execute such documents, including estoppel letters and Subordination, Non-Disturbance and Attornment Agreements ("SNDA"), as may be required for the purposes of subordinating or verifying this License. Specifically, Licensee shall, without charge therefor, at any time and from time to time, within seven (7) days after request by Licensor, execute, acknowledge and deliver to Licensor a written estoppel certificate certifying to Licensor, any mortgagee, assignee of a mortgagee, or any purchaser of the Property, or any other person designated by Licensor, as of the date of such estoppel certificate; (a) that Licensee is in possession of the Premises per the License terms; (b) that this License is unmodified and in full force and effect (or if there have been modifications, that this License is in full force and effect as modified and setting forth such modification); (c) whether or not there are then existing any setoffs or defenses against the enforcement of any right or remedy of Licensor, or any duty or obligation of Licensee hereunder (and, if so, specifying the same in detail); (d) the amount of the Base License Fee and the dates through which Base License Fee and Additional License Fee, if any, have been paid; (e) that Licensee has no knowledge of any then uncured defaults on the part of Licensor under this License (or if Licensee has such knowledge, specifying the same in detail); (f) that Licensee has no knowledge of any event having occurred that authorizes the termination of this License by Licensee (or if Licensee has knowledge of any such uncured defaults, specifying the same in detail); (g) that Licensee has no knowledge of any event having occurred that authorizes the termination of this License by Licensee; (h) the amount of any Security Deposit, if any, held by Licensor; and (i) such reasonable other information requested by Licensor, such mortgagee, assignee of such mortgagee, such purchaser or such other person. Failure to deliver the certificate within seven (7) days after request by Licensor shall be conclusive upon Licensee for the benefit of Licensor and any successor to Licensor that this License is in full force and effect and had not been modified except as may be represented by the party requesting the certificate. If Licensee fails to deliver the certificate within seven (7) days after requested by Licensor, then by such failure Licensee shall irrevocably constitute and appoint Licensor as its attorney-in-fact to execute and deliver the certificate to any third party.

17. **Assignment and Subleasing.** Licensee shall not assign or sublicense this License by operation of law or otherwise (including without limitation by transfer of stock, merger, or dissolution), mortgage or pledge the same, or sublicense the Premises or any part thereof, without prior written consent of Licensor, which Licensor may grant or deny in its sole discretion. Licensor's consent to an assignment or sublicense shall not release Licensee from any obligation hereunder, and Licensor's consent shall be required for any subsequent assignment or sublicense. If Licensee desires to assign or sublicense the Premises, it shall so notify Licensor at least sixty (60) days in advance and shall provide Licensor with a copy of the proposed assignment or sublicense and such information with respect thereto as Licensor requests to allow Licensor to make informed judgments as to the financial condition, reputation, operations, and desirability of the proposed transferee. After receipt of notice, Licensor may elect to: (i) Cancel the License as to the Premises or portion thereof proposed to be assigned or sublicensed; or (ii) Consent to the proposed assignment or sublicense; and if the License Fee and other consideration payable in respect thereof exceeds the License Fee payable hereunder, Licensee shall pay to Licensor such excess within ten (10) days following receipt thereof by Licensee: or (iii) Withhold its consent, which shall be deemed to be elected unless Licensor gives Licensee written notice otherwise. Licensee shall pay for each assignment the sum of five hundred ($500.00) per each request whether or not approval of the assignment is provided by Licensor.

18. **Eminent Domain.** If the Premises shall be taken or condemned in whole or in part for public purposes or sold under threat of condemnation, this License shall terminate at the option of Licensor. Licensor shall be entitled to receive the entire award of any condemnation or the proceeds of any sale in lieu thereof.

19. **WAIVER OF SUBROGATION. LICENSEE WAIVES EVERY CLAIM THAT ARISES OR MAY ARISE IN ITS FAVOR AGAINST THE LICENSOR AND LICENSOR PARTIES OR ANY OTHER LICENSEE OR TENANT OF THE BUILDING DURING THE TERM, FOR ANY INJURY TO OR DEATH OF ANY PERSON OR ANY LOSS OF OR DAMAGE TO ANY OF LICENSEE'S PROPERTY LOCATED WITHIN, UPON OR CONSTITUTING A PART OF THE PREMISES OR PROPERTYY,**

TO THE EXTENT SUCH INJURY, DEATH, LOSS OR DAMAGE IS OR COULD BE COVERED BY ANY INSURANCE POLICIES, WHETHER OR NOT SUCH LOSS OR DAMAGE IS RECOVERABLE THEREUNDER. THIS WAIVER SHALL BE IN ADDITION TO, AND NOT IN LIMITATION OF, ANY OTHER WAIVER OR RELEASE CONTAINED IN THIS LICENSE. LICENSEE SHALL GIVE TO EACH INSURANCE COMPANY, WHICH HAS ISSUED TO IT ANY INSURANCE POLICY COVERING THE PREMISES OR PROPERTY OR LICENSEE'S OPERATIONS, WRITTEN NOTICE OF THIS WAIVER AND HAVE ITS INSURANCE POLICIES ENDORSED, IF NECESSARY, TO PREVENT THEIR INVALIDATION BY REASON OF THIS WAIVER. THIS WAIVER OBLIGATION SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THE LICENSE.

20. **Events of Default.** The occurrence of any of the following shall constitute an event of default ("Event of Default") hereunder:
(a) Any failure by Licensee to pay the License Fee when due. Licensor shall not be required to provide Licensee with notice of failure to pay License Fee.
(b) Any failure by Licensee to observe and perform any provision of this License, other than the payment of License Fee, that continues for five (5) days after notice to Licensee; however, an Event of Default shall occur hereunder without any obligation of Licensor to give any notice if Licensor has given Licensee notice under this Section on at least one occasion during the twelve (12) month interval preceding such failure by Licensee.
(c) Licensee or any guarantor of Licensee's obligations hereunder: (1) being unable to meet its obligations as they become due, or being declared insolvent according to any law, (2) having its property assigned for the benefit of its creditors, (3) having a receiver or trustee appointed for itself or its property, (4) having its interest under this License levied on under legal process, (5) having any petition filed or other action taken to reorganize or modify its debts or obligations, or (6) having any petition filed or other action taken to reorganize or modify its capital structure if either Licensee or such guarantor is a corporation or other entity.
(d) The abandonment of the Premises by Licensee (which shall be conclusively presumed if Licensee is absent from the Premises for ten (10) consecutive days).

21. **Remedies.** Upon the occurrence of any Event of Default, Licensor may, in addition to all other rights and remedies afforded Licensor hereunder or by law or equity, take any of the following actions:
(a) Terminate this License by giving Licensee written notice thereof, in which event Licensee shall immediately surrender the Premises to Licensor. If Licensee fails to surrender the Premises to Licensor, Licensor may, without prejudice to any other remedy, enter upon and take possession of the Premises or any part thereof by changing the gate locks to the Premises, towing vehicles at Licensee's expense or by any other means necessary in Licensor's sole judgment without being liable for prosecution or any claim for damages. If this License is terminated hereunder, Licensee shall pay to Licensor the sum of: (1) all License Fees accrued hereunder through the date of termination, (2) all amounts due under the License, and (3) an amount equal to: (A) the total License Fee that Licensee would have been required to pay for the remainder of the Term discounted to present value at a per annum rate equal to the interest rate on one-year Treasury bills as published on the nearest the date this License is terminated by the Wall Street Journal, Southwest Edition, minus (B) the then present fair License Fee value of the Premises for such period, similarly discounted.
(b) Change the gate locks to the Premises, tow all vehicles on the Premises at Licensee's expense and deny Licensee access to the Premises until such Event of Default is cured.
(c) Enter upon the Premises without being liable for prosecution or any claim for damages and do whatever Licensee is obligated to do under the terms of this License. Licensee agrees to reimburse Licensor on demand for any expenses which Licensor may incur thus effecting compliance with Licensee's obligations under this License. Licensee further agrees that Licensor shall not be liable for any damages resulting to the Licensee from such action.
(d) Licensee expressly waives notice as to the disposal of any property on the Premises as of default, lockout or termination, which has not claimed or redeemed within thirty (30) days.

22. **Licensor's Liability.** The liability of Licensor to Licensee for any default by Licensor under the terms of this License shall be limited to Licensee's actual direct, but not consequential, damages therefor and shall be recoverable from the interest of Licensor in the Property only. There shall be absolutely no personal liability on persons, firms, or entities who constitute Licensor, or any management company acting on behalf of Licensor, or any agent, employee, officer, partner, shareholder or joint venturer of Licensor or such management company for with respect to any of the terms, covenants, conditions, and provisions of this License or of any other acts, omissions, events or deficiencies arising from or related to this License, the Premises or the Property. Licensor's reservation of rights under this License, such as to enter upon or maintain the Premises, shall not be deemed to create any duty on the part of Licensor to exercise any such right. Licensor expressly advises Licensee that Licensor's intention is that Licensee shall have full responsibility for, and shall assume all risk to, persons and property while in, on or about the Premises. Such exculpation is absolute and without any exception whatsoever.

23. **No Joint Venture.** Nothing contained herein shall be deemed or construed by the parties hereto, nor any third party, as creating the relationship of principal and agent or of partnership or joint venture between the parties hereto, nor create any fiduciary duties on the part of either party, it being understood and agreed that nothing contained herein, nor any actions of the parties hereto, shall be deemed to create any relationship between the parties hereto other than the relationship of Licensor and Licensee.

24. **Transfer of Licensor's Rights**. In the event Licensor transfers its interest in the Property, Licensor shall assign its rights and obligations under this License to the successor in interest prior to or in conjunction with such transfer. Upon assignment of this License to Licensor's successor in interest, Licensor shall thereby automatically be released from any further obligations hereunder, and Licensee agrees to look solely to the successor in interest of Licensor for the performance of such obligations and agrees to the transfer of this License to new ownership.

25. **Name.** Licensee shall not, without the written consent of Licensor, use the name of the Property for any purpose other than as the address of the business to be conducted by Licensee in the Premises, and in no event shall Licensee acquire any rights in or to such names.

26. **Attorney's Fees.** If a party employs an attorney to interpret, enforce or defend any of its rights or remedies hereunder, the losing party shall pay reasonable attorney's fees incurred in such dispute.

27. **Force Majeure.** Whenever a period of time is prescribed for action to be taken by either party, it shall not be liable or responsible for, and there shall be excluded from the computation for any such period of time, any delays due to strikes, riots, acts of God, shortages of labor or materials, war, governmental laws, regulations, or restrictions, or any other causes of any kind whatsoever which are beyond its control.

28. **Governmental Regulations.** Licensee will comply with all laws, ordinances, orders, rules and regulations of all governmental agencies having jurisdiction of the Property and Premises with reference to the use, condition or occupancy of the Premises.

29. **Governing Law.** This License shall be interpreted and enforced in accordance with the laws of the State of Texas. Jurisdiction and venue for any action related to this Agreements shall be in the State courts sitting in Dallas County, Texas.

30. **Successors and Assigns.** Except as otherwise provided in this License, all of the covenants, conditions and provisions of this License shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors, and assigns.

31. **Severability.** If any provision of this License or the application thereof to any person or circumstances shall be

invalid or unenforceable to any extent, the remainder of this License and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

32. **Notice**. Any Notice required or permitted to be given under this Agreement must be in writing and may be served by: (1) depositing same in the United States mail, addressed to the party to be notified below, certified with return receipt requested; (2) by delivering the same in person to such party via a hand-delivery or (3) by Federal Express or any courier service that provides a return receipt showing the date of actual delivery of same to the addressee thereof. Notice given in accordance with this section shall be effective upon receipt.

LICENSOR: PSF I Knoll Trail, LLC
Prescott Realty Group, Inc.
3100 Monticello Avenue, Suite 600
Dallas, Texas 75205
Attn: Peter Kofoed, Head of Asset Management
Email: PKofoed@prescottgroup.com
Phone Number: (214) 750-0009

With a copy to: Prescott Realty Group, Inc.
3100 Monticello Avenue, Suite 600
Dallas, Texas 75205
Attn: Nancy Gapen, Senior Property Manager
Email: NGapen@prescottgroup.com
Phone Number: (214) 725-7472

LICENSEE: Dallas Area Rapid Transit
1401 Pacific Avenue
Dallas, Texas 75202
ATTN: Assistant Vice President, Real Estate
Email: DART_RE@dart.org
Phone Number: (214) 749-2633

33. **Defined Terms and Headings.** The words "Licensor" and "Licensee" as used herein shall include the plural as well as the singular. If more than one person is named as Licensee, the obligations of such persons are joint and several. The headings and titles to the sections of this License are not part of this License and shall have no effect upon the construction or interpretation of any part thereof. Captions contained herein are for the convenience of reference only and in no way limit or enlarge the terms or conditions of this License.

34. **Authority and Execution.** If Licensee executes this Agreement as a corporation or other entity, each of the persons executing this License on behalf of Licensee personally covenants and warrants that Licensee is duly authorized and validly existing, that Licensee is qualified to do business in the state in which the Premises is located, that Licensee has full right and authority to enter into this License, and that each person signing on behalf of Licensee is authorized to do so. This Agreement may be executed electronically and in any number of counterparts; all of which taken together shall constitute one and the same agreement.

35. **Entire Agreement; Amendment; No Representations or Warranties; No Memorandum of License**. This License contains the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes any and all prior and contemporaneous agreements, understandings, promises, and representations made by either party to the other concerning the subject matter hereof and the terms applicable hereto. It is expressly agreed by Licensee, as a material consideration to Licensor for the execution of this License, that there have been no representations, understandings, stipulations, agreements or promises pertaining to the

Premises, the Building or this License not incorporated in writing herein. This License shall not be altered, waived, amended or extended, except by a written agreement signed by the parties hereto, unless otherwise expressly provided herein. **LICENSOR'S DUTIES AND WARRANTIES ARE LIMITED TO THOSE SET FORTH IN THIS LICENSE, AND SHALL NOT INCLUDE ANY IMPLIED DUTIES OR WARRANTIES, ALL OF WHICH ARE HEREBY DISCLAIMED BY LICENSOR AND WAIVED BY LICENSEE. LICENSOR AND LICENSEE EXPRESSLY DISCLAIM ANY IMPLIED WARRANTY THAT THE PREMISES ARE SUITABLE FOR LICENSEE'S INTENDED COMMERCIAL PURPOSE, AND LICENSEE'S OBLIGATION TO PAY THE LICENSE FEE HEREUNDER IS NOT DEPENDENT UPON THE CONDITION OF THE PREMISES OR THE PERFORMANCE BY LICENSOR OF ITS OBLIGATIONS HEREUNDER, AND, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, LICENSEE SHALL CONTINUE TO PAY THE LICENSE FEE, WITHOUT ABATEMENT, SETOFF OR DEDUCTION, NOTWITHSTANDING ANY BREACH BY LICENSOR OF ITS DUTIES OR OBLIGATIONS HEREUNDER, WHETHER EXPRESS OR IMPLIED.** Neither this License nor a memorandum of this License shall be recorded in the public records of the county in which the Property is located without the prior written consent of Licensor. All indemnity and defense obligations of Licensee arising under this License shall be cumulative of each other and survive the expiration or earlier termination of this License.

36. **Generally.** Time is of the essence with respect to every provision of this License. All persons constituting Licensee shall be jointly and severally liable hereunder. The language in all parts of this License shall be construed as a whole according to its fair meaning. Licensee has had a fair opportunity to review the License and, as such, no presumption shall be made against the drafter of this License. All provisions hereof to be performed by Licensee are both conditions and covenants.

LICENSOR:

PSF I Knoll Trail Crossing, LLC,
a Delaware limited liability company
By: PB Knoll Trail JV, LLC,
a Delaware limited liability company,
its sole member

By: PSF I Knoll Trail MM, LLC
a Texas limited liability company

By: _____
Name: _____
Title: _____

Date:_____

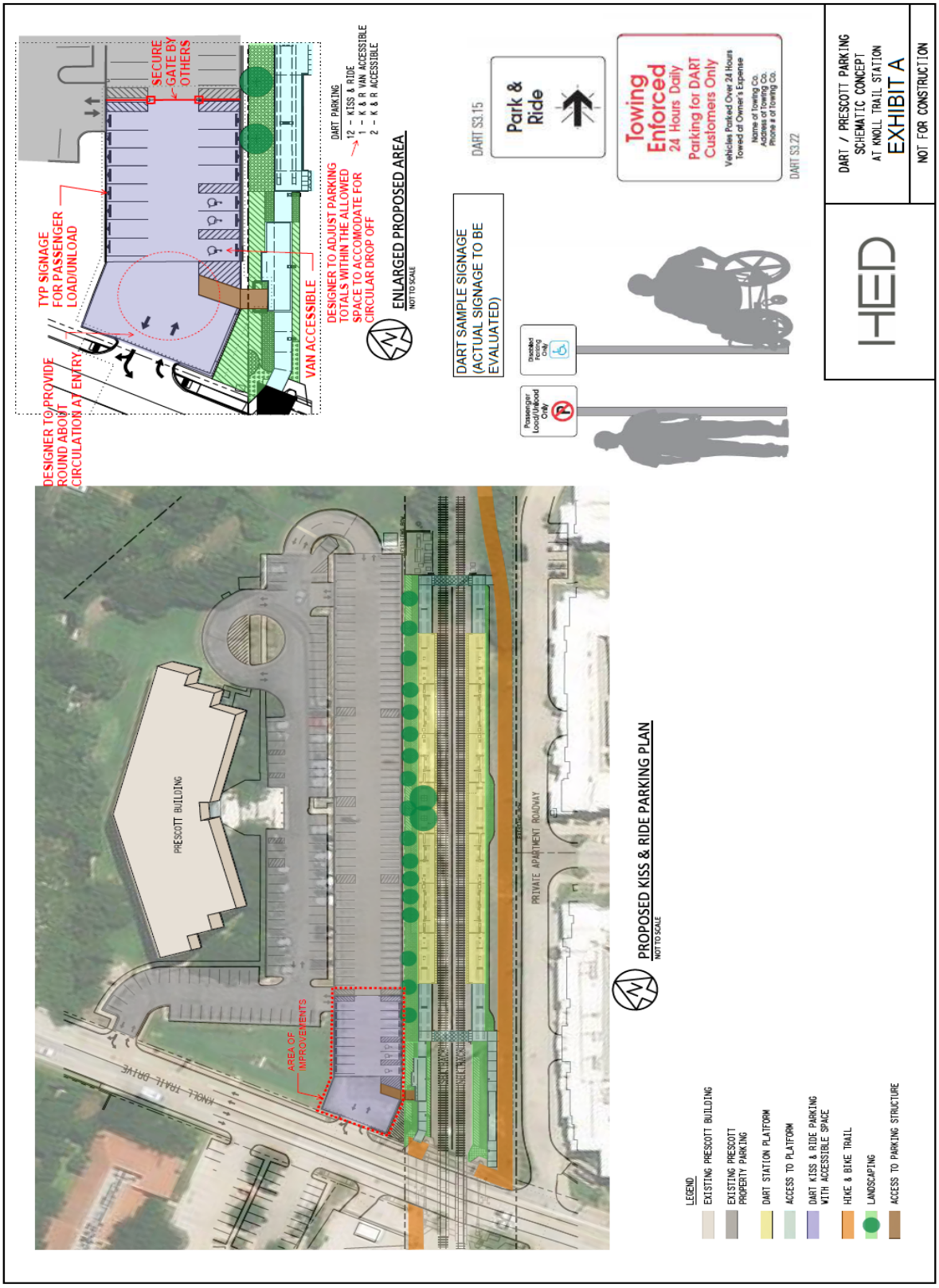
LICENSEE:

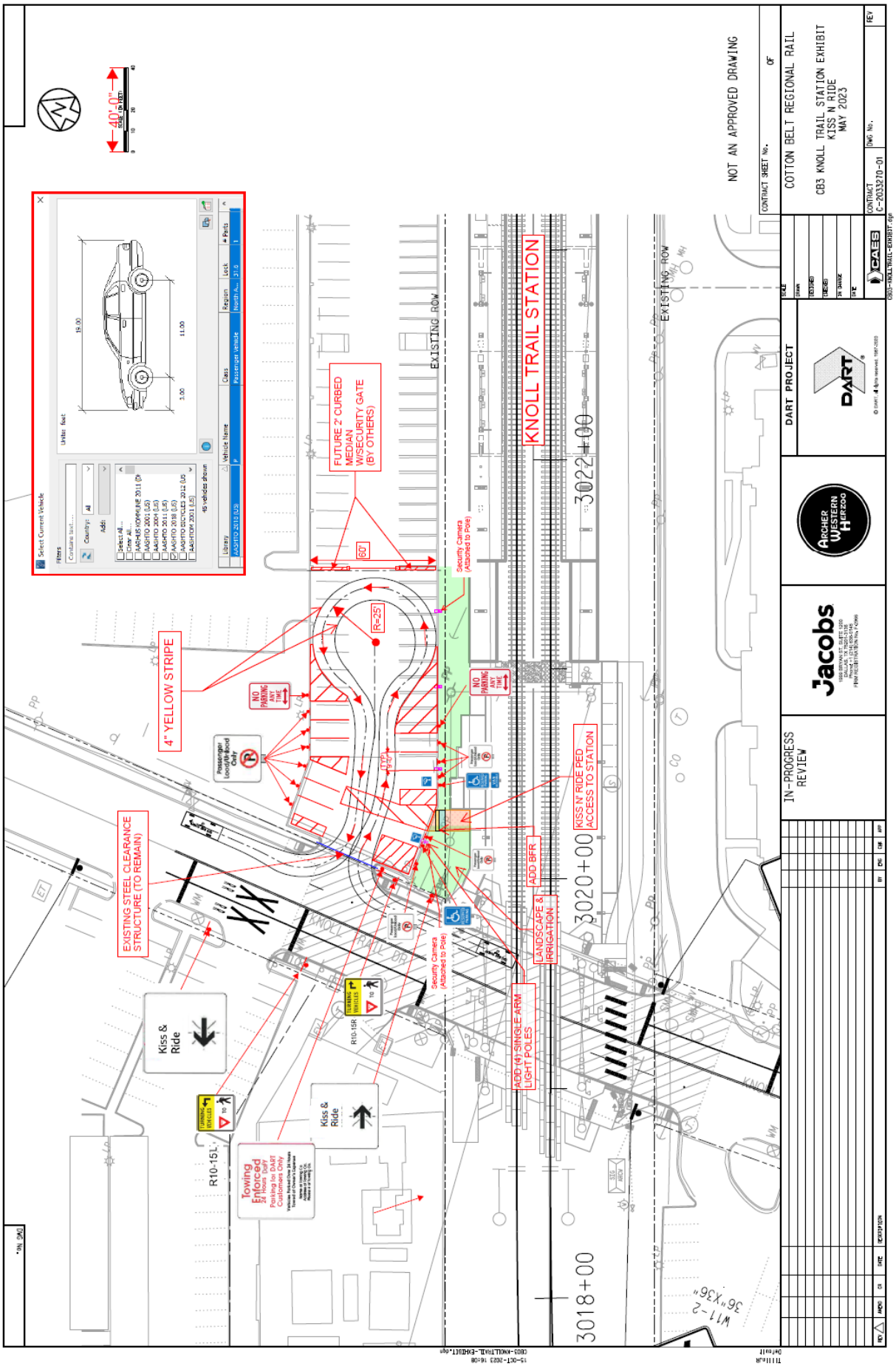
Dallas Area Rapid Transit,
a Texas Regional Transportation Authority

By: _____
Name: Caitlin Holland
Title: Vice President, Real Estate &
Economic Development
Development Department

Date:_____

EXHIBIT "A"


DART / PRESCOTT PARKING
SCHEMATIC CONCEPT
AT KNOLL TRAIL STATION
EXHIBIT A
NOT FOR CONSTRUCTION
HED
PROPOSED KISS & RIDE PARKING PLAN
NOT TO SCALE
PRESCOTT BUILDING
PRIVATE APARTMENT ROADWAY
KNOLL TRAIL DRIVE
AREA OF IMPROVEMENTS
LEGEND
EXISTING PRESCOTT BUILDING
EXISTING PRESCOTT PROPERTY PARKING
DART STATION PLATFORM
ACCESS TO PLATFORM
DART KISS & RIDE PARKING WITH ACCESSIBLE SPACE
HIKE & BIKE TRAIL
LANDSCAPING
ACCESS TO PARKING STRUCTURE
DESIGNER TO PROVIDE ROUND ABOUT CIRCULATION AT ENTRY
TYP SIGNAGE FOR PASSENGER LOAD/UNLOAD
SECURE GATE BY OTHERS
VAN ACCESSIBLE
DESIGNER TO ADJUST PARKING TOTALS WITHIN THE ALLOWED SPACE TO ACCOMODATE FOR CIRCULAR DROP OFF
DART PARKING
12 - K & R ACCESSIBLE
1 - K & R VAN ACCESSIBLE
2 - K & R ACCESSIBLE
ENLARGED PROPOSED AREA
NOT TO SCALE
DART SAMPLE SIGNAGE (ACTUAL SIGNAGE TO BE EVALUATED)
DART S3.15
Park & Ride
DART S3.22
Towing Enforced
24 Hours Daily
Parking for DART Customers Only
Vehicles Parked Over 24 Hours Towed at Owner's Expense
Name of Towing Co.
Address of Towing Co.
Phone # of Towing Co.
Passenger Load/Unload Only
Disabled Parking Only


NOT AN APPROVED DRAWING
COTTON BELT REGIONAL RAIL
CB3 KNOLL TRAIL STATION EXHIBIT
KISS N RIDE
MAY 2023
DART PROJECT
IN-PROGRESS REVIEW
Jacobs
KNOLL TRAIL STATION
EXISTING ROW
FUTURE 2' CURBED MEDIAN W/SECURITY GATE (BY OTHERS)
4" YELLOW STRIPE
EXISTING STEEL CLEARANCE STRUCTURE (TO REMAIN)
KISS N' RIDE PED ACCESS TO STATION
ADD BFR
LANDSCAPE & IRRIGATION
ADD (4) SINGLE ARM LIGHT POLES
Security Camera (Attached to Pole)
NO PARKING ANY TIME
Kiss & Ride
Towing Enforced
Parking for DART Customers Only
3018+00
3020+00
3022+00
R=25'
R10-15L
R10-15R
40' 0"

Agenda Report

Committee-of-the-Whole ☒
Board Meeting ☒

Voting Requirements:
Majority

DATE: **May 28, 2024**

SUBJECT: **Approval of Employment Agreement for DART Board Administrator**

BOARD ACTION

Approval of a resolution authorizing the Board Chair to finalize an employment agreement, in substantially the form shown as Exhibit 1 to the Resolution, with _____ for the position of DART Board Administrator.

PURPOSE

- DART's legislation authorizes the Board to appoint members or non-members as assistant secretaries.
- The position of DART Board Administrator is currently vacant, and the Board Chair convened a Board Administration-Board Administrator Search Committee to conduct a search for a replacement.
- The Search Committee has interviewed qualified candidates for the position and recommended a selected candidate to the DART Board.
- On May 14, 2024 (Resolution No. 240046), the Board approved a resolution authorizing the Board Chair to negotiate an employment agreement with the selected candidate for the position of DART Board Administrator.
- The purpose of this item is to authorize the Board Chair to finalize an employment agreement with the selected candidate.

LEGAL CONSIDERATIONS

- Section 452.504 of the Texas Transportation Code authorizes the Board to appoint, as necessary, members or non-members as assistant secretaries.

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RESOLUTION

of the

DALLAS AREA RAPID TRANSIT BOARD

(Executive Committee)

Approval of Employment Agreement for DART Board Administrator

WHEREAS, DART's legislation authorizes the Board to appoint members or non-members as assistant secretaries; and

WHEREAS, the position of DART Board Administrator is currently vacant, and the Board Chair convened a Board Administration-Board Administrator Search Committee to conduct a search for a replacement; and

WHEREAS, the Search Committee has interviewed qualified candidates for the position and recommended a selected candidate to the DART Board; and

WHEREAS, on May 14, 2024 (Resolution No. 240046), the Board approved a resolution authorizing the Board Chair to negotiate an employment agreement with the selected candidate for the position of DART Board Administrator; and

WHEREAS, an employment agreement, including salary, has been negotiated with the candidate and is presented to the DART Board for approval; and

WHEREAS, funding for this position is within current budget and FY 2024 20-Year Financial Plan allocations.

NOW, THEREFORE, BE IT RESOLVED by the Dallas Area Rapid Transit Board of Directors that the Board Chair is authorized to execute an employment agreement, in substantially the form shown as Exhibit 1 to this Resolution, with _____, for the position of DART Board Administrator.

Approval of Employment Agreement for DART Board Administrator

M. Nathan Barbera Secretary	Gary A. Slagel Chair
APPROVED AS TO FORM:	ATTEST:
Gene Gamez General Counsel	Nadine S. Lee President & Chief Executive Officer
	Date

BOARD ADMINISTRATOR EMPLOYMENT AGREEMENT
By and Between
Dallas Area Rapid Transit and _____

THIS EMPLOYMENT AGREEMENT ("Agreement") is made and entered into by and between Dallas Area Rapid Transit ("DART") and _____ (_____) or ("Board Administrator") and is effective on the date executed by both parties.

WHEREAS, DART desires to employ _____ as Board Administrator in accordance with applicable provisions of the laws of Texas; and

WHEREAS, _____ desires employment as Board Administrator of DART; and

NOW, THEREFORE in consideration of the premises and the mutual agreements hereinafter set forth, the parties hereby agree as follows:

1.00 **APPOINTMENT**. DART through its Board of Directors hereby appoints and employs at-will _____ as Board Administrator of DART. _____ reports directly to the Board of Directors. _____ shall work under the general direction of the Chair of the DART Board of Directors. _____ shall be responsible for directing and administering the activities of the Office of Board Support and its staff and shall serve as Secretary of the Trial Board and Administrative Law Judges.

2.00 **TERM**. The initial term of this Agreement begins on June 10, 2024, and will expire on June 9, 2025. This Agreement may be renewed or terminated in accordance with the provisions of this section and Section 7 of this Agreement. If DART takes no action to renew prior to the end of the initial term or of any subsequent terms, the Agreement automatically becomes renewable on a month-to-month basis for a period of three (3) thirty (30) day periods in which the Board will determine whether to renew such Agreement. Extension of a monthly term will be automatic unless either party provides to the other party written notice of termination in accordance with the provisions of Section 7 hereof, or DART renews the Agreement. In the event DART takes no action to renew or terminate the Agreement prior to the end of the third month of extension, the Agreement will automatically renew retroactively to January 1 for a one (1) year term.

3.00 **COMPENSATION**.

3.01 DART will pay _____ $_____, bi-weekly minus required applicable withholdings, payable in the same manner and at the same time as other employees of DART are paid, and subject to the same applicable deductions for taxes and employee benefit contributions. Pursuant to the Administrative Employment Manual and as approved by the Board, _____ will be eligible for merit increases and executive bonuses or other compensation benefits in the same manner as other employees at DART.

3.02 _____ will receive 30 days Paid Time Off ("PTO") annually. Unless approved in advance, new employees are not eligible to use PTO until after their initial six months of employment. Upon termination of employment, all unused PTO will be paid to _____ in a lump sum at the then current rate of pay (or as applicable under the Administrative

Employment Manual "AEM"). _____ has informed the Chair of a pre-paid vacation in July 2024 and _____ is authorized to use PTO for this pre-paid vacation.

3.03 DART will pay _____ for any professional dues and at its discretion for other memberships in professional organizations related to _____ employment. In addition, DART will pay for reasonable continuing education classes and reasonable business expenses related thereto.

3.04 DART will provide _____ free parking at DART Headquarters.

3.05 DART will reimburse _____ for reasonable business expenses incurred in the conduct of DART business.

3.06 DART will waive the 30-day waiting period for health insurance benefits and benefits will begin on the first day of _____ employment.

3.07 Except as otherwise noted in the Agreement, _____ will be subject to the policies, procedures, and standards of conduct under the AEM. _____ will also be subject to the travel policy, IT policy and other policies applicable to DART employees.

4.00 **DUTIES**.

4.01 _____ will serve as Board Administrator to DART and as directed provide guidance and assistance to the Board.

4.02 _____ will provide guidance and assistance as requested to the President & Chief Executive Officer, the General Counsel, and Chief Audit Officer, or their designee.

4.03 _____ will hire and supervise all staff and/or assistants of the Office of Board Support and will direct, administer, and supervise the affairs of such department.

4.04 _____ will abide by the Board Administrator job description and will have such other duties as the Board of Directors may, in its discretion, determine.

4.05 _____ shall not engage in any outside employment, activity, or enterprise that interferes with or has an adverse effect on ____ work at DART, or that could represent a potential conflict of interest that may be inconsistent or incompatible with employment by DART. _____ will not perform work outside of DART duties for compensation. _____ will comply with Administrative Policy, 1.11 or any amendment thereof pertaining to outside employment or activities by executives and will disclose and seek approval prior to undertaking any outside business or activity.

5.00 **PERFORMANCE EVALUATION**.

5.01 The DART Board of Directors, with the assistance of _____ will prepare methods and criteria, including specific goals and other performance indicators to use in evaluating _____ performance. At least annually, the Board will use these methods and criteria in its performance evaluation of _____. The Board may increase the salary, pay incentive

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awards, and/or alter other benefits in amounts and to the extent the DART Board of Directors determines is appropriate.

5.02 There will be no quantifiable FY 2024 performance goals for _____. _____ is expected to establish contact and communication at least quarterly with service area city and county secretaries and board administrator or equivalent Board Support peers at the state and national level. _____ will become familiar with the Board Administrator job description, DART's Bylaws, Rules of Procedures, Board policies, Administrative policies and required Board Financial Disclosure Statement forms. _____ will be responsible for the schedule monitoring or calendaring of the performance evaluation and goal development schedule of direct reports. _____ will assure that all Office of Board Support staff will complete their respective Statement of Financial Affiliation and Interest on or before May 1 of each year or soon after the Board Support staff is hired. _____ is expected to take full advantage of the time, knowledge, skills, expertise, and experience that will be available through the transitional advisory services to be provided by the former Director of Board Support. _____ will complete the required training pertaining to ___ fiscal authority, department credit card usage and will reconcile department billings/invoices to assure accountability and stewardship of public funds.

5.03 _____ acknowledges that teamwork of the Office of Board Support with other executive departments is vital to DART's mission and goals. Board Support absences cause the work unit to suffer, co-workers are unduly burdened, timely deliverables are impacted and operating cost are increased. _____ will comply with the Employee Standards of Conduct, Ethical Behavior, Attendance and Personal Appearance policy set out in the AEM.

6.00 **INDEMNIFICATION**. DART will defend and indemnify _____ to the extent applicable by law for any negligent act resulting in actual damages, cost and fees arising from an act or omission within the course and scope of the _____ duties. DART may not pay damages awarded against _____ that arise from a cause of action for official misconduct or that arise from a cause of action involving a willful or wrongful act or omission or an act or omission constituting gross negligence. DART may, at its election, purchase and maintain insurance on behalf of _____ against all or any part of the liability covered by this provision.

7.00 **TERMINATION and RESIGNATION**.

7.01 **Termination.** Notwithstanding any other provision of this Agreement, the Board may terminate _____ employment under this Agreement at any time without Cause with a 30-day notice by a majority vote of the qualified and appointed members of the Board. Prior to any termination action, _____ may have the opportunity to address the Board. The Board may terminate this Agreement at any time for Cause with immediate effect by a majority vote of the qualified and appointed members of the Board.

7.02 **Resignation.** _____ may voluntarily resign his position by giving the Board at least ninety (90) days' notice but minimally thirty (30) days' notice in writing of the intention to resign. Said notice will be delivered to the Board Chair, and the timing of any public statement or press release about the resignation will be determined by the Board. _____ will perform such duties as assigned during the notice period and be entitled to salary

payments and other benefits, including PTO usage but not accrual, during the notice period, unless the Board in its discretion determines a different time.

7.03 **Payment upon Termination.** Except as provided below, all pay, benefits, rights, duties, or entitlements, unless specifically extended in writing beyond termination of this Agreement, shall cease to accrue on the last day of the Employment Term. If the Board terminates this Agreement for any reason other than for Cause (as defined below), subject to the execution of a waiver and release in a form reasonably acceptable to DART, DART shall pay _____ a separation payment of **six (6) bi-weekly salary payments.** _____, as applicable and permitted by law, shall receive any retirement and insurance benefits in the same manner as other employees at DART. For the purposes of this section, "Cause" shall mean any of the following: _____ (i) failure to perform ____ duties (other than such failure resulting from incapacity due to physical or mental illness), (ii) failure to comply with any legal directive of the Board, (iii) engagement in dishonesty, fraud, illegal conduct, or gross misconduct which is, in each case, materially injurious to DART, (iv) conviction or plea of guilty or nolo contendere to a crime that constitutes a felony (or state jail equivalent) or a crime that constitutes a misdemeanor involving moral turpitude or a crime that materially impairs _____ ability to perform services for DART or results in reputational or financial harm to DART, (v) material failure to comply with the policies of DART or of the Board if such failure results in reputational or financial harm to DART. Determination of "Cause" shall be made by a majority vote of the Board. Separation payment to be paid under this section shall be paid in one lump sum (subject to applicable withholding).

8.00 **OTHER TERMS and CONDITIONS of EMPLOYMENT**. In addition to the employment benefits specifically provided for in this Agreement, all provisions of DART personnel rules and provisions of benefits relating to health and life insurance, PTO, holidays, termination benefits, car usage or mileage reimbursement and other fringe benefits and working conditions, as they now exist or may be amended, also apply to _____ as they would to other employees of DART, insofar as those provisions, regulations, and rules are not inconsistent with this Agreement. If a conflict exists between such policies and this agreement, the terms and conditions of this Agreement will prevail.

8.01 As Board Administrator for DART, _____ recognizes that confidential information will be disclosed by DART. _____ acknowledges that such confidential information is to remain the property of DART to the extent allowed by law both during and after _____ employment at DART, and that _____ will not disclose such confidential information to third parties without the consent of the DART Board. Confidential information does not include, however, information and materials that are or become publicly available.

9.00 **ARBITRATION**. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof or employment, will be settled by final and binding arbitration administered by the American Arbitration Association (AAA) under its National Rules for the Resolution of Employment Disputes. One arbitrator selected by mutual agreement of the parties will resolve such controversy or claim. In the event the parties cannot agree on an arbitrator, the parties will alternatively strike from a AAA provided list of nine arbitrators, until one arbitrator name remains. Each party will pay its own costs, attorney fees and pay half of the arbitrator's expenses. Any court having jurisdiction thereof may enter judgment upon the award rendered by the arbitrator.

10.00 **GENERAL PROVISIONS.**

10.01 Any notice which either party may wish to give to the other party hereunder will be deemed to have been given when delivered personally or when deposited in the United States mail, registered or certified and with proper postage prepaid, if addressed as follows:

To DART: Dallas Area Rapid Transit Authority
1401 Pacific Avenue
P. O. Box 660163
Dallas, TX 75266-7200
Attention: DART Board Chair

To Board Administrator:
1401 Pacific Avenue
P. O. Box 660163
Dallas, TX 75266-7200
Attention: _____

or to such other address as either party may designate for itself or _____ from time to time, by written notice to the other party, given in the manner stated in this subsection.

10.02 All payments or reimbursements for expenses provided by this Agreement will be subject to audit and confirmation by DART's auditors as to nature, amount, and appropriateness under the provisions of this Agreement, DART's Administrative Employment Manual or rules relating to travel or expense reimbursement.

10.03 This Agreement constitutes the entire agreement and understanding of the parties and supersedes any prior oral or written Agreement, understanding, representation, warranty, promise, or documents relating to the subject matter of this Agreement.

10.04 This Agreement may be amended or modified only by a written instrument executed by the parties hereto, except as provided herein.

10.05 The section and other headings contained in this Agreement are for reference purposes only and will not affect in any way the meaning or interpretation of this Agreement.

10.06 No omission or delay by any party in exercising any right, power, or privilege hereunder will impair the exercise of any such right, power, or privilege or be construed to be a waiver thereof or of any default or to be an acquiescence therein, and any single or partial exercise of any such right, power, or privilege will not preclude other or further exercises thereof or the exercise of any other right, power, or privilege. No waiver will be valid unless in writing and signed by the party to be charged, and then only to the extent therein specified.

10.07 In the event any one or more of the provisions contained in this Agreement will for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provisions, and the Agreement will be

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construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

10.08 This Agreement is not assignable by either party hereto.

10.09 This Agreement is governed by the laws of the State of Texas. Venue for any action concerning this Agreement will be in Dallas County, Texas.

THIS AGREEMENT CONTAINS A BINDING ARBITRATION PROVISION THAT AFFECTS YOUR LEGAL RIGHTS AND MAY BE ENFORCED BY THE PARTIES. THEREFORE, EACH PARTY BELOW IS ENCOURAGED TO SEEK LEGAL ADVICE BEFORE ENTERING INTO THIS AGREEMENT.

EXECUTED this ____ day of May 2024.

DALLAS AREA RAPID TRANSIT	**Board Administrator**
_____	_____
By: **Gary Slagel, DART Board Chair**	**By: _____, EID No.:**

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Agenda Report

Board Meeting ☒

Attachment:	Voting Requirements:
1. Redline - FY 2025 Financial Standards	2/3

DATE: **May 28, 2024**

SUBJECT: **Approval of Additional Amendments to the Financial Standards for FY 2025 Budget and 20-Year Financial Plan**

RECOMMENDATION

Approval of a resolution adopting additional amendments to the Financial Standards for the FY 2025 budget and 20-Year Financial Plan, as shown in Exhibit 1 to the Resolution.

COMMITTEE CONSIDERATIONS

- On May 14, 2024, the Committee-of-the-Whole unanimously moved this item to the May 28, 2024, Board of Directors meeting.

BUSINESS PURPOSE AND FINANCIAL CONSIDERATIONS

- Staff briefed the Budget and Finance Committee on proposed changes to the Financial Standards on February 21, 2024. The Committee recommended that staff present changes for consideration in installments, rather than at one time.
- Based on guidance from the Committee, staff recommended critical changes to four standards (G4, G6, D2, and D4) to conform to new legislation or legal opinions or to protect DART's standing in the credit markets. On April 16, 2024 (Resolution No. 240044), the Board approved that item unanimously and those standards will govern budget development for FY 2025.
- The purpose of this item is to brief the Committee-of-the-Whole on additional proposed amendments to the Financial Standards, as redlined in Attachment 1. While not strictly required to protect DART's credit ratings or reflect legal/legislative changes, these changes will strengthen and clarify DART's financial management practices in a meaningful and material way. The Budget and Finance Committee approved these amendments unanimously on May 8, 2024. If approved, these will be incorporated into the FY 2025 Financial Standards.
- Discussion of this item is in accordance with the Board's Financial Standards Policy and supports Board Strategic Priority 2: Provide stewardship of the transit system, agency assets and financial obligations.

LEGAL CONSIDERATIONS

- Section 452.056 of the Texas Transportation Code authorizes DART to exercise all powers necessary or useful in the construction, repair, maintenance, or operation of the public

transportation system.

- Sections 452.054, 452.506, and 452.546 of the Texas Transportation Code authorize the DART Board to adopt rules and bylaws as necessary to conduct meetings.
- Article VII of the DART Board Bylaws states that the Board shall adopt and provide for the enforcement of rules, policies, or procedures in connection with the management, operation, and control of DART.
- DART Board Policy II.02, Financial Standards Policy, requires the Board to review and approve a set of Financial Standards each year as part of the budget and Financial Plan approval process. The Policy also requires that approval or amendment of DART's Financial Standards will require an affirmative vote of two-thirds of the appointed and qualified members of the Board.

FY 2025 Financial Standards

The Financial Standards are divided into three sections: General, Debt Service, and Business Planning Parameters. The purpose of the general standards is to ensure that DART prudently manages its financial affairs and establishes appropriate cash reserves. The purpose of the debt service standards is to limit the level of debt that may be incurred and to ensure that debt assumptions are based on financial parameters similar to (or more conservative than) those that would be placed on DART by the financial marketplace. Actual debt covenants may differ from these standards. Where this occurs, the Financial Plan will reflect the actual covenants in the Board-approved debt instrument. The business planning parameters provide management with a framework for developing the following year's budget and the 20-Year Financial Plan and establishing future business targets for management to achieve. Since DART's enabling legislation requires a two-thirds vote on debt and the Financial Plan, approval or amendment of DART's Financial Standards will require an affirmative vote of two-thirds of the appointed and qualified Board members.

FY 2025 Financial Standards – General

G1. ~~The~~ DART's fiscal year-end ~~of DART~~ for financial reporting purposes shall ~~end on~~ be September 30 ~~of each year~~. At the beginning of the budget and financial planning process each year, the Board should review and approve a set of Financial Standards that can be used by management as a framework for developing the ~~following~~ next year's ~~B~~budget~~, Business Plan,~~ and 20-Year Financial Plan. The Board shall approve the ~~B~~budget ~~and 20-Year Financial Plan~~ by September 30 of each fiscal year. The Board may adopt the 20-Year Financial Plan prior to the beginning of the fiscal year. The Annual Budget shall be the first year of the 20-Year Financial Plan.

Commented [CM1]: Formerly G8

~~G1.~~G2. Complete and accurate accounting records shall be maintained in accordance with Generally Accepted Accounting Principles as promulgated by the Government Accounting Standards Board. DART's fiscal year-end for financial reporting purposes shall be September 30.

~~G2.~~G3. Management shall invest ~~F~~funds of the ~~A~~authority ~~shall be invested~~ within the guidelines of the Board's approved Investment Policy and Investment Strategy, and in compliance with applicable federal and ~~S~~state law, including Section 452.102 of the Texas Transportation Code~~, Article 717q V.T.C.S.,~~ and the Texas Public Funds Investment Act~~, and applicable Federal law~~. The Board shall approve the ~~signatories for all~~ depository bank disbursement officers for the ~~A~~agency ~~checking and savings accounts~~.

~~G3.~~G4. An independent accounting firm shall perform an examination of DART's consolidated financial statements (including Single Audit requirements) and DART's retirement plan financial statements on an annual basis. The agency's goal is to receive an unqualified opinion on the financial statements and an opinion that DART is in compliance with Federal Single Audit requirements in all material respects.

~~G4.~~G5. DART shall contract with an independent actuary to perform an annual valuation of the Defined Benefit Retirement Plan and Trust and the Other Post-Employment Benefits and Trust. DART shall maintain both plans at 100-percent-funded status, and management shall maintain a discount rate of no more than 6.75 percent.

~~G5.~~G6. Appropriate insurance coverage shall be maintained to mitigate the risk of material loss. For self-insured retentions, a separately funded Master Insurance Reserve shall be maintained in an amount equal to the estimated liability for incurred losses and a reasonable allowance for claims incurred but not filed. An actuarial review of self-insured retentions will be made at least once every three years to ensure adequacy of the Master Insurance Reserve.

G7. DART shall maintain a working cash requirement at the end of the fiscal year of at least 90 days of operating expenses, plus cash reserves for budgeted capital projects and grants, as projected in the 20-Year Financial Plan. DART shall invest these funds in accordance with the investment strategy for the Operating Fund.

~~G6.~~G8. ~~In order to provide a buffer against an unanticipated shortfall in sales tax collections,~~ DART ~~will~~ shall maintain an ~~Financial~~ Emergency Reserve~~. The goal of this reserve is to maintain a balance~~ of at least $50 million and no more than 10~~%~~ percent of the current year's sales tax budget to mitigate emergent financial circumstances such as a natural disaster or an unanticipated shortfall in sales collections of five percent or more. Authorization to spend Emergency Reserve funds requires the affirmative vote of two-thirds of the appointed and qualified members of the Board.~~During periods in which sales taxes exceed the budget, the excess collections will be deposited into the Reserve by January 1 of the following year, up to a maximum fund balance of $50 million.~~

~~G7.~~G9. In order to provide funding for initiatives that enhance the quality and affordability of public transportation, DART will maintain a Mobility Assistance and Innovation Fund. Sources of funding shall include: i) sales tax received in excess of the amount budgeted for the fiscal year after such excess has been used to meet the requirements established for the Financial Reserve; ii) non-operating revenue and non-passenger operating revenue, received in excess of the amount budgeted for the fiscal year, and not already designated for a specific purpose (if actual operating expense net of operating revenue, is less than or equal to budget for the fiscal year just ended), such as real estate sales and leases, station naming rights, and other innovative sources; iii) investment earnings on the Financial Reserve and Mobility Assistance and Innovation Fund balances; and iv) grants and other contributions (including private). The Mobility Assistance and Innovation Fund shall be used for capital or operating projects and initiatives that advance the goals and objectives identified by the agency, as well as mitigation of fare increases. Authorization to spend Reserve funds requires the affirmative vote of two-thirds of the appointed and qualified members of the Board.

~~G8. The fiscal year of DART shall end on September 30 of each year. At the beginning of the budget and financial planning process each year, the Board should review and approve a set of Financial Standards that can be used by management as a framework for developing the following year's Budget, Business Plan, and 20-Year Financial Plan. The Board shall approve the Budget and 20-Year Financial Plan by September 30 of each fiscal year. The Annual Budget shall be the first year of the 20-Year Financial Plan.~~

~~G8.~~G10. Any funds remaining after compliance with the other Financial Standards shall remain as designated cash for future spending and be available for budgeting in future years in accordance with the Financial Plan and subject to Board approval (per G1).

Commented [CM2]: Moved to G1

~~G9.~~G11. 20-Year Financial Plan amendments shall require a two-thirds vote of the number of appointed and qualified Board members. An amendment is necessary when DART's share of the addition of a new capital project or the cumulative modification of an existing capital project is in excess of $1 million or DART's share of the addition of a new operating program or increase in an existing operating program is in excess of $500,000.

FY 2025 Financial Standards – Business Planning Parameters

B1. Sales tax revenue forecasts shall be based on a sales tax model developed specifically for the DART service area by an independent economist. In order to ensure a conservative sales tax estimate, the model's projections may be reduced from the forecasted levels, but not increased for years 2-20 of the 20-Year Financial Plan. The most current year may be based on management's best estimate. All such modifications shall be approved by the Board during the financial planning process.

B2. Passenger revenue forecasts shall be derived from ridership and average fare forecasts based on the Board's approved fare policy and fare structure. The Board will consider, from time to time, fare modifications to achieve Service Plan, ridership, and subsidy per passenger targets (see B4) and to maintain DART's financial viability.

B3. The Board shall approve annual fixed route service levels by mode for each of the next five years. Fixed route service levels shall be based on the Five-Year Action Plan prepared by the Planning and Development Department. Cost of service will be developed jointly by Finance and Planning.

B4. The Board desires to steadily improve service efficiency over time. Subsidy per passenger will continue to be monitored and managed. Management will continue to report the subsidy per passenger in the Quarterly Operating and Financial Performance Report. Items that impact subsidy per passenger will be reported in the Financial Considerations section of Agenda Reports.

B5. For financial planning purposes, total operating expenses may not increase by more than 90% of the projected rate of inflation for the Dallas area, plus the incremental costs associated with the addition of new services, programs, and/or facilities as approved by the Board, as well as Board-approved contract increases, actuarial analyses, health-care cost increases, and fuel prices. The projected incremental cost impact of new services, programs, and/or facilities shall be presented to the Board for approval as part of the 20-Year Financial Plan assumption process each year.

B6. As the Board desires to maximize financial resources devoted to the provision of service and minimize administrative costs, the administrative ratio [net administrative costs (administrative costs minus administrative revenues) divided by direct costs] may not increase for two consecutive years and shall not be higher than 12.0%. As such the direct cost ratio (direct costs minus net administrative costs divided by direct costs) shall not be lower than 88%.

Management shall use a consistent methodology for computing net administrative costs and direct costs.

Administrative costs shall include such costs as human capital, legal, marketing and communications, finance and associated technology. Administrative revenues shall include non-passenger revenues such as advertising, concessions, and other system-generated revenue. Direct costs shall include costs incurred in the provision of service such as bus operations, rail operations, mobility management services, police and fare enforcement, planning and development, revenue collection, and customer service.

Management will present the projected costs of the major components of net administrative costs and direct costs to the Board as part of the Budget process each year.

This Financial Standard shall be achieved by maximizing direct costs relative to net administrative

costs.

B7. General Mobility programs for road improvement programs such as the Local Assistance Program (LAP), Principal Arterial Street System (PASS), Transit Related Improvement Program (TRIP), and Transportation System Management (TSM) and Intelligent Transportation System projects shall be funded according to the terms of the approved interlocal agreements and recorded as non-operating expenses in the 20-Year Financial Plan.

B8. Capital planning and development costs and start-up costs are the internal staff costs associated with planning, designing, constructing, and opening new capital projects such as the light rail system. Management shall use a consistent methodology for allocating costs between operating and capital planning. Capital planning and development costs shall not exceed 7% of total operating costs. Cumulative start-up costs for a line section shall not exceed 60% of the first-year operating costs of that line section.

B9. The 20-Year Financial Plan shall include funding for asset replacement and expansion projects. Capital projects in excess of $1 million shall be approved by the Board. Timely replacement of assets shall be the highest priority to ensure a safe system. Accordingly, the 20-Year Financial Plan shall include replacement reserves by major asset category to ensure adequate future funding. The reserve levels shall be based on an independent assessment of asset condition (to be completed at least once every five years). Expansion projects shall be prioritized based on the project's cost, impact on ridership, return on investment, available funds, and other relevant factors. Capital construction projects shall be increased at annual inflation rates no less than the greater of those: (i) contained in projections developed specifically for DART by an independent economist; or (ii) based on the current available data from construction contract awards. Inflation rates will be reviewed annually and as construction contracts are awarded to determine if the assumptions are reasonable. Non-construction capital projects will be increased at rates no less than general inflation (Consumer Price Index).

B10. DART receives formula and discretionary federal funding. Formula funding shall be programmed primarily for bus replacement, capital preventive maintenance (if available), state-of-good-repair projects, and passenger facility construction. Formula funding for future years shall be forecast at the current year's funding level or at the minimum levels included in Federal authorizations to ensure a conservative forecast. Discretionary funding shall be programmed primarily for major system expansion projects (e.g., LRT or new bus maintenance facilities). Discretionary funding levels shall be estimated by project based on federal criteria and the likelihood of obtaining congressional appropriations and require Board approval during the budget/20-Year Financial Plan process.

FY 2025 Financial Standards – Debt Service

D1. DART may not enter into a debt or financing arrangement unless the transaction is in full compliance with all applicable provisions of the Texas Transportation Code and other applicable state and federal laws.

D2. Long-term debt may be included in the 20-Year Financial Plan. Debt shall only be issued for approved capital projects and insurance reserves. Specific debt issuances are not tied to specific projects. Any project included in the budget or 20-Year Financial Plan may be funded from the General Operating Fund or with debt, as needed.

D3. Sinking funds shall be established to ensure that cash is available to make timely debt service payments on fixed-rate debt issuances that have maturities of one year or less and have periodic semi-annual interest payments. DART shall deposit on a monthly basis a prorated amount sufficient to fund the next principal and interest payment.

D4. Bond debt service reserve funds, if any, are to be established only when necessary. DART shall satisfy the liquidity requirements sought by bond investors and credit agencies by maintaining a sound, prudent, and reasonable Operating Fund.

D5. DART shall establish a legal security structure of liens, agreements, pledged revenues, and other covenants which will be sufficient to (1) secure a rating of "A" or better on sales tax securities; (2) a MIG1 or SP1 rating on short-term notes; or (3) secure A1 or P1 rating on other short-term debt, or if necessary, secure a credit enhancement from a financial institution with a rating of "AA" or better.

D6. Certain debt service coverage ratios are required to access the financial markets. For financial planning purposes, annual sales tax revenues must exceed DART's current year debt service obligations by a factor of at least two (external coverage ratio). It is a goal of DART that for financial planning purposes, for long-term debt, sales tax revenues plus operating revenues, plus interest income, less operating expenses (excluding debt service and depreciation), for any twelve consecutive months of the prior eighteen months, must be sufficient to cover maximum annual debt service (ratio greater than 1.0). However, the DART Board may choose to grant exceptions to this standard in the interest of expediting the completion of the System Plan.

DRAFT

RESOLUTION

of the

DALLAS AREA RAPID TRANSIT BOARD

(Executive Committee)

Approval of Additional Amendments to the Financial Standards for FY 2025 Budget and 20-Year Financial Plan

WHEREAS, the Board desires to provide staff with a financial and operating framework for development of the FY 2025 Budget and 20-Year Financial Plan; and

WHEREAS, DART Board Policy II.02, Financial Standards Policy, requires the Board to review and approve the Financial Standards each year as a part of the budget and financial planning process; and

WHEREAS, DART Board Policy II.02, Financial Standards Policy, also states that an affirmative vote of two-thirds of the appointed and qualified members of the Board is required for approval of DART's Financial Standards; and

WHEREAS, on April 16, 2024, the DART Board approved critical changes to four standards (G4, G6, D2, and D4) to conform to new legislation or legal opinions or to protect DART's standing in the credit markets; and

WHEREAS, staff is recommending additional amendments to the standards as shown in Exhibit 1.

NOW, THEREFORE, BE IT RESOLVED by the Dallas Area Rapid Transit Board of Directors that the Financial Standards for the FY 2025 Budget and 20-Year Financial Plan process as shown in Exhibit 1 to this Resolution are approved.

Approval of Additional Amendments to the Financial Standards for FY 2025 Budget and 20-Year Financial Plan

Prepared by:

/s/ Elizabeth Reich

M. Elizabeth Reich
Chief Financial Officer

Approved as to form:

/s/ Gene Gamez

Gene Gamez
General Counsel

Approved by:

/s/ Nadine S. Lee

Nadine S. Lee
President & Chief Executive Officer

FY 2025 Financial Standards

The Financial Standards are divided into three sections: General, Debt Service, and Business Planning Parameters. The purpose of the general standards is to ensure that DART prudently manages its financial affairs and establishes appropriate cash reserves. The purpose of the debt service standards is to limit the level of debt that may be incurred and to ensure that debt assumptions are based on financial parameters similar to (or more conservative than) those that would be placed on DART by the financial marketplace. Actual debt covenants may differ from these standards. Where this occurs, the Financial Plan will reflect the actual covenants in the Board-approved debt instrument. The business planning parameters provide management with a framework for developing the following year's budget and the 20-Year Financial Plan and establishing future business targets for management to achieve. Since DART's enabling legislation requires a two-thirds vote on debt and the Financial Plan, approval or amendment of DART's Financial Standards will require an affirmative vote of two-thirds of the appointed and qualified Board members.

FY 2025 Financial Standards – General

G1. DART's fiscal year-end for financial reporting purposes shall be September 30. At the beginning of the budget and financial planning process each year, the Board should review and approve a set of Financial Standards that can be used by management as a framework for developing the next year's budget and 20-Year Financial Plan. The Board shall approve the budget by September 30 of each fiscal year. The Board may adopt the 20-Year Financial Plan prior to the beginning of the fiscal year. The Annual Budget shall be the first year of the 20-Year Financial Plan.

G2. Complete and accurate accounting records shall be maintained in accordance with Generally Accepted Accounting Principles as promulgated by the Government Accounting Standards Board. DART's fiscal year-end for financial reporting purposes shall be September 30.

G3. Management shall invest funds of the authority within the guidelines of the Board's approved Investment Policy and Investment Strategy, and in compliance with applicable federal and state law, including Section 452.102 of the Texas Transportation Code and the Texas Public Funds Investment Act. The Board shall approve the depository bank disbursement officers for the agency.

G4. An independent accounting firm shall perform an examination of DART's consolidated financial statements (including Single Audit requirements) and DART's retirement plan financial statements on an annual basis. The agency's goal is to receive an unqualified opinion on the financial statements and an opinion that DART is in compliance with federal Single Audit requirements in all material respects.

G5. DART shall contract with an independent actuary to perform an annual valuation of the Defined Benefit Retirement Plan and Trust and the Other Post-Employment Benefits and Trust. DART shall maintain both plans at 100-percent-funded status, and management shall maintain a discount rate of no more than 6.75 percent.

G6. Appropriate insurance coverage shall be maintained to mitigate the risk of material loss. For self-insured retentions, a separately funded Master Insurance Reserve shall be maintained in an amount equal to the estimated liability for incurred losses and a reasonable allowance for claims incurred but not filed. An actuarial review of self-insured retentions will be made at least once every three years to ensure adequacy of the Master Insurance Reserve.

G7. DART shall maintain a working cash requirement at the end of the fiscal year of at least 90 days of operating expenses, plus cash reserves for budgeted capital projects and grants, as projected in the 20-Year Financial Plan. DART shall invest these funds in accordance with the investment strategy for the Operating Fund.

G8. DART shall maintain an Emergency Reserve of at least $50 million and no more than 10 percent of the current year's sales tax budget to mitigate emergent financial circumstances such as a natural disaster or an unanticipated shortfall in sales collections of five percent or more. Authorization to spend Emergency Reserve funds requires the affirmative vote of two-thirds of the appointed and qualified members of the Board.

G9. In order to provide funding for initiatives that enhance the quality and affordability of public transportation, DART will maintain a Mobility Assistance and Innovation Fund. Sources of funding shall include: i) sales tax received in excess of the amount budgeted for the fiscal year after such excess has been used to meet the requirements established for the Financial Reserve; ii) non-operating revenue and non-passenger operating revenue, received in excess of the amount budgeted for the fiscal year, and not already designated for a specific purpose (if actual operating expense net of operating revenue, is less than or equal to budget for the fiscal year just ended), such as real estate sales and leases, station naming rights, and other innovative sources; iii) investment earnings on the Financial Reserve and Mobility Assistance and Innovation Fund balances; and iv) grants and other contributions (including private). The Mobility Assistance and Innovation Fund shall be used for capital or operating projects and initiatives that advance the goals and objectives identified by the agency, as well as mitigation of fare increases. Authorization to spend Reserve funds requires the affirmative vote of two-thirds of the appointed and qualified members of the Board.

G10. Any funds remaining after compliance with the other Financial Standards shall remain as designated cash for future spending and be available for budgeting in future years in accordance with the Financial Plan and subject to Board approval (per G1).

G11. 20-Year Financial Plan amendments shall require a two-thirds vote of the number of appointed and qualified Board members. An amendment is necessary when DART's share of the addition of a new capital project or the cumulative modification of an existing capital project is in excess of $1 million or DART's share of the addition of a new operating program or increase in an existing operating program is in excess of $500,000.

FY 2025 Financial Standards – Business Planning Parameters

B1. Sales tax revenue forecasts shall be based on a sales tax model developed specifically for the DART service area by an independent economist. In order to ensure a conservative sales tax estimate, the model's projections may be reduced from the forecasted levels, but not increased for years 2-20 of the 20-Year Financial Plan. The most current year may be based on management's best estimate. All such modifications shall be approved by the Board during the financial planning process.

B2. Passenger revenue forecasts shall be derived from ridership and average fare forecasts based on the Board's approved fare policy and fare structure. The Board will consider, from time to time, fare modifications to achieve Service Plan, ridership, and subsidy per passenger targets (see B4) and to maintain DART's financial viability.

B3. The Board shall approve annual fixed route service levels by mode for each of the next five years. Fixed route service levels shall be based on the Five-Year Action Plan prepared by the Planning and Development Department. Cost of service will be developed jointly by Finance and Planning.

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B5. For financial planning purposes, total operating expenses may not increase by more than 90% of the projected rate of inflation for the Dallas area, plus the incremental costs associated with the addition of new services, programs, and/or facilities as approved by the Board, as well as Board-approved contract increases, actuarial analyses, health-care cost increases, and fuel prices. The projected incremental cost impact of new services, programs, and/or facilities shall be presented to the Board for approval as part of the 20-Year Financial Plan assumption process each year.

B6. As the Board desires to maximize financial resources devoted to the provision of service and minimize administrative costs, the administrative ratio [net administrative costs (administrative costs minus administrative revenues) divided by direct costs] may not increase for two consecutive years and shall not be higher than 12.0%. As such the direct cost ratio (direct costs minus net administrative costs divided by direct costs) shall not be lower than 88%.

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Management will present the projected costs of the major components of net administrative costs and direct costs to the Board as part of the Budget process each year.

This Financial Standard shall be achieved by maximizing direct costs relative to net administrative

costs.

B7. General Mobility programs for road improvement programs such as the Local Assistance Program (LAP), Principal Arterial Street System (PASS), Transit Related Improvement Program (TRIP), and Transportation System Management (TSM) and Intelligent Transportation System projects shall be funded according to the terms of the approved interlocal agreements and recorded as non-operating expenses in the 20-Year Financial Plan.

B8. Capital planning and development costs and start-up costs are the internal staff costs associated with planning, designing, constructing, and opening new capital projects such as the light rail system. Management shall use a consistent methodology for allocating costs between operating and capital planning. Capital planning and development costs shall not exceed 7% of total operating costs. Cumulative start-up costs for a line section shall not exceed 60% of the first-year operating costs of that line section.

B9. The 20-Year Financial Plan shall include funding for asset replacement and expansion projects. Capital projects in excess of $1 million shall be approved by the Board. Timely replacement of assets shall be the highest priority to ensure a safe system. Accordingly, the 20-Year Financial Plan shall include replacement reserves by major asset category to ensure adequate future funding. The reserve levels shall be based on an independent assessment of asset condition (to be completed at least once every five years). Expansion projects shall be prioritized based on the project's cost, impact on ridership, return on investment, available funds, and other relevant factors. Capital construction projects shall be increased at annual inflation rates no less than the greater of those: (i) contained in projections developed specifically for DART by an independent economist; or (ii) based on the current available data from construction contract awards. Inflation rates will be reviewed annually and as construction contracts are awarded to determine if the assumptions are reasonable. Non-construction capital projects will be increased at rates no less than general inflation (Consumer Price Index).

B10. DART receives formula and discretionary federal funding. Formula funding shall be programmed primarily for bus replacement, capital preventive maintenance (if available), state-of-good-repair projects, and passenger facility construction. Formula funding for future years shall be forecast at the current year's funding level or at the minimum levels included in federal authorizations to ensure a conservative forecast. Discretionary funding shall be programmed primarily for major system expansion projects (e.g., LRT or new bus maintenance facilities). Discretionary funding levels shall be estimated by project based on federal criteria and the likelihood of obtaining congressional appropriations and require Board approval during the budget/20-Year Financial Plan process.

FY 2025 Financial Standards – Debt Service

D1. DART may not enter into a debt or financing arrangement unless the transaction is in full compliance with all applicable provisions of the Texas Transportation Code and other applicable state and federal laws.

D2. Long-term debt may be included in the 20-Year Financial Plan. Debt shall only be issued for approved capital projects and insurance reserves. Specific debt issuances are not tied to specific projects. Any project included in the budget or 20-Year Financial Plan may be funded from the General Operating Fund or with debt, as needed.

D3. Sinking funds shall be established to ensure that cash is available to make timely debt service payments on fixed-rate debt issuances that have maturities of one year or less and have periodic semi-annual interest payments. DART shall deposit on a monthly basis a prorated amount sufficient to fund the next principal and interest payment.

D4. Bond debt service reserve funds, if any, are to be established only when necessary. DART shall satisfy the liquidity requirements sought by bond investors and credit agencies by maintaining a sound, prudent, and reasonable Operating Fund.

D5. DART shall establish a legal security structure of liens, agreements, pledged revenues, and other covenants which will be sufficient to (1) secure a rating of "A" or better on sales tax securities; (2) a MIG1 or SP1 rating on short-term notes; or (3) secure A1 or P1 rating on other short-term debt, or if necessary, secure a credit enhancement from a financial institution with a rating of "AA" or better.

D6. Certain debt service coverage ratios are required to access the financial markets. For financial planning purposes, annual sales tax revenues must exceed DART's current year debt service obligations by a factor of at least two (external coverage ratio). It is a goal of DART that for financial planning purposes, for long-term debt, sales tax revenues plus operating revenues, plus interest income, less operating expenses (excluding debt service and depreciation), for any twelve consecutive months of the prior eighteen months, must be sufficient to cover maximum annual debt service (ratio greater than 1.0). However, the DART Board may choose to grant exceptions to this standard in the interest of expediting the completion of the System Plan.

Agenda Report

Committee-of-the-Whole ☒
Board Meeting ☒

Attachments:	Voting Requirements:
1. Board Policy III.16 2. TRE Link Map	Majority

DATE: **May 28, 2024**

SUBJECT: **Approval of the Dallas/Fort Worth International Airport Site-Specific Shuttle Funding Agreement**

RECOMMENDATION

Approval of a resolution authorizing the President & Chief Executive Officer or her designee to execute a two-year Site-Specific Shuttle funding agreement, substantially in the form shown as Exhibit 1 to the Resolution, with Trinity Metro and the Dallas/Fort Worth International Airport (DFWIA), for a total authorized amount not-to-exceed $418,030 over the two-year term for DART's portion of the funding agreement.

FINANCIAL CONSIDERATIONS

- This Dallas/Fort Worth International Airport (DFWIA) Site-Specific Shuttle Funding Agreement is included in the Service Planning & Scheduling Department's proposed FY 2025 Operating budget.
- Sufficient funding for this circulator service in the amount $418,030 is included in both the Service Planning & Scheduling Department's proposed FY 2025 Operating Expense budget and the Total Operating Expense line item of the approved FY 2024 20-Year Financial Plan.
- The cost of service will be divided equally between Trinity Metro, Dallas/Fort Worth International Airport (DFWIA) and DART. DART's annual cost is $203,162 for the first year, and $214,868 in the second year of the agreement.

BUSINESS PURPOSE

- Approval of this agreement will assist DART in achieving Board Strategic Priority 1: Enhance the safety and service experience through customer-focused initiatives.
- On April 14, 1998 (Resolution No. 980078), the Board approved a Site-Specific Shuttle Service Policy, Board Policy III.16, that allows DART to initiate or continue DART-operated circulator/distributor shuttle services, which connect to rail stations or transit centers, where an employer or other entity agrees to subsidize the service. (See Attachment 1.)
- A shuttle agreement between DART, Trinity Metro, and DFWIA has been in existence since 2000.

- The existing interlocal funding agreement with Trinity Metro and the DFWIA for shuttle service was approved by the DART Board on September 28, 2021 (Resolution No. 210143) and expires September 30, 2024.

- Trinity Metro shall operate the Service providing a direct connection between the Trinity Railway Express (TRE) CentrePort Station and Terminal B. (See Attachment 2.) Passengers transfer at Terminal B to airport shuttle buses that serve DFWIA terminals. The TRE shuttle carried an average of 6,460 passengers monthly in FY 2023.

- Hours of Service are Monday through Saturday (no Sunday Service) 5:15 a.m.-11:42 p.m. Two shuttles at a peak 20-minute headway will operate Monday-Friday between the hours of 5:15 a.m. to 9:08 a.m. and 4:32 p.m. to 7:08 p.m. The remaining hours of operation on weekday, as well as Saturday service, will run at an Off-Peak 40-minute headway utilizing one shuttle.

- DART, Trinity Metro, and DFWIA have shared the cost of operating this service equally with funding assistance from the North Central Texas Council of Governments (NCTCOG). Under the new agreement the three agencies will continue to share cost without funding assistance from NCTCOG. However, due to upcoming national events, such as World Cup 2026, an enhanced service may be required, at which time, the agencies will request reimbursement for those expenses from the NCTCOG.

LEGAL CONSIDERATIONS

Section 452.056(a) of the Texas Transportation Code authorizes DART to construct, develop, plan, and operate a public transportation system within the service area.

Section 452.055 of the Code authorizes DART to enter into contracts with any person.

DART Board Policy III.16, Site-Specific Shuttle Service Policy, provides for Board consideration of joint-funding arrangements for privately operated shuttle service. The policy allows DART to fund up to 50% of the service cost in circumstances where the service meets DART's service standards and where the service is an enhancement to the DART system.

Attachment 1

Site Specific Shuttle Service Policy

DATE ISSUED: April 14, 1998
Resolution No. 980078
Amended by Resolution: 070120
Policy No. III.16 (Operations)

Section 1:

1.1 It is the policy of the DART Board to consider partial funding (up to 50%) of circulator/distributor shuttle services (bus or van) which connect to rail stations or transit centers and are operated by employers or other private entities. In order to be considered for funding, such services must enhance the DART system and must meet Board adopted standards for performance of circulator/distributor service (as provided for in the adopted Service Standards, Policy III.11). DART participation in support of such services should be commensurate with the degree of enhancement to the DART system. A process diagram is shown in Attachment 1.

1.2 Service proposals brought to the Board for consideration under this section of the Policy should at minimum, include:

A. A projection of new riders (passenger trips) attracted to the DART system through the provision of the proposed service. Evaluation of the degree to which a proposed service is an enhancement to the DART system will primarily be determined by the calculated subsidy per new rider.
B. A description of DART's participation in the solicitation and selection of the contractor or operator of the proposed service.
C. The proposed routing and scheduling of the service (including how the service interfaces with DART rail or DART Transit Centers).
D. The proposed fare and fare media for the service.
E. Indemnification of DART relative to the liability associated with operation of the proposed service.
F. Proposed service quality standards, as well as a methodology for assuring attainment of standards.
G. Proposed service identification (identification of the service as being partially DART sponsored).
H. A description of how accessibility of the service will be provided.

1.3 A proposal for a service agreement with a college or university located within the DART Service Area and accredited by the Commission on Colleges of the Southern Association of Colleges and Schools that is brought to the Board for consideration under this section may include, as part of the consideration for entering the agreement, access to the DART fixed-route system for students, faculty and staff of the college or university.

Section 2:

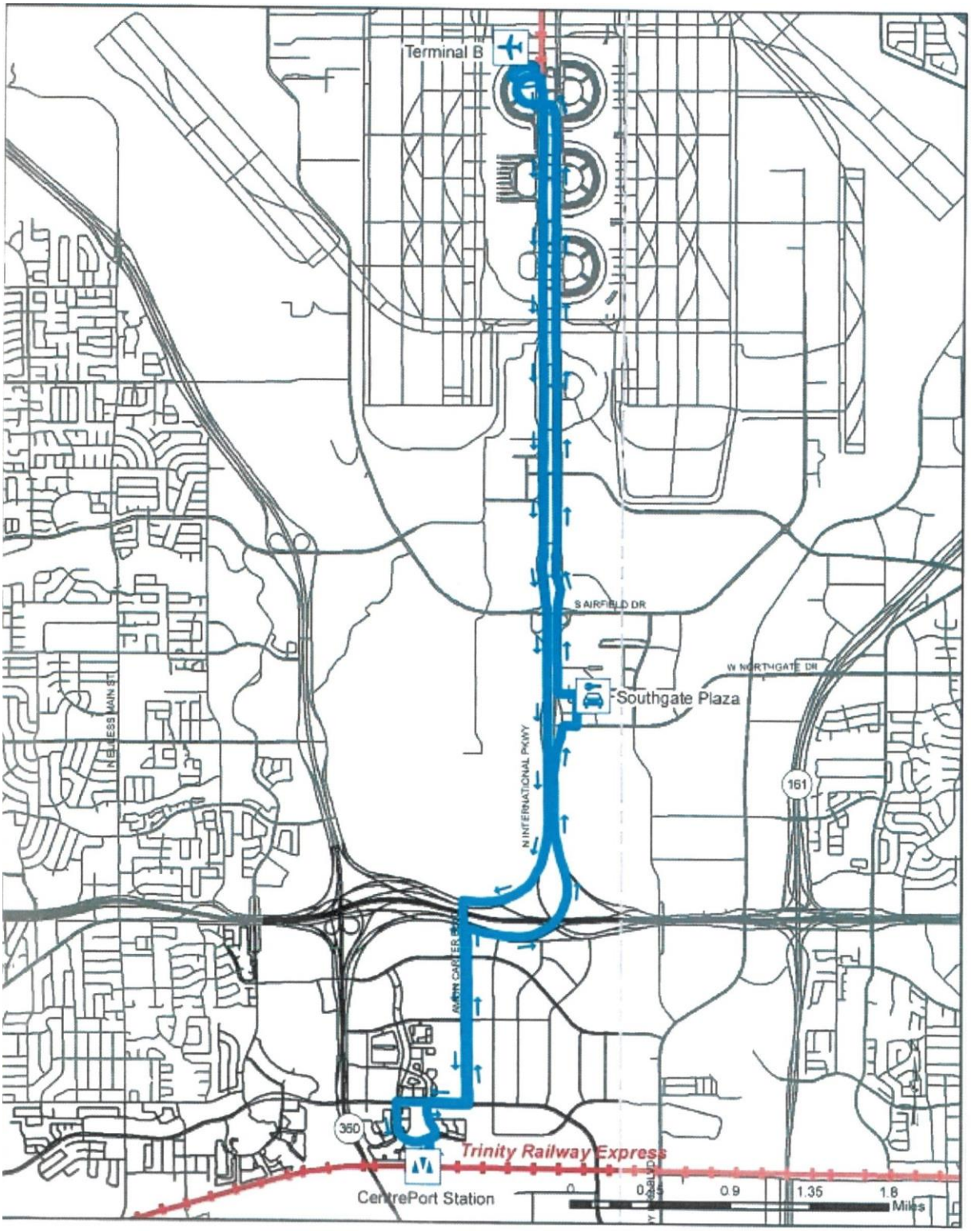
2.1 Further, it is the policy of the DART Board to consider the initiation or continuation of DART-operated circulator/distribution shuttle services (bus or van) which connect to rail stations or transit centers where performance of the service is marginal, but where an employer or other entity agrees to subsidize the service. The amount of the subsidy will be determined in accordance with the performance standards for the Circulator/Distributor category of service as established within DART's adopted Service Standards.

2.2 In keeping with the adopted Service Standards, route performance will be measured by three indicators; passenger/mile, passengers, trip and subsidy per passenger, and indexed within each service category. Service will only be initiated or continued under this section of the Policy if the subsidy provided by the employer or other entity results in the route meeting the minimum required performance level (an indexed score of 0.6, when all three performance indicators are considered). Performance of each route will be evaluated on a quarterly basis and adjustments made in the subsidy requirement, as necessary, to comply with the performance threshold established by the Service Standards. The route performance process is shown in Attachment 2.

2.3 This policy is intended to supplement DART initiated services and not limit the provision of any DART initiated services.

2.4 DART's financial participation in services would be paid for through the incremental bus operations funding included in the financial bus plan. New service proposals under this policy will only be considered where "currently approved" funding exists to support them.

TRE Link - Terminal



DRAFT

RESOLUTION

of the

DALLAS AREA RAPID TRANSIT BOARD

(Executive Committee)

Approval of the Dallas/Fort Worth International Airport Site-Specific Shuttle Funding Agreement

WHEREAS, on April 14, 1998 (Resolution No. 980078), the Board approved DART Board Policy III.16, Site-Specific Shuttle Service Policy, which allows the Board to consider partial funding (up to 50%) of circulator services which connect to rail stations or transit centers and are operated by employers or other private entities; and

WHEREAS, a shuttle agreement between DART, Trinity Metro, and DFWIA has been in existence since 2000; and

WHEREAS, the existing interlocal funding agreement for shuttle service was approved by the Board on September 28, 2021 (Resolution No. 210143) and expires on September 30, 2024; and

WHEREAS, funding for this agreement is within proposed FY 2025 Budget and approved FY 2024 20-Year Financial Plan allocations.

NOW, THEREFORE, BE IT RESOLVED by the Dallas Area Rapid Transit Board of Directors that the President & Chief Executive Officer or her designee is authorized to execute a two-year site-specific shuttle funding agreement, substantially in the form shown as Exhibit 1, with Trinity Metro and the Dallas/Fort Worth International Airport (DFWIA) for a total authorized amount not-to-exceed $418,030 over the two-year term for DART's portion of the funding agreement.

Approval of the Dallas/Fort Worth International Airport Site-Specific Shuttle Funding Agreement

	/s/ Dee Leggett
Prepared by:	Dee Leggett Executive Vice President Chief Development Officer
	/s/ Gene Gamez
Approved as to form:	Gene Gamez General Counsel
	/s/ Nadine S. Lee
Approved by:	Nadine S. Lee President & Chief Executive Officer

INTERLOCAL AGREEMENT
BETWEEN
DALLAS AREA RAPID TRANSIT
and
TRINITY METRO
and
DALLAS FORT WORTH INTERNATIONAL AIRPORT BOARD

THIS AGREEMENT, by and among DALLAS AREA RAPID TRANSIT ("DART"), a Texas regional transportation authority organized and existing pursuant to Chapter 452, Texas Transportation Code, whose address is 1401 Pacific Avenue, Dallas, Texas 75202, FORT WORTH TRANSPORTATION AUTHORITY (dba "TRINITY METRO"), a Texas regional transportation authority organized and existing pursuant to Chapter 452, Texas Transportation Code, whose address is 801 Cherry Street, Suite 850, Fort Worth, Texas 76102, and DALLAS FORT WORTH INTERNATIONAL AIRPORT BOARD ("DFW International Airport Board"), collectively referred to as the "Parties" or individually as a "Party."

WITNESSETH:

WHEREAS, DART, Trinity Metro and DFW International Airport Board are working to improve regional transit services to and around DFW International Airport (the "Airport"); and

WHEREAS the Parties desire to cooperate in enhancing transit frequency to better service commuters and securing access to jobs, specifically by providing funding for vehicle maintenance and for the operation of a circulator service between the Trinity Railway Express ("TRE") CentrePort Station (the "CentrePort Station") and DFW International Airport Terminal B ("Terminal B") with routing as shown in Exhibit "B" (the foregoing service collectively defined as the "Service"); and

WHEREAS, Pursuant to Sections 452.055(a) and 452.056(a)(2) of the Texas Transportation Code and the Interlocal Cooperation Act, Chapter 791, Texas Government Code, DART and Trinity Metro are authorized to enter into interlocal agreements with other governmental entities.

NOW THEREFORE, for the consideration herein described, the receipt and sufficiency of which is acknowledged by the Parties, DART, Trinity Metro, and the DFW International Airport Board agree to follow:

AGREEMENT:

1. Term and Termination.

1.01. Term. The term of this Agreement shall begin on the 1st day of October 2024 and terminate at midnight on the 30th day of September, 2026.

1.02. Termination. This Agreement may be terminated by (a) written agreement of all of the Parties; or (b) by a Party giving one hundred and twenty (120) days' prior written notice in the other Parties of the termination to ensure sufficient time for any required public hearings and for any Party or Parties desiring to continue the Service to identify alternative means of continuing it without interruption.

1.03. Termination for Failure to Fund. DART's, Trinity Metro's, and the DFW International Airport Board's fiscal years begins October 1st and ends the following September 30th. Budget funds are approved by the DART Board of Directors for DART, and Trinity Metro Board of Directors for Trinity Metro, and by the City Councils of Dallas and Fort Worth, as owners of the Airport, on an annual basis. In the event any Party fails to fund this Agreement for any fiscal year during the term hereof, this Agreement shall automatically terminate on the last day of the fiscal year for which funding has been approved. All other Parties will be given no less than one hundred and twenty (120) days' prior written notice of any such non-approval of funding for this Agreement. In the event of a non-funding, the non-funding Party shall be liable for its share of operating costs incurred prior to the effective date of termination.

2. **DART Duties and Responsibilities.** DART covenants and agrees as follows:

2.01. DART's Operating Funds. DART shall contribute funds toward the cost of operations of the Service in quarterly installments on the dates agreed upon by the Parties as described in Exhibit "A."

3. **Trinity Metro Duties and Responsibilities.** Trinity Metro covenants and agrees as follows:

3.01. Trinity Metro's Operating Funds. Trinity Metro shall contribute funds toward the cost of operations of the Service in quarterly installments on the dates agreed upon by the Parties as described in Exhibit "A."

3.02. Vehicle Procurement. Trinity Metro shall procure, using its own procurement policy and procedures, the vehicles necessary for operation of the Service, all of which shall be fully accessible as required by the Americans with Disabilities Act.

3.03. Operation of Service. Trinity Metro shall operate the Service providing a direct connection between the CentrePort Station and Terminal B. In no event shall Trinity Metro be obligated to operate the Service so as to pick up or drop off passengers at intermediate stops between the CentrePort Station and Terminal B or, other than the CentrePort Station, at any location outside the boundaries of the Airport. If the South Remote Lot re-opens or the Car Rental Stop becomes available, these stops can be utilized in lieu of Terminal B if all Parties agree. The Service schedule will operate as follows: Monday-Saturday 5:15 am- 11:42 pm. Two Shuttles at a Peak 20-minute headway will operate Monday-Friday between the hours of 5:15 am to 9:08 am and 4:32 pm to 7:08 pm. The remaining hours of operation on Weekday as well as Saturday service will run at an Off-Peak 40-minute headway utilizing one shuttle.

3.04. Federal Funds. Trinity Metro shall be responsible for applying for any Federal funds associated with this Service.

3.05. Trinity Metro shall require all contractors performing work under this agreement to maintain Commercial General Liability, Automobile Liability, and Workers' Compensation insurance. The policies shall be endorsed with a waiver of subrogation in favor of DART and Trinity Metro. The General Liability and Automobile Liability policies shall name DART and Trinity Metro as additional insureds. Contractor's insurance shall be primary coverage in all instances.

3.06. Complaints. Trinity Metro shall be responsible for responding to complaints including, but not limited to, those involving Americans with Disabilities Act or Civil Rights Act Title VI violations. DFW International Airport Board and DART shall have no responsibility for responding to any complaints.

3.07. Permits and Compliance. Trinity Metro shall possess or obtain any necessary permits required by ordinance or state or Federal law for operating of the Service. DFW International Airport Board shall provide reasonable assistance to Trinity Metro to obtain any required permits. Trinity Metro shall comply with all applicable laws, rules, and regulations of the State of Texas and the United States during the performance of this Agreement.

4. **DFW International Airport Board Duties and Responsibilities.** DFW International Airport Board covenants and agrees as follows.

4.01. DFW's Operating Funds. DFW International Airport Board shall contribute funds toward the cost of operations of the Service in quarterly installments on dates agreed upon by the Parties as described in Exhibit "A"

5. **Joint Obligations.**

5.01. Cost-Sharing Schedule. The Parties have jointly developed a cost-sharing schedule clarifying the division of operating costs between DART, DFW International Airport Board, and Trinity Metro which is attached hereto, marked Exhibit "A" and incorporated herein for all pertinent purposes. Parties will jointly agree to cost-sharing as described in Exhibit "A" based upon a Monday-Saturday, 306 days a year service schedule.

5.02. Service Standards; Monitoring Performance. The Parties will jointly develop standards for the provision of the Service and for monitoring the performance of the Service. At such time as such standards are developed, they shall be incorporated into this Agreement for all purposes, effective as of the execution of this Agreement.

5.03. Service Modifications. Any modification of the Service of more than plus or minus 25% of revenue miles shall require the prior written agreement of DART, Trinity Metro, and the DFW International Airport Board. Such modifications to the Service cannot be effectuated until or unless a public hearing is held in compliance of any application provisions stipulated in the Texas Transportation Code. Service modifications of less than 25% may be agreed to administratively, without the need for a hearing, and upon written agreement of all of the Parties.

5.04. Marketing of Service. The Parties shall jointly market the Service, known as the TRE Link, through their respective marketing efforts and each Party shall be responsible for bearing the costs of their own marketing efforts. Branding of the Service will be developed by Trinity Metro and approved by all Parties, such approval shall not to be unreasonably withheld or delayed, and all marketing by the Parties will conform to the approved branding.

5.05. Enhanced TRE Link service may be provided during the special events in Arlington, for example the World Cup in 2026, to accommodate the increase in visitors to North Central Texas if mutually agreed to by all parties to this ILA. This could include twenty-minute service all day instead of just during peak on weekdays, twenty-minute service on Saturday, and the addition of Sunday service to DFWIA Terminal B. It could also include additional buses going to DFWIA Terminal D. If no outside funding is available, additional service will only be provided if all of the parties to this ILA agree to fund it.

6. **Representations and Warranties.**

6.01. Available Financing. Subject to the provisions of Section 1.04, each Party represents and warrants to the other Parties that the costs of any purchase made by it under this Agreement, or the payment for any of the Service made pursuant to the Agreement, will be properly made from financing sources then-available to the said party.

6.02. Authorized Signatures. Each Party represents and warrants to the other Parties that prior to the execution of this Agreement, the person signing such Agreement was authorized to do so by such Party's governing body.

6.03. Future Authorizations. Each Party represents and warrants to the other Party that no renewal or extension of this Agreement will be signed unless it is first authorized by the governing body of such Party.

7. **Contact Persons.**

The Parties will each designate an individual to serve as the primary point of contact under this Agreement ("Primary Contact Persons"), and the Parties will use all reasonable efforts to keep the Primary Contact Persons fully apprised of any issues in connection with the Service.

DART: Rob Smith, Vice President
Phone: 214.749.2929
Email: RSmith@dart.org

Trinity Metro: Carla Forman, Director
Phone: 817.215.8903
Email: Carla.Forman@RideTM.org

DFW International
Airport Board: James Mauldin, Vice President Treasury Management
Phone: 972.973.5447
Email: jmauldin@dfwairport.com

8. **Miscellaneous.**

8.01. Notices. Any notice required or permitted to be given by any Party to the other Parties shall be in writing, and shall be deemed to have been duly given when delivered personally one (1) business day after being deposited with a reputable overnight air courier service or three (3) business days after being deposited in the United States mail, certified, return receipt requested, in a postage-paid envelope addressed to the other Parties at the addresses set out below:

DART
PO Box 660163
Dallas, Texas 75266-7202
1401 Pacific Ave.
Dallas, Texas 75202
Attention: Rob Smith

Trinity Metro
801 Grove Street
Fort Worth, Texas 76102
Attention: Carla Forman

DFW International Airport Board
PO Drawer 619428
Dallas Fort Worth Airport, Texas 75261
Attention: James Mauldin

Any Party may change its address for notice by sending a notice thereof to the other Parties.

8.02. Assignment. This Agreement shall not be assigned without the prior consent of all Parties.

8.03. Audit. Either or both DART and DFW International Airport Board may review any and all of the Service performed by Trinity Metro under this Agreement. DFW International Airport Board or DART is granted the right to audit, at its election and cost, all of Trinity Metro's records and billings related to the performance of this Agreement. Trinity Metro agrees to retain such records for a minimum of four (4) years from the expiration date of this Agreement related to the Service.

8.04. Required FAA Contract Provisions. The following provisions are required by the Federal Aviation Administration. For the purposes of this Section 8.04, the DFW International Airport Board may be referred to as "Sponsor" or "Owner" and Trinity Metro and DART may be referred to as "Contractor" where applicable. The following provisions apply to DART and Trinity Metro only to the extent they are otherwise applicable to the Parties and

to the Service and the other terms of this Agreement.

A. Contractor agrees that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap, be excluded from participating in any activity conducted with or benefiting from Federal assistance. The provision binds the Contractor and subcontractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

B. The Sponsor, in accordance with the provisions of Title VI of the Civil Rights Act of 1974 (78 Stat. 252, 42 USC §§ 2000d-4) and the Regulations, hereby notifies all bidders or offerors that it will affirmatively ensure that any contract entered into pursuant to this advertisement disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration of the award.

C. Compliance with Nondiscrimination Requirements. During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereafter referred to as the "Contractor"), agrees as follows.

1. Compliance with Regulations: The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

2. Nondiscrimination: The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employments practices when the contract covers any activity, project, or program set forth in Appendix R of 49 CFR part 21.

3. Solicitations for Subcontracts, including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the contractor's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

4. Information and Reports: The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to

the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance: In the event of a Contractor's noncompliance with the non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

   (a) Withholding payments to the Contractor under the Contract until the Contractor complies: and/or

   (b) Cancelling, terminating, or suspending a contract, in whole or in part

6. Incorporation of Provisions: The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts and Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

D. Title VI List of Pertinent Nondiscrimination Acts and Authorities: During the performance of this Contract, the Contractor, for itself, its assignees, and successors in interest, (hereinafter referred to as the "Contractor") agrees to comply with the following non-discrimination statues and authorities to the extent applicable to the Service and this Agreement, including, but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);

- 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation-Effectuation of the Title VI of the Civil Rights Act of 1964);

- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);

- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 et seq.) as amended (prohibits discrimination on the basis of disability), and 49 CFR part 27;

- The Age Discrimination Act of 1975, as amended (42 USC § 6101 et seq.) (prohibits discrimination on the basis of age);

- Airport and Airway Improvement Act of 1982 (49 USC § 471), Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);

- The Civil Rights Restoration Act of 1987 (PI. 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);

- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131-12189) as implemented by U.S. Department of Transportation regulations at 49 SFR parts 37 and 38;

- The Federal Aviation Administration's Nondiscrimination statue (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);

- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 et seq).

E. Occupational Health and Safety Act of 1970. All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full test. The employer must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The employer retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). The employer must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of labor-Occupational Safety and Health Administration.

8.05. Governing Law. This Agreement shall be construed and enforced in accordance with the

law of the State of Texas. The venue shall be in Dallas or Tarrant County.

8.06. Entirety and Amendments. The Agreement embodies the entire agreement between the Parties with respect to the within subject matter, supersedes all prior agreements and understandings, if any, relating to the mattes addressed herein, and maybe amended or supplemented only a written instrument executed by all Parties.

8.07. Parties Bound. This Agreement shall be binding upon and inure to the benefit of the executing Parties and their respective successors and approved assigns.

8.08. Number and Gender. Words of any gender used in the Agreement shall be held and construed to include any other gender, and words in the singular shall include the plural and vice versa, unless the text clearly requires otherwise.

8.09. Relationship of the Parties. Nothing in the Agreement shall be deemed or construed by the Parties or by any third party, as creating the relationship of principal and agent, partnership, joint venture, or joint enterprise between the Parties.

8.10. Headings. The headings utilized in this Agreement are for reference and convenience only and shall not enter into the interpretation hereof.

8.11. Interpretation. No provision of the Agreement shall be construed against or interpreted to the disadvantage of any Party by any court or other governmental or judicial authority by reason of such Party having or being deemed to have drafted, prepared, structured, or dictated such provision.

8.12. Counterparts. This Agreement will be executed in multiple counterparts, all of which taken together shall constitute one single agreement between the Parties with respect to the mattes herein contained.

8.13. No Waiver of Immunity; No Third-Party Beneficiaries. In the execution of this Agreement, none of the Parties waive, nor shall be deemed hereby to have waived, any immunity or any legal or equitable defense otherwise available against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the Parties do not create any obligations, express or implied, other than those set forth herein, and in the Agreement does not create any rights in parties that are not signatories to the Agreement, including any rights in the public in general.

(SIGNATURES ON THE FOLLOWING PAGE)

IN WITNESS WHEREOF, the Parties have executed this Agreement in multiple originals this _____day of _____2024.

FORT WORTH TRANSPORTATION AUTHORITY
D/B/A TRINITY METRO

By:_____
Richard Andreski, President and CEO

DALLAS AREA RAPID TRANSIT

By:_____
Nadine S. Lee, President & Chief Executive Officer

DALLAS-FORT WORTH INTERNATIONAL AIRPORT BOARD

By:_____
(Title)

Approved as to Form

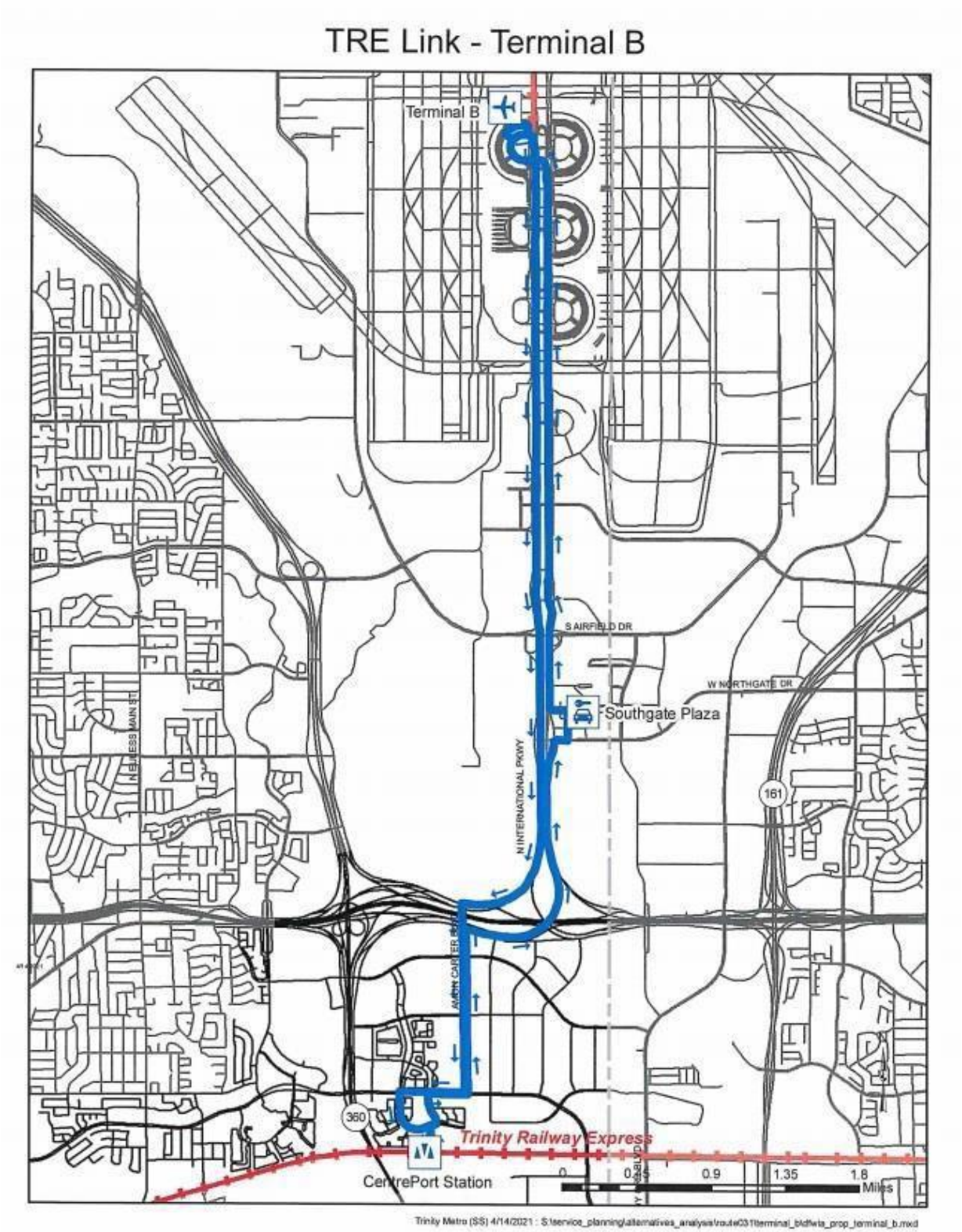
_____
Legal Counsel, DFW International Airport Board

EXHIBIT A

				Route 31 TRE Link					
:20 Peak/:40 Off-Peak Terminal B									
	FY2025								
		Bus	Service	Days/	Hourly	Daily	TM	Total	Each Agency
Option	# Buses	Headway	Day	Year	Rate	Hours	Maint	Cost	Cost @33%
5	2	:20/:40	Weekday	254	$74.16	24.37	$11.92	$532,833.48	
5	1	:40	Saturday	52	$74.16	18.5	$11.92	$82,808.96	
							Total	$615,642.44	$203,162.00
	FY2026								
		Bus	Service	Days/	Hourly	Daily	TM	Total	Each Agency
Option	# Buses	Headway	Day	Year	Rate	Hours	Maint	Cost	Cost @33%
5	2	:20/:40	Weekday	254	$76.38	24.37	$14.66	$563,535.78	
5	1	:40	Saturday	52	$76.38	18.5	$14.66	$87,580.48	
							Total	$651,116.26	$214,868.37
Total Cost								$1,266,758.70	$418,030.37

The Service schedule will operate as follows: Monday-Saturday 5:15am-11:42pm. Two Shuttles at a Peak 20-minute headway will operate Monday-Friday between the hours of 5:15am to 9:08am and 4:32pm to 7:08pm. The remaining hours of operation on Weekday as well as Saturday service will run at an Off-Peak 40- minute headway utilizing one shuttle.

EXHIBIT B


TRE Link - Terminal B
Terminal B
S AIRFIELD DR
W NORTHGATE DR
Southgate Plaza
N INTERNATIONAL PKWY
N BELT LINE RD
N MAIN ST
161
360
Trinity Railway Express
CentrePort Station
0
0.45
0.9
1.35
1.8
Miles
Trinity Metro (SS) 4/14/2021 : S:\service_planning\alternatives_analysis\route\031\terminal_bldfwia_prop_terminal_b.mxd

Agenda Report

Committee-of-the-Whole ☒
Board Meeting ☒

Attachment:	Voting Requirements:
1. Location Maps	Majority

DATE: **May 28, 2024**

SUBJECT: **Approval of the Declaration and Sale of Surplus Property Located at 2225 Cesar Chavez, in the City of Dallas, to Skybridge Homes, LLC**

RECOMMENDATION

Approval of a resolution: 1) declaring DART's interest in the property located at 2225 Cesar Chavez in the City of Dallas, Dallas County, Texas, surplus to DART's needs for the efficient operation and maintenance of its public transportation system; and 2) authorize the President & Chief Executive Officer or her designee to take such action and execute such documents as shall be necessary for the sale of the property described in Exhibit 1 of the resolution to the adjacent property owner, Skybridge Homes, LLC, for the fair market value as determined by an appraisal, subject to legal review, and subject to approval of the Federal Transit Administration (FTA).

FINANCIAL CONSIDERATIONS

- The offer received from Skybridge Homes, LLC, constitutes the fair market value of the property based on an appraisal prepared by a Texas State Certified Real Estate Appraiser and reviewed by DART's Chief Appraiser.
- Sale of this property will generate revenue for DART.

BUSINESS PURPOSE

- The property illustrated in Attachment 1, and fully described in Exhibit 1 of the resolution, was purchased by DART from BNSF Railway Company as part of a larger acquisition of a railroad corridor through south Dallas, now part of the DART Red and Blue lines. The property is surplus to DART's needs for the efficient operation and maintenance of its public transportation system.
- Skybridge Homes, LLC, the adjacent property owner, desires to acquire the property to support its future development of the site.
- The subject property is a narrow strip of land that, because of its small size, cannot be developed by itself.
- The property will be sold "as is", "where is", without warranties, subject to any and all utilities. DART will reserve a noise and vibration easement.
- Approval of this real estate transaction will help achieve Board Strategic Priority 5: Enhance DART's role as a recognized local, regional, and national transportation leader.

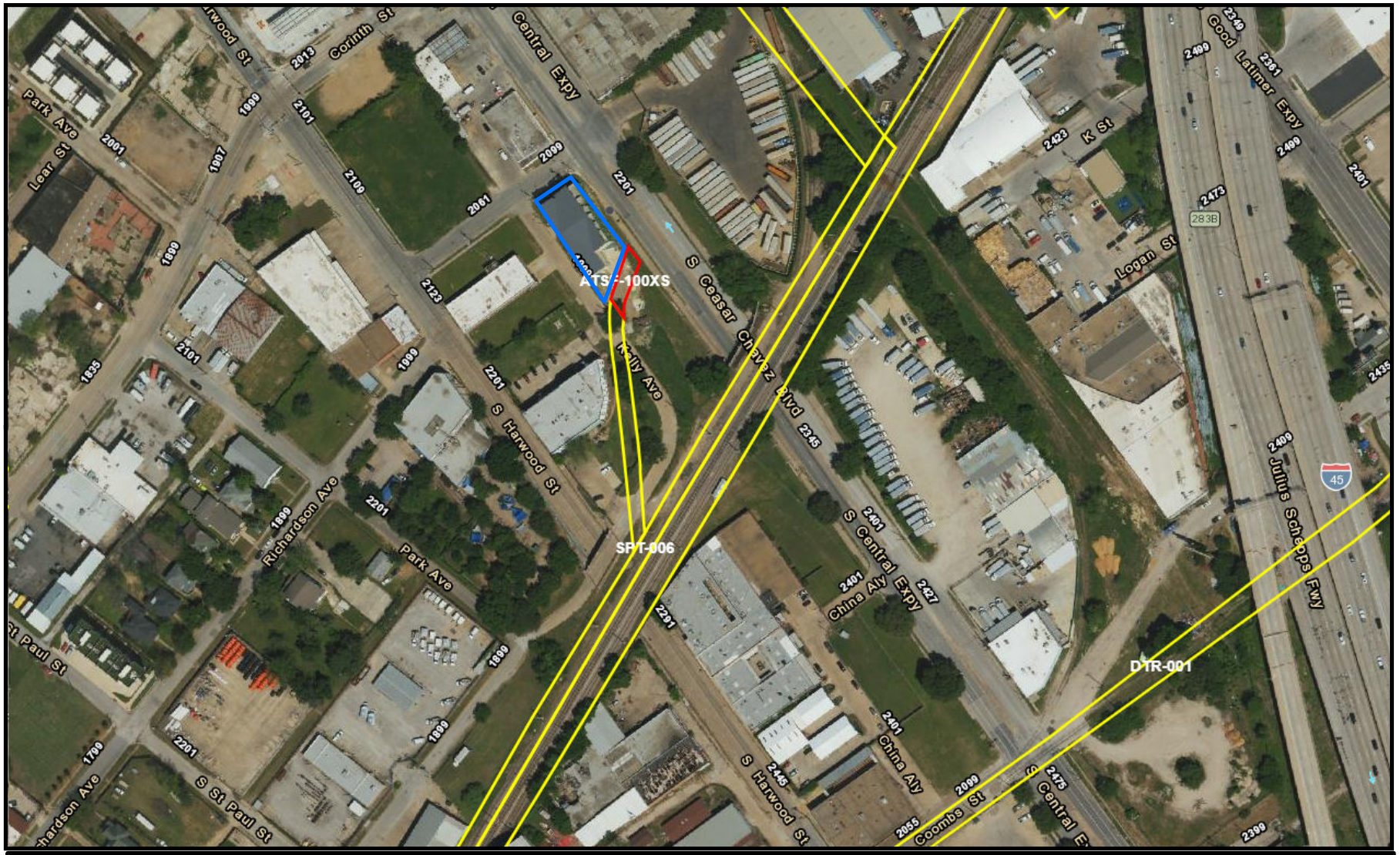
- The Board has been provided a confidential packet under separate cover outlining the details of the proposed transaction.

APPRAISAL INFORMATION

- An appraisal has been obtained by Skybridge Homes, LLC, and reviewed by DART's Chief Appraiser, a Texas State Certified Real Estate Appraiser.

LEGAL CONSIDERATIONS

- Section 452.054(d) of the Texas Transportation Code authorizes DART to dispose of any rights of interest in real property which are not needed for the efficient operation and maintenance of the public transportation system.
- Section 272.001 of the Local Government Code allows DART to sell otherwise undevelopable property to an abutting owner without a public solicitation.



Legend

- Skybridge Homes, LLC.
- DART Owned Property
- Property to be Sold
  2225 Cesar Chavez Blvd.

DALLAS AREA RAPID TRANSIT

Approval of the Declaration and Sale of Surplus Property Located at 2225 Cesar Chavez, in the City of Dallas, to Skybridge Homes, LLC

0 320 640 1,280 1,920 2,560 Meters

DART

DRAFT

RESOLUTION

of the

DALLAS AREA RAPID TRANSIT BOARD

(Executive Committee)

Approval of the Declaration and Sale of Surplus Property Located at 2225 Cesar Chavez, in the City of Dallas, to Skybridge Homes, LLC

WHEREAS, Dallas Area Rapid Transit (DART) was created to provide a regional public transportation system, and the acquisition of real property and the planning, design, engineering, and construction of improvements thereon are functions fundamental to the provision of a public transportation system; and

WHERES, Skybridge Homes, LLC, desires to purchase the DART owned property through a deed without warranty; and

WHEREAS, DART's interest in this property located at 2225 Cesar Chavez, is surplus to DART's needs for the efficient operation and maintenance of its public transportation system; and

WHEREAS, Skybridge Homes, LLC, agrees to pay DART fair market value as determined by a Texas State Certified Real Estate Appraiser; and

WHEREAS, the property will be sold "as is", "where is", without warranties, subject to any and all utilities, and DART will reserve a noise and vibration easement.

NOW, THEREFORE, BE IT RESOLVED by the Dallas Area Rapid Transit (DART) Board of Directors that:

Section 1: The property described in Exhibit 1 to this resolution is hereby declared surplus to DART's needs for the efficient operation and maintenance of its public transportation system.

Section 2: The President & Chief Executive Officer or her designee is hereby authorized to take such action and execute such documents as shall be necessary for the sale of the property described in Exhibit 1 of the resolution to the adjacent property owner, Skybridge Homes, LLC, for the fair market value as determined by an appraisal, subject to legal review, and subject to approval by the Federal Transit Administration (FTA).

Approval of the Declaration and Sale of Surplus Property Located at 2225 Cesar Chavez, in the City of Dallas, to Skybridge Homes, LLC

	/s/ Dee Leggett
	Dee Leggett
Prepared by:	Executive Vice President Chief Development Officer
	/s/ Gene Gamez
Approved as to form:	Gene Gamez General Counsel
	/s/ Nadine S. Lee
Approved by:	Nadine S. Lee President & Chief Executive Officer

DART PARCEL NO. ATSF-100XS
DALLAS AREA RAPID TRANSIT
JOHN GRIGSBY SURVEY, ABSTRACT NO. 495
CITY OF DALLAS
DALLAS COUNTY, TEXAS

April 6, 2015

FIELD NOTE DESCRIPTION

BEING a 1,952 square foot or 0.045 acre a tract of land in the John Grigsby Survey, Abstract No. 495, and being in the City Block 872, City of Dallas, Dallas County, Texas and being part of that certain tract of land conveyed to G.C. & S.F. Railroad Company as evidenced by Deed recorded in Volume 58, Page 188 of the Deed Records, Dallas County, Texas and being more particularly described as follows:

BEGINNING at a 5/8" iron rod found for corner in the northeast line of an Unnamed Street (Known as Kelly) (variable R.O.W.), said corner being South 37°08'16" East, 206.18 feet from the intersection of the north line of said Unnamed Street with the south line of Richardson Avenue (50 foot R.O.W.), same further being the southernmost corner of a certain tract of land conveyed to George Charalabopoulos, as evidenced by Instrument Number 201400173323 Official Public Records, Dallas County, Texas at Texas State Plane Coordinates N=6967541.47, E=2496801.42, same being the beginning of a non-tangent curve to the left, having a radius of 1884.86 feet and a chord which bears North 00°47'14" East, for 100.63;

THENCE Northerly, along the easterly line of said George Charalambopoulos tract, through a central angle of 03°03'33", for an arc distance of 100.64 feet to a 5/8" iron rod with yellow plastic cap, stamped "A.R.S.", set for the northwest corner of the herein described tract;

THENCE South 37°24'43" East, departing the said easterly line, along the southwesterly line of Cesar Chavez Boulevard (Variable R.O.W.) for a distance of 31.44 feet to a 5/8" iron rod with yellow plastic cap, stamped "A.R.S.", set in the westerly line of that certain tract of land conveyed to the CITY OF DALLAS as evidenced by Deed recorded in Volume 3163, Page 599, Deed Records, Dallas County, Texas;

THENCE South 00°20'33" West, departing the said southwesterly line and along the said westerly line for a distance of 86.08 feet to a 5/8" iron rod with yellow plastic cap, stamped "A.R.S.", set for corner;

THENCE South 01°24'52" West, departing said westerly line and along the westerly line of that certain tract of land conveyed to G.C. & S.F. Railroad Company as evidenced by Deed recorded in Volume 4852, Page 631, Deed Records, Dallas County, Texas, for a distance of 15.43 feet to a 5/8" iron rod with yellow plastic cap, stamped "A.R.S.", set for corner;

THENCE North 37°08'16" West, departing the said westerly line and along the prolonged north line of the aforementioned Unnamed Street (Known as Kelly), for a distance of 32.45 feet to the **POINT OF BEGINNING and CONTAINING** within the metes recited 1,952 square feet or 0.045 acres of land, more or less.

April 6, 2015

FIELD NOTES

DART PARCEL NO. ATSF-100XS
DALLAS AREA RAPID TRANSIT
JOHN GRIGSBY SURVEY, ABSTRACT NO. 495
CITY OF DALLAS
DALLAS COUNTY, TEXAS

April 6, 2015

FIELD NOTE DESCRIPTION

Bearings, distances and coordinates shown are based on State Plane Coordinate System, North American Datum 1983 (NAD83), Texas North Central Zone 4202 (TXNC 4202). Distances shown have been modified to surface by applying a factor of 1.000136506 to the State Plane Coordinates.

A plat of even survey date herewith accompanies this description.

I, Dustin D. Davison, a Texas Registered Professional Land Surveyor, hereby certify that the legal description hereon and the accompanying plat represent an actual survey made on the ground under my supervision.

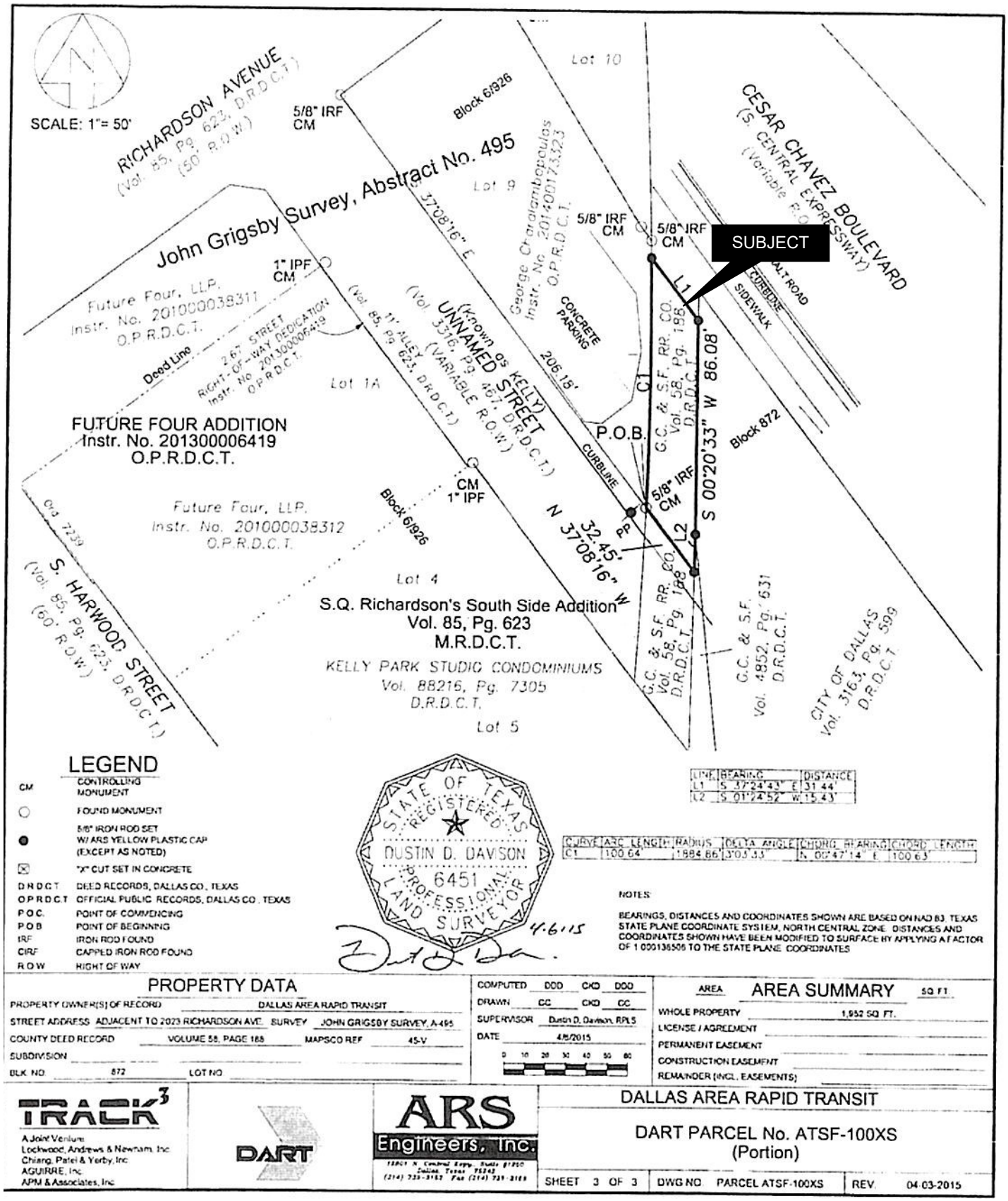
4-6-15

Dustin D. Davison, R.P.L.S.
Texas Registration No. 6451



April 6, 2015

FIELD NOTES



LEGEND

CM	CONTROLLING MONUMENT
○	FOUND MONUMENT
●	5/8" IRON ROD SET W/ ARS YELLOW PLASTIC CAP (EXCEPT AS NOTED)
⊠	"X" CUT SET IN CONCRETE
D.R.D.C.T.	DEED RECORDS, DALLAS CO., TEXAS
O.P.R.D.C.T.	OFFICIAL PUBLIC RECORDS, DALLAS CO., TEXAS
P.O.C.	POINT OF COMMENCING
P.O.B.	POINT OF BEGINNING
IRF	IRON ROD FOUND
CIRF	CAPPED IRON ROD FOUND
R.O.W.	RIGHT OF WAY

STATE OF TEXAS
REGISTERED
DUSTIN D. DAVISON
6451
PROFESSIONAL
LAND SURVEYOR
4.6.15

LINE	BEARING	DISTANCE
L1	S 37°24'43" E	31.44'
L2	S 01°24'52" W	15.43'

CURVE	ARC LENGTH	RADIUS	DELTA ANGLE	CHORD BEARING	CHORD LENGTH
C1	100.64'	1884.86'	3°03'33"	N 00°47'14" E	100.63'

NOTES:

BEARINGS, DISTANCES AND COORDINATES SHOWN ARE BASED ON NAD 83, TEXAS STATE PLANE COORDINATE SYSTEM, NORTH CENTRAL ZONE. DISTANCES AND COORDINATES SHOWN HAVE BEEN MODIFIED TO SURFACE BY APPLYING A FACTOR OF 1.000136506 TO THE STATE PLANE COORDINATES

PROPERTY DATA

PROPERTY OWNER(S) OF RECORD: DALLAS AREA RAPID TRANSIT
STREET ADDRESS: ADJACENT TO 2023 RICHARDSON AVE. SURVEY: JOHN GRIGSBY SURVEY, A-495
COUNTY DEED RECORD: VOLUME 58, PAGE 188 MAPSCO REF: 45-V
SUBDIVISION:
BLK NO: 872 LOT NO:

COMPUTED: DDD CKD: DDD
DRAWN: CC CKD: CC
SUPERVISOR: Dustin D. Davison, RPLS
DATE: 4/6/2015

AREA SUMMARY

AREA	SQ. FT.
WHOLE PROPERTY	1,952 SQ. FT.
LICENSE / AGREEMENT	
PERMANENT EASEMENT	
CONSTRUCTION EASEMENT	
REMAINDER (INCL. EASEMENTS)	

TRACK 3
A Joint Venture
Lockwood, Andrews & Newnam, Inc.
Chiang, Patel & Yerby, Inc.
AGUIRRE, Inc.
APM & Associates, Inc.

DART

ARS Engineers, Inc.
12801 N. Central Expy., Suite 1250
Dallas, Texas 75243
(214) 739-3163 Fax (214) 739-3169

DALLAS AREA RAPID TRANSIT

DART PARCEL No. ATSF-100XS
(Portion)

SHEET 3 OF 3 | DWG NO. PARCEL ATSF-100XS | REV. 04-03-2015

SURVEY

Agenda Report

Committee-of-the-Whole ☒
Board Meeting ☒

Voting Requirements:
Majority

DATE: **May 28, 2024**

SUBJECT: **Approval of Interlocal Agreement for Cooperative Purchasing Program Between Dallas Area Rapid Transit and Washington State Department of Enterprise Services**

RECOMMENDATION

Approval of a resolution authorizing the President & Chief Executive Officer or her designee to execute an Interlocal Agreement (ILA) for a Cooperative Purchasing Program between Dallas Area Rapid Transit (DART) and Washington State Department of Enterprise Services (DES), substantially in the form shown as Exhibit 1 to the Resolution.

FINANCIAL CONSIDERATIONS

- Approval and execution of this ILA does not create a financial liability for DART. Cooperative Agreements are permitted under the DART Procurement Regulations. All purchases made using this cooperative agreement will adhere to DART Procurement Regulations.

BUSINESS PURPOSE

- Approval of this item will assist DART in achieving Board Strategic Priority 1: Enhance the safety and service experience through customer-focused initiatives; Strategic Priority 2: Provide stewardship of the transit system, agency assets and financial obligations; and Strategic Priority 5: Enhance DART's role as a recognized local, regional and national transportation leader.

- The Washington State Department of Enterprise Services (DES) is an executive branch agency and has powers and duties as provided in chapter 43, Laws of 2011, which allow the DES to enter into agreements with any other governmental entity or a public benefit nonprofit organization, in compliance with Revised Code of Washington (RCW), chapter 39.34.055, to furnish such products and services as deemed appropriate by both parties.

- Discussion and approval of this ILA begins the process of determining if a cooperative agreement for the procurement of buses is in the best interest of DART. The ILA signals an intent to utilize the Cooperative Agreement with the State of Washington to purchase buses, requires no financial commitment at this time and authorization to procure buses under this cooperative Agreement will be subject to DART Board approval.

- From time to time, DART may wish to engage DES in various additional goods and services available in their Cooperative Purchasing Programs, such as transit buses, emergency response material and services, and other materials and labor necessary to accomplish a public transit purpose beneficial to DART and its patrons. DART will be responsible for its purchases under the cooperative purchasing agreement.

- The governing bodies of DART and DES desire to foster goodwill and cooperation between the two entities and deem it to be in the best interest of both entities to enter into this Agreement relative to the purchasing of transit buses and for such other additional goods and services as DART may subsequently agree to by the execution of separate and specific agreements.

LEGAL CONSIDERATIONS

Section 452.055 of the Texas Transportation Code authorizes DART to enter into contracts with any person.

Section 452.056(a) of the Texas Transportation Code authorizes DART to acquire, construct, develop, plan, own, operate and maintain a public transportation system.

DRAFT

RESOLUTION

of the

DALLAS AREA RAPID TRANSIT BOARD

(Executive Committee)

Approval of Interlocal Agreement for Cooperative Purchasing Program Between Dallas Area Rapid Transit and Washington State Department of Enterprise Services

WHEREAS, Washington State Department of Enterprise Services (DES) was formed under the Washington State Government Agency Code Chapter 43.19 Revised Code of Washington (RCW), in October 2011 and receives federal, state, and local funds for public agencies and other government entities; and

WHEREAS, DES as an executive branch agency has powers and duties, as provided in chapter 43, Laws of 2011, and may enter into agreements with any other governmental entity or a public benefit nonprofit organization, in compliance with RCW 39.34.055, to furnish such products and services as deemed appropriate by both parties; and

WHEREAS, discussion and approval of this ILA begins the process of determining if a cooperative agreement for the procurement of buses is in the best interest of DART. The ILA signals an intent to utilize the Cooperative Agreement with the State of Washington to purchase buses, requires no financial commitment at this time and authorization to procure buses under this cooperative Agreement will be subject to DART Board approval; and

WHEREAS, from time to time, DART may wish to engage DES in various additional goods and services available in their cooperative purchasing programs, such as transit buses, emergency response material and services and other materials and labor necessary to accomplish a public transit purpose beneficial to DART and its patrons; and

WHEREAS, the governing bodies of DART and DES desire to foster goodwill and cooperation between the two entities; and

WHEREAS, DART will be responsible for its purchases under the cooperative purchasing agreement; and

WHEREAS, the DES and DART deem it to be in the best interest of both Parties to enter into this Agreement relative to the future purchasing of transit buses and for such other additional goods and services as DART may subsequently agree to by the execution of separate and specific agreements.

NOW, THEREFORE, BE IT RESOLVED by the Dallas Area Rapid Transit Board of Directors that the President & Chief Executive Officer or her designee is authorized to execute an Interlocal Agreement for a Cooperative Purchasing Program Between Dallas Area Rapid Transit and Washington State Department of Enterprise Services, substantially in the form shown as Exhibit 1 to the Resolution.

Approval of Interlocal Agreement for Cooperative Purchasing Program Between Dallas Area Rapid Transit and Washington State Department of Enterprise Services

Prepared by:	/s/ Dee Leggett Dee Leggett Executive Vice President Chief Development Officer
Approved as to form:	/s/ Gene Gamez Gene Gamez General Counsel
Approved by:	/s/ Nadine S. Lee Nadine S. Lee President & Chief Executive Officer

INTERLOCAL AGREEMENT FOR A COOPERATIVE PURCHASING PROGRAM BETWEEN DALLAS AREA RAPID TRANSIT (DART) AND WASHINGTON STATE DEPARTMENT OF ENTERPRISE SERVICES (DES)

This Interlocal Agreement (the "Agreement") is made by and between Dallas Area Rapid Transit ("DART"), a Texas local government authority organized and existing pursuant to Subchapter D of Chapter 431 of the Texas Transportation Code, located at 1401 Pacific Avenue, Dallas, Texas 75202, and the Washington State Department of Enterprise Services ("DES") a Washington State Government Agency whose address is 1500 Jefferson Street SE, Olympia, WA 98501 (collectively, referred to as the "the Parties" or individually, as a "Party").

RECITALS

WHEREAS, the DES was formed under the Washington State Government Agency Code Chapter 43.19 RCW in October 2011 that receives federal, state, and local funds for public agencies and other government entities; and

WHEREAS, DES as an executive branch agency has powers and duties as provided in chapter 43, Laws of 2011 may enter into agreements with any other governmental entity or a public benefit nonprofit organization, in compliance with RCW 39.34.055, to furnish such products and services as deemed appropriate by both parties; and

WHEREAS, DART has investigated and determined that it would be advantageous and beneficial for the Agency to utilize the DES Cooperative Purchasing Program to procure Transit Buses; and

WHEREAS, DART desires to enter into an interlocal cooperative purchasing agreement with DES for procuring Transit Buses requirements; and

WHEREAS, from time to time, DART may wish to engage DES in various additional goods and services, available in their cooperative purchasing programs such as transit buses, emergency response material and services and other materials and labor necessary to accomplish a public transit purpose beneficial to the DART and its patrons; and

WHEREAS, DART will be responsible for its purchases under the cooperative purchasing agreement; and

WHEREAS, the governing bodies of the DART and Washington State DES desire to foster goodwill and cooperation between the two entities; and

WHEREAS, the DES and DART, deem it to be in the best interest of both entities to enter into this Agreement relative to the purchasing of Transit Buses and for such other additional goods and services as DART may subsequently agree to by the execution of separate and specific agreements.

NOW, THEREFORE, for and in consideration of the mutual covenants, terms and conditions set forth herein, the mutual benefits to each Party, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Term and Termination

1.01. This Agreement shall take effect on the date executed by the last of the Parties and shall remain in effect until this Agreement is terminated as set forth herein. The Parties agree that while the Cooperative Purchase Agreement ("CPA") remains in effect, the CPA supersedes this Agreement. In case of a conflict in in the language between these Agreements, the terms and conditions of the CPA shall control and are final and binding on both Parties.

1.02. A Party may terminate this Agreement by giving one hundred-twenty (120) days written notice to the other Party prior to the date set for termination in the written notice ("Termination Date") in the manner ser forth for giving notice in the Agreement. In the event that either Party shall fail to perform any of their respective material obligations under this Agreement, the non-defaulting Party shall have the right to terminate this Agreement if the defaulting Party has not cured any such failure to perform within thirty (30) calendar days following written notice by non-defaulting Party of such failure.

2. Roles and Responsibilities

Parties shall adhere to the designated roles and responsibilities provided in the CPA (See Attachment A, which is attached to this Agreement and incorporated herein for all purposes).

3. Miscellaneous

3.01. Force Majeure. Neither Party will be liable for any failure or delay in performing an obligation under this Agreement that is due to any of the following causes (which causes are hereinafter referred to as "Force Majeure"), to the extent beyond its reasonable control: acts of God, accident, riots, war, terrorist act, epidemic, pandemic, quarantine, civil commotion, breakdown of communication facilities, breakdown of web host, breakdown of internet service provider, natural catastrophes, governmental acts or omissions, changes in laws or regulations, national strikes, fire, explosion, or generalized lack of availability of raw materials or energy.

For the avoidance of doubt, Force Majeure shall not include (a) financial distress nor the inability of either party to make a profit or avoid a financial loss, (b) changes in the market prices or conditions, or (c) a party's financial inability to perform its obligations hereunder.

3.02. Audit and Retention of Records. Any Party shall have the right to request an audit of another Party's records related to the operation of the Service. The Parties shall retain adequate records for auditing purposes for a period of three years after final payment hereunder.

3.03. Indemnifications

3.03.1. To the extent permitted by applicable law, the Parties shall defend, indemnify and hold its officers, employees, visitors and contractors, harmless from all loss, cost and expense by reason of injury (including death), to any person, or damage to property, arising out of or from any accident or other occurrence taking place during the performance of this Agreement, which injury or damage results from negligence on the part of the Parties, its agents, employees, or contractors.

3.03.2. In the event of joint or concurring negligence or fault of both Parties, liability, if any, shall be apportioned comparatively in accordance with the law of the State of Texas. The provisions of this section are solely for the benefit of the Parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity, nor limit the right of the Parties to assert any governmental immunity defense to any claim of another Party or entity. The provisions of this section shall survive termination or expiration of this Agreement.

3.04. Notices. Any notice by any Party shall be in writing and shall be deemed to have been duly given only if delivered personally or sent by United States mail, certified, return receipt requested, in a postage paid envelope addressed to the Parties as set out below:

A Party may designate another address by giving notice thereof to the other Parties.

3.05. Binding Effect. The provisions of this Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. There shall be no third-party beneficiaries of this Agreement.

3.06. Construction and Drafting. The paragraph headings in this Agreement are intended for convenience only and shall not be taken into consideration in the construction or interpretation of this Agreement. Whenever used herein, unless the context otherwise provides, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all other genders. Both Parties have participated in the drafting hereof and accordingly no party shall be given credit therefor in the interpretation of this Agreement.

3.07. Partial Invalidity. Any portion of this Agreement being declared by law to be invalid shall not invalidate the remaining provisions which shall remain in full force and effect.

3.08. Merger and Amendment. This instrument constitutes the entire agreement of the Parties, along with the Cooperative Purchase Agreement with respect to matters contemplated herein, and it may be modified or amended only in writing, signed by all Parties hereto and in accordance with the terms hereof.

3.09. No Partnerships or Joint Enterprise. It is mutually understood and agreed that this Agreement is intended by the Parties to establish only an independent contractual relationship and is not intended to create a partnership or joint venture between the Parties.

3.10. Assignment. No Party may assign its rights and obligations or either under this Agreement, in whole or in part, without first obtaining the prior written consent of the other Party, which consent may be withheld for any reason. No assignee or successor may further assign, in whole or in part, its rights and obligations without prior written consent of the other Party to this Agreement at the time of further assignment.

3.11. Entire Agreement. The recitals and exhibits to this Agreement are incorporated herein for all purposes. This Agreement, along with the Cooperative Purchase Agreement constitutes the entire agreement of DART and DES with respect to the subject matter hereof. In the event of conflict between this ILA and the Cooperative Purchase Agreement, the terms of the Cooperative Purchase Agreement shall prevail.

3.12. DART Board Policy III.07. The Provisions of the DART Board Policy are incorporated herein and binding on the Parties hereto. Any renewal of this Agreement must be approved by each Party and the DART Board of Directors.

(SIGNATURES ON THE FOLLOWING PAGE)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in multiple originals as of the _____ day of _____, 2024.

DALLAS AREA RAPID TRANSIT

By: _____
_____
_____

WASHINGTON STATE, DEPARTMENT OF ENTERPRISE SERVICES

By: _____
_____
_____

Agenda Report

Voting Requirements:
2/3

DATE: **May 28, 2024**

SUBJECT: **Approval of Amendments to DART Service Standards and Service Changes**

RECOMMENDATION

The Board will consider renewed debate to require a two-thirds vote to: 1) Approve a major service change where the impact of the proposed changes would add or reduce service in any one service area city; and 2) Approve a Transit Development Plan where the impact of a proposed change would add or reduce service in any one service area city. In addition to the two-thirds voting requirements to approve DART's Service Standards and any change to the ridership/ratio by 5% or more, the President & Chief Executive Officer or her designee may be authorized to incorporate any changes into DART's Service Standards as shown in Exhibit 1 to the Resolution.

FINANCIAL CONSIDERATIONS

- This action has no financial impact.

BUSINESS PURPOSE

- This resolution will assist DART in achieving Board Strategic Priority 5: Enhance DART's role as a recognized local, regional, and national transportation leader.
- On March 21, 2023, the DART Board of Directors approved Resolution No. 230029 requiring the affirmative vote of two-thirds of the number of appointed and qualified members of the Board to:1) Approve DART's Service Standards; 2) Change the Ridership/Coverage ratio by 5% or more; 3) Approve a major service change where the impact of the proposed change would reduce the service in any one service area city; 4) Approve a Transit Development Plan where the impact of a proposed change would reduce service in any one service area city; and 5) authorized the President & Chief Executive Officer or her designee to incorporate the above noted changes into DART's Service Standards as noted in Exhibit 1-DART Service Standards.
- DART Board Rule 18-Motion to Renew Debate permits any specific matter contained in a resolution voted on by the Board of Directors to be discussed at a subsequent meeting only if a member requests the matter be placed on the Committee of the Whole (COTW) agenda. Before discussion of the matter, the COTW must vote to renew debate pursuant to the procedures contained in the current edition of Robert's Rules of Order Newly Revised. If the motion to renew debate is approved by the COTW, the matter may be discussed; if the motion to renew fails, the matter may not be discussed.
- At the Board Workshop held on March 8, 2024, one or more Board members requested that the DART Service Standards be placed on the next COTW agenda.

- The voting requirement for a Motion to Renew Debate to amend an item previously adopted is majority vote.
- The COTW, after consideration of the Motion to Renew Debate, may consider changes to the action taken on the DART Service Standards on March 21, 2023, noted above.

LEGAL CONSIDERATIONS

Section 452.054 of the Texas Transportation Code authorizes DART to exercise all powers necessary or convenient to carry out the purposes or provisions of the statute.

DART Board Rule of Procedure 18 sets out the process and permits a motion to renew debate on any specific matter contained in a resolution voted on by the Board of Directors.

DRAFT

RESOLUTION

of the

DALLAS AREA RAPID TRANSIT BOARD

(Executive Committee)

Approval of Amendments to DART Service Standards and Service Changes

WHEREAS, DART was created for the purpose of providing public transportation services within the boundaries of the DART Service Area; and

WHEREAS, DART strives to design transportation services which address the mobility needs and the values of the service area stakeholders, transit riders, and the public; and

WHEREAS, certain changes in the manner of service delivery have significant implications for our current and future customers; and

WHEREAS, on March 21, 2023 the DART Board of Directors approved Resolution No. 230029 requiring the affirmative vote of two-thirds of the number of appointed and qualified members of the Board to: 1) Approve DART's Service Standards; 2) Change the Ridership/Coverage ratio by 5% or more; 3) Approve a major service change where the impact of the proposed change would reduce the service in any one service area city; 4) Approve a Transit Development Plan where the impact of a proposed change would reduce service in any one service area city; and 5) authorized the President & Chief Executive Officer or her designee to incorporate the above noted changes into DART's Service Standards; and

WHEREAS, DART Board Rule 18-Motion to Renew Debate, permits and sets out the process by which a matter contained in a resolution voted on by the Board may be discussed or amended at a subsequent meeting only if a member requests that the matter be placed on the Committee of the Whole (COTW) agenda; and

WHEREAS, before any discussion may occur on a matter raised in a Motion to Renew Debate, the COTW must vote to renew debate pursuant to the procedures outlined in Board Rule 18; and

WHEREAS, a motion to renew debate was approved by the COTW and the matter of Approval of Amendments to Service Standards and Service Changes was properly before the Board; and

WHEREAS, the Board debated and accepted amendments to the 2023 Service Standards and Service Changes requiring the affirmative vote of two-thirds of the appointed and qualified members of the Board for major service changes where the impact of the proposed change would add or reduce the service in any one service area city and for the approval of a Transit Development Plan where the impact of a proposed change would add or reduce service in any one service area city; and

WHEREAS, the Board reaffirms the requirement of an affirmative vote of two-thirds of the appointed and qualified members of the Board to approve DART's Service Standards and changes of 5% or more in the ridership/coverage ratio.

NOW, THEREFORE, BE IT RESOLVED by the Dallas Area Rapid Transit Board of Directors that the affirmative vote of two-thirds of the number of appointed and qualified members of the Board shall be required to:

Section 1: Approve DART's Service Standards.

Section 2: Change the Ridership/Coverage ratio by 5% or more.

Section 3: Approve a major service change where the impact of the proposed changes would add or reduce the service in any one service area city.

Section 4: Approve a Transit Development Plan where the impact of a proposed change would add or reduce the service in any one service area city.

Section 5: The President & Chief Executive Officer or her designee is authorized to incorporate the above noted changes into DART's Service Standards as shown in Exhibit 1-DART Service Standards.

Section 6: DART Board Resolution No. 230029 is Rescinded.

Approval of Amendments to DART Service Standards and Service Changes

	/s/ Dee Leggett
Prepared by:	Dee Leggett Executive Vice President Chief Development Officer
	/s/ Gene Gamez
Approved as to form:	Gene Gamez General Counsel
	/s/ Nadine S. Lee
Approved by:	Nadine S. Lee President & Chief Executive Officer

RESOLUTION

230029

of the

DALLAS AREA RAPID TRANSIT BOARD

(Executive Committee)

RESOLUTION

Approval of Voting Requirement for Service Standards and Service Changes

WHEREAS, DART was created for the purpose of providing public transportation services within the boundaries of the DART Service Area; and

WHEREAS, DART strives to design transportation services which address the mobility needs and the values of the service area stakeholders, transit riders, and the public; and

WHEREAS, certain changes in the manner of service delivery have significant implications for our current and future customers; and

WHEREAS, the Board Governance Ad Hoc Committee was convened to discuss potential changes to the voting requirement for service standards, major service changes, and the Transit Development Plan and included consideration of current two-thirds voting requirements applicable to DART's fixed guideway system involving rail service or facilities that are not applicable to bus services; and

WHEREAS, the Board accepts the recommendation of the Committee of the Whole to approve a resolution requiring the affirmative vote of two-thirds of the appointed and qualified members of the Board to approve DART's Service Standards and a change of 5% or more in the ridership/coverage ratio; and

WHEREAS, the Board debated and accepted amended motions recommending a resolution requiring the affirmative vote of two-thirds of the appointed and qualified members of the Board for major service change where the impact of the proposed change would reduce the service in any one service area city and for the approval of a Transit Development Plan where the impact of a proposed change would reduce service in any one service area city; and

WHEREAS, imposing a two-thirds voting requirement to approve substantial changes in the manner of service delivery to our customers is in the best interest of the agency; and

WHEREAS, the Board may modify its procedures to require a two-thirds vote to approve certain actions.

Approval of Voting Requirement for Service Standards and Service Changes

NOW, THEREFORE, BE IT RESOLVED by the Dallas Area Rapid Transit Board of Directors that the affirmative vote of two-thirds of the number of appointed and qualified members of the Board shall be required to:

Section 1: Approve DART's Service Standards.

Section 2: Change the Ridership/Coverage ratio by 5% or more.

Section 3: Approve a major service change where the impact of the proposed change would reduce the service in any one service area city.

Section 4. Approve a Transit Development Plan where the impact of a proposed change would reduce service in any one service area city.

Section 5: The President & Chief Executive Officer or her designee is authorized to incorporate the above noted changes into DART's Service Standards as noted in Exhibit 1-DART Service Standards.

Rodney Schlosser
Secretary

Michele Wong Krause
Chair

APPROVED AS TO FORM:

Gene Gamez
General Counsel

ATTEST:

Nadine S. Lee
President & Chief Executive Officer

March 21, 2023
Date

230029
Exhibit 1
~~Resolution No. 210181~~

DART SERVICE STANDARDS

~~December 2021~~March 21

Revisions

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PREFACE

This document codifies the Service Standards adopted by the DART Board of Directors to provide guidance to the Authority's technical staff in evaluating the performance of the fixed route and demand-responsive services the agency provides to the general public. These standards apply to fixed-route bus services, site-specific shuttle services, DART ADA Paratransit services, and DART GoLink zones. The Service Standards documented herein are the result of a lengthy history of service evaluation and the evolution of performance metrics by DART.

~~Approval of the Service Standards including approval of the Transit Development Plan (TDP), changes in the ridership/coverage ratio of 5% or more on the rider/coverage ratio and approval of major service changes shall require a two thirds vote of the number of appointed and qualified Board of Directors.~~

Approval of the Service Standards and a change of 5% or more in the ridership/coverage ratio shall require the affirmative vote of two-thirds of the appointed and qualified members of the Board of Directors for major service change where the impact of the proposed change would reduce the service in any one-member city and for the approval of a Transit Development Plan where the impact of a proposed change would reduce service in any one-member city.

The history of DART Service Standards actually precedes the formation of the authority. The predecessor to DART, the Dallas Transit System, developed a set of service standards in the late 1970's. DART initially used these standards in 1984 as it became responsible for public transit in the region. A specific set of DART service standards was developed and adopted in August 1985 (Resolution 850124). These standards were clarified and updated in March 1986 (Resolution 860009).

A significant effort to update DART Service Standards was completed in July 1991 (Resolution 910134). This effort focused on resource management and service quality and included guidelines for route and service design and bus-related passenger facilities. These standards were revisited in 1995 before the inauguration of the Light Rail system and the implementation of the feeder bus network.

In August 1995, the Board of Directors adopted a Policy on Service Standards and concurrently approved a revised system of service performance measurement. Resolution 950187 adopted Service Standards that, for the first time, included the concept of the Route Performance Index (RPI). Those 1995 Service Standards included the segmentation of bus service into route types

based on function. Definitions of acceptable performance and of corrective actions to be employed for routes that were not performing acceptably were included. A program of regular reporting to the Board of Directors was established at that time.

In September 1995, the Feeder Bus Planning Guidelines were adopted and incorporated into the Service Standards (Resolution 950217). The Service Standards process was updated and clarified in November 1998 (Resolution 980261) with the adoption of the Policy on Performance Measures. This latter policy added the Rail Station Feeder routes to the other four route classifications, directed the annual adoption of performance metrics for each route classification, clarified the policy on quarterly reporting of service evaluation results and added the concept of "Baseline" service in areas of high reliance on public transit.

The Board of Directors adopted amendments to the Policy on Performance Measures in December 2003 (Resolution 030153). These amendments codified performance standards for DART-on-Call service and for Site-Specific Shuttle service.

In April 2013, the Board of Directors approved a series of Service Standards amendments to address new Federal Transit Administration requirements related to Title VI of the Civil Rights Act (Resolution 130037). These included new standards for vehicle assignments, definitions of what constitutes a major service change, and definitions for disparate impact and disproportionate burden of major service or fare changes.

In 2017, staff was asked to begin work on significant updates to current service standards. Central to the updates has been an interest in defining standards to assist in efforts to improve bus service quality and quantity, including network structure, service frequency, service span, and placement of appropriate passenger amenities. Many sections have been completely rewritten to reflect this interest. This version of Service Standards was approved by the Board of Directors in October 2018.

In 2021, DART completed development of and adopted a Final Bus Network Plan after a two year planning process. The new Plan – implemented in January 2022 – completely redesigned the DART bus network. The changes are so significant that they necessitated a series of changes to DART Service Standards that are incorporated into this newest, latest version of the policy document. In addition, this latest version of the Service Standards addresses other changes since 2018, including the evolution of GoLink service and the use of newer analytical tools in service planning work.

Subsequent sections set the Strategic Plan context for Service Standards, defines Route and Service Design Guidelines, incorporates the adopted Bus/Rail Interface Guidelines, establishes standards of Service Quality, explains Resource Management standards, codifies the process of Service Performance Evaluation and provides guidelines for Transit Amenities.

SECTION 1: STRATEGIC PLANNING CONTEXT

The Service Standards, formulated to guide the development and delivery of DART's family of services, have their basis in the Mission Statement articulated by the Board of Directors and in the Vision Statement that is corollary to it. These Service Standards have been designed to provide guidance to DART staff in achieving the goals and objectives set forth by the Strategic Plan.

MISSION STATEMENT

To benefit the region by providing a sustainable system of innovative, affordable, reliable, and safe mobility options for our riders that enhances the quality of life and stimulates economic development.

VISION STATEMENT

Transforming our region with mobility options that connect people, communities, and destinations.

STRATEGIC PRIORITIES

Building from the mission and vision, the DART Board of Directors adopts strategic priorities to guide Agency initiatives. Several of the current strategic priorities are directly related to many of the standards and guidelines described in this document.

Current strategic priorities include:

1. Enhance the safety and service experience through customer-focused initiatives.
2. Provide stewardship of the transit system, agency assets and financial obligations.
3. Innovate to enhance mobility options, business processes and funding.
4. Pursue excellence through employee engagement, diversity, development and wellbeing.
5. Enhance DART's role as a recognized local, regional and national transportation leader.

SECTION 2: PURPOSE, CIVIL RIGHTS

At the inception of Dallas Area Rapid Transit (DART) in 1983, transit service performance in Dallas was measured by a set of service standards approved by the Dallas Transit Board in 1979. Those standards were comprehensive in scope and typical of transit industry service standards of that

time. Since 1983, the DART staff has developed, and the Board of Directors has approved an initial set of DART Service Standards and several revisions of those standards to ensure that service design and performance measurement practices were in line with those common to the industry. The Board of Directors formally addressed Service Standards in 1985, 1986, 1991, 1995 and 1998. In November 1998, the Policy on Performance Measures was adopted.

Since 1998, the services provided by DART have evolved with new, non-traditional services being implemented to respond to changing needs within the communities the Authority serves. These changes resulted in services that did not fit the mold of performance measurement established by the 1998 policy. In the fall of 2003, the Planning Committee of the Board reviewed the history of DART Service Standards and the practical aspects of the application of those standards. After reviewing alternative approaches to performance measurement and considering the need to include new services in the process, the Policy on Performance Measures was modified in December 2003.

In 2003, DART also updated several aspects of current standards to address Federal Title VI civil rights requirements. These included establishment of formal standards for vehicle assignments to ensure equitable distribution throughout the DART network. The new standards also formally defined major service changes and the analysis required to ensure that such changes do not have unfair burdens in minority or low-income communities.

With the successful build-out of the DART light rail network, the DART Board and DART Cities have placed much greater attention in recent years on bus service, including network design, coverage, frequency, travel times, and amenities at bus stops and other DART facilities. 2018 and 2021 versions of the standards reflects a significant change in approach for DART, with a much greater focus on bus service improvements. Many sections have been completely rewritten to reflect changes in policy focus and the development of a new bus network design.

PURPOSE

The purpose of this document is to establish guidelines and measurements that will direct the development, implementation, monitoring, and modification of transit services. This document represents a codification of the application of the Policy on Performance Measures. It incorporates practices and definitions that have evolved from earlier service standards documents; it includes a definition of Baseline service; it includes a refined approach to developing indices by which route and service performance is measured, including Service Performance Indices for DART Innovative and ADA Paratransit services.

The guidelines that follow form the basis for the application of Service Standards established by the Policy on Performance Measures. Adopted DART Service Standards necessitate the development of administrative procedures and practices to support the standards.

OBJECTIVES

The objectives of the service standards process are:

- To provide a regular, consistent, fair and objective process for reviewing transit system performance and responding to changes in travel patterns and developing market conditions in order provide increasingly effective service.
- To establish a framework of empirical measurement of resource utilization by which scarce resources can be objectively and equitably distributed throughout the DART Service Area.
- To provide a systematic method of measuring, monitoring and reporting the performance of DART's fixed-route services, innovative services and ADA Paratransit services to management and the Board of Directors.

TITLE VI COMPLIANCE

It is the intent that DART will not discriminate in it services, guidelines, standards or policies. In the application of these standards, DART will be cognizant of the requirements of FTA C 4702.1B and DOT regulation, 49 CFR part 21. DART will respond to the needs of its Title VI and Environmental Justice population by being fair and equitable in its practices. DART will identify and address, as appropriate, disproportionately high, and adverse human health and environmental effects, including social and economic effects of programs and activities on minority populations and low-income populations.

Major Service Change

Changes to the transit network and to service levels are necessary to provide a system that responds to the changing travel needs of riders. Minor adjustments to schedules and minor realignment of routes occur in response to specific and, often, dynamic circumstances that require a timely response to maintain the system's utility. These changes are frequently undertaken in direct response to customer-expressed needs or changed operating conditions and affect a relatively small constituency with whom communication can be targeted.

DART's Service Planning process will be a participative one. The needs, concerns, opinions, and preferences of the communities being served by DART's routes and services are important to designing and delivering successful transit service. Planners will include specific rider and

community participation in each study effort that anticipates changing routes, service types or service levels. These opportunities may be relatively informal, occurring through small group meetings and one-on-one interaction.

Public participation will target low-income and minority riders and/or advocacy groups. Prehearing public participation will also include public meetings at transit centers, rail stations, or through the use of mobile information vehicles. These meeting opportunities will focus on the days and times of days that customers will be the most likely to be impacted.

Changes that affect the system and its users on a larger scale require a more deliberate and formal approach. The changes that impact routes and schedules more significantly require a defined process to allow for formal participation of the public in the change process. Major changes requiring the formal participation process are defined below.

Major Change

Adoption of major service changes requires the affirmative vote of two-thirds of the appointed and qualified members of the Board of Directors where the impact of the proposed change would reduce the service in any one-member city.

A major change is defined as:

- Any fare change;
- A service change that involves:
  - 25 percent or more of the number of transit route miles of a transit route;
  - 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;
  - a headway adjustment of more than five minutes during peak-hour service and more than 15 minutes during non-peak-hour service;
  - the establishment of a new transit route; or
  - multiple changes in a fiscal year that cumulate to the levels described above.

The Texas Transportation Code requires that DART conduct formal public hearings in the event of major changes as defined above. DART's service planning process will anticipate the need for public hearings in the event of major changes and will include appropriate time for the public hearing process.

Disparate Impact Analysis

Federal Transit Administration regulations require that transit agencies conduct a disparate impact analysis when a major service change affects a minority transit route. DART will conduct a disparate impact analysis for each minority route for which a major service change is proposed. DART's Diversity Department will conduct a review of the disparity analysis to confirm compliance with FTA Title VI requirements and to ensure there is no adverse impact on minority communities.

Minority Transit Route – A minority transit route is defined as a route with at least one-third of its revenue miles located in a Census block, Census block group, or traffic analysis zone where the percentage of minority population exceeds the percentage of minority population in the service area.

Disparate Impact Definition – A disparate impact is an adverse impact upon minority (or lowincome, minority) population that is 5 percentage points greater than the proportion of minority (or low income, minority) population in the service area.

Disproportionate Burden Analysis

Federal Transit Administration regulations require that transit agencies conduct a disproportionate burden analysis when a major service change affects a low-income transit route. DART will conduct a disparate analysis for each low-income route for which a major service change is proposed. DART's Diversity Department will conduct a review of the disproportionate burden analysis to confirm compliance with FTA Title VI requirements and to ensure there is no burden on low-income communities.

Low-Income Transit Route – A low-income transit route is defined as a route with at least one-third of its revenue miles located in a Census block, Census block group, or traffic analysis zone where the percentage of low-income population exceeds the percentage of low-income population in the service area. For the purposes of this definition, low-income is defined as a household income less than 150% of the defined Federal Poverty Level.

Disproportionate Burden Definition – A Disproportionate burden is an adverse burden upon low income population that is 5 percentage points greater than the proportion of low-income population in the service area.

SECTION 3: BUS ROUTE AND SERVICE DESIGN GUIDELINES

Bus route and service design guidelines are used in the development of new service proposals, the evaluation of existing services, and the evaluation of proposed modifications to existing

services. The following guidelines are used to optimize the overall usefulness of the system to riders, ensure the consistency of route structure, and provide objective and consistent criteria for the establishment of service levels. The guidelines can be divided into two categories: those describing the physical characteristics of routes and service zones and those relating to the level of service operated over a route or within a service zone.

OVERVIEW

DART aims to provide bus services that are timely, frequent, reliable, accessible, clean, and comfortable. At the same time, DART serves a range of customers who have varying travel needs, and offers service with characteristics that are specifically targeted the varying customer markets. DART Service Standards define a number of key service categories to encapsulate the different services offered.

For traditional fixed-route, fixed-schedule, multiple-stop services, the different service classes vary significantly over key characteristics, including service frequency, stop and line spacing, directness, and service span. The following table summarizes a hierarchy of key bus service classes:

Type of Service	Minimum Peak, Midday Frequency	Minimum Line Spacing (miles)	Average Stop Spacing	Target Directness	On Time Performance Target	Service Span	Characteristics, Notes
Rapid Ride	15/20	1	0.75 mi.	<1.2	92%	4a-1a	Queue jump lanes; active TSP; dedicated ROW preferred; minimum 3,000 daily boardings; branded bus and stations
Frequent	15/20	1	0.25 mi.	<1.4	90%	4a-1a	TSP preferred
Local	15/30	0.5	900'	1.4	90%	5a-12mid	
Local Coverage	30/60	0.5	900'	1.4	90%	5a-12mid	
Baseline (See Section 9)	60/60 or GoLink	0.5	N.A.	N.A.	90%	5a-9p	Last stage for routes that do not meet performance standards

The following sections describe each service class in greater detail. Other, more specialized services are also included in the classification listings.

TRANSIT DEVELOPMENT PLANS

Transit Development Plans (TDP) should be developed periodically to describe plans for future services and service changes. TDP's are a short- or middle-term plan guiding development of transit services over a five-year period (occasionally as long as 10 years). The TDP focuses on the configuration of transit routes and service operations with some associated capital investment identified, but will not address long-term plans for rail lines or other capital-intensive transit investments. The DARTzoom plan approved by the Board in 2021 is an example of a TDP. The transit industry may describe a TDP as a five-year service plan, but DART is avoiding this terminology due to the different use of the term "Service Plan" in the Texas Transportation Code.

The adoption of a TDP requires the affirmative vote of two-thirds of the appointed and qualified Board of Directors where the impact of a proposed change would reduce service in any one-member city.

SERVICE DESIGN PHILOSOPHY

In 2019-2021 DART initiated a comprehensive bus network redesign effort that included a strong focus on the relative balance between two core service delivery approaches: ridership and coverage. Ridership-focused networks concentrate service where ridership demand is highest, offering fewer routes but greater frequency. Coverage-focused networks aim to serve everyone, typically with lower service frequency.

The New Bus Network introduced in 2022 blends both ridership- and coverage-based elements into a hybrid approach. In November 2020, the Board of Directors unanimously adopted a resolution that authorized DART staff to develop a bus network based upon the hybrid network concept with a ridership/coverage ratio between 75-25% and 70-30% and determined to maximize the most efficient approach, and based upon the FY20 budget for service level resources. The New Bus Network ultimately adopted by the Board reflected this balance, with a system-wide ridership/coverage ratio of 75-25%.

In considering service adjustment proposals, staff should evaluate whether the adjustment(s) would cause the systemwide ridership/coverage ratio to deviate significantly from the Board policy target, which was 75-25% for the 2022 New Bus Network. A significant deviation would normally be 5% or more, as the ridership/coverage ratio is calculated in 5% increments. For major service changes as defined in Section 2, staff shall report the impact of the changes on the ridership/coverage ratio as a part of the service change decision process.

Normally, changes in ridership/coverage ratios are the consequence of a broad service change involving many bus routes and/or GoLink zones. Changes at the individual route level are unlikely to impact the overall ratio for the system.

Major service planning efforts like the bus network redesign should explicitly consider ridership/coverage ratios as a part of the planning effort.

SERVICE CLASSIFICATION

Changes to ridership/coverage ratios or greater than 5% require the affirmative vote of two-thirds of the appointed and qualified Board of Directors.

DART bus services are classified into key service categories that reflect their functional and operational characteristics defined under the new bus network. The categories are the framework within which transit services are developed, modified and evaluated. A summary of the features characterizing each service category is provided in the following paragraphs.

Frequent Route Network *Various Bus and Rail Services, Bus Route Number Sequence 1-99*

Frequent routes serve high-ridership corridors that are integral to the DART service network, including a mix of bus and rail services. These routes are characterized by higher service frequencies, a wider span of operating hours, and wider stop spacing. Frequent services should operate every 15 minutes during weekday peak periods, 20 minutes midday, and 20-30 minutes at other times, with more frequent service available as ridership demand requires. Traffic signal priority should be provided where technically feasible.

Service hours for Frequent routes will be designed to allow workers to reach jobs that start as early as 6:00am and travel home from jobs that end as late as 11:00pm. As a consequence, service will be available starting at 4:00am and continue until at least 1:00am (earlier or later where there is demonstrated demand for service). Early and late trips should be explicitly scheduled to serve early morning and late evening "line-ups" – scheduled times where bus and rail services converge to allow for wide-scale transfer activity.

Frequent routes will be identified as a part of periodic DART system and bus service planning efforts, including Transit System Plans and bus network redesign work. Candidate routes should have the following key characteristics:

- High residential densities, key activity centers, and preferably both should be located within walking distance of the route alignment

- Demonstrated high transit ridership performance and productivity relative to other, comparable routes
- Complementary to other parts of the DART Frequent network without duplicating key services

Local Routes *DART Route Number Sequence: 100- 199*

Local routes are fixed-route, fixed-schedule services, with frequent peak service and 30 minute service at other times. Most local routes make frequent stops and consequently operate at low average speeds. These routes operate seven days per week, and minimum service span is 5am12midnight.

Local Coverage Routes *DART Route Number Sequence 200-299*

Local coverage routes are fixed-route, fixed-schedule services that cover areas with lower residential and/or commercial densities, but where ridership levels are sufficiently high to support fixed-route service rather than on-demand GoLink service. These routes have 30 minute peak service and 40-60 minute off-peak service frequency, operate seven days per week, and minimum service span is Sam-12midnight.

Express Routes *DART Route Number Sequence: 300 - 399*

Express routes have terminal points within the Dallas CBD or at other destination-oriented concentrations of employment or commercial activity where they may provide service over a route segment with local stops. They operate nonstop to and from park and ride, Transit Center and Rail station facilities. These routes primarily serve communities with lower population densities and depend upon the mode change at Transit Center, station or park and ride facilities to aggregate ridership. Express routes typically provide higher speed service than do other routes.

Shuttle Routes *DART Route Number Sequence: 400 - 499*

DART operates many special Shuttle routes. These routes tend to be relatively short, providing first/last mile access from the rest of the service network or circulation within key activity centers. Many operate as public/private partnerships under DART's Site-Specific Shuttle Program, with the private sector partner helping to fund service that may be operated by DART, a DART contractor, or by the partner. Shuttle services are available to the general public, but are

generally tailored to specific needs of the employees, customers or clients of the areas served. The schedules of these routes are coordinated with other DART services.

Rapid Ride Routes *DART Route Number Sequence: 900-999*

Rapid Ride service involves limited-stop service in high ridership corridors. These routes aim to offer faster long-distance trips across the service area, especially during the time periods with the peak demand and heavy traffic. These routes may have crosstown or radial orientations, operating in major service corridors with heavy ridership and with a frequent underlying local service. DART is looking at a potential future network of Rapid Ride service in key corridors.

Traffic signal priority should be provided where technically feasible. Dedicated lanes, queue jumping facilities, and other traffic flow treatments designed to speed up vehicle operations should be investigated and implemented for Rapid Ride projects.

Rapid Ride routes will be identified as a part of periodic DART system and bus service planning efforts, including Transit System Plans and bus network redesign work. Candidate routes should have the following key characteristics:

- Demonstrated high transit ridership performance and productivity within the corridor served, sufficient to support both the rapid ride service and underlying frequent-stop service. Such corridors should have existing ridership of greater than 3,000 passengers per average weekday.
- Key activity centers, transfer points to other services with high ridership, or other ridership generators should be located along the route alignment

Mobility on Demand – GoLink Zones *DART Route Number Sequence: Community Name*

The Mobility on Demand program offers GoLink demand responsive service available to the general public within designated service zones. The service is usually anchored at a DART rail station or Transit Center, and customers can connect to and from the transit facility or circulate within the zone. Zones can be anchored to core frequent routes if more appropriate to the specific zone.

Trips are arranged through a smartphone application, or by a telephone call to a call center. GoLink service is often provided in areas of very low population density where traditional fixedroute bus service would not likely be successful, but can also be suitable for other use cases

in higher-density areas. Services may include a mix of dedicated vehicles assigned to the zone plus other non-dedicated services (e.g., transportation network companies, taxis, etc.)

ADA Paratransit Service

ADA Paratransit service is a curb-to-curb public transportation service for people who are specifically qualified for such services under the provisions of the Americans with Disabilities Act (ADA). The ADA Paratransit service operates throughout the DART service area in a many to-many mode. Areas of specific coverage and the span of availability of the service are compliant with requirements of the ADA. All vehicles used for the service are lift-equipped. Passengers who are unable to use steps are accommodated by the lift with a boarding chair available upon request. Specific policies and guidelines govern the scheduling of trips and the performance of the service.

AREA COVERAGE

Area coverage expresses the degree to which the transit network is within reasonable proximity of the population, employment, or other activity centers it is charged with serving. Area coverage is most easily expressed by a measure of acceptable walking distances on each side of a route and is, therefore, directly related to the geographic spacing of bus routes. A majority of transit users initiate their transit trip as pedestrians and walk some distance to reach a transit stop. These walking distances, typically between 0.25 mile and 0.50 mile, vary depending on the population or employment density. Areas of lower population density have more spatially dispersed population and activity centers, resulting in lower transit demand. The practicality of lower demand is a lower level of transit accessibility.

Route spacing guidelines are a function of the type of service and areas served. Generally, the core frequent route network should be spaced farther apart using major arterials to ensure faster operating speeds.

Table 3.1 - Recommended Bus Route Spacing Guidelines

Type of Service	Minimum Line Spacing (miles)
Rapid Ride	1
Frequent	1
Local	0.5
Local Coverage	0.5

Baseline (See Section 9)	0.5

These route spacing criteria are guidelines intended to assist in developing a route structure that provides a level of accessibility commensurate with ridership potential while avoiding a division of the potential ridership market among routes. In general bus routes should not be placed simply to meet an arbitrary standard of distance between routes but should be developed with the expectation that minimal levels of ridership relative to the level of service provided will be attracted to the route.

Duplication of route coverage along the same thoroughfares tends to divide ridership, reducing the productivity of routes and lowering the efficiency of resource utilization. It is expected that bus routes will converge at Transit Centers, rail stations and activity centers in order to accommodate ridership needs. The degree to which routes converge or duplicate one another should be governed by specifically identified service requirements and avoided without identified need.

BUS STOP SPACING

Bus stop spacing is the distance between successive, designated stop locations in the same direction of travel along a bus route. Bus stop spacing should be related to land use and the density of development along a route. Bus stop spacing is a significant measure of accessibility. When stop locations are being designated, it is necessary to consider passenger convenience, safety of passengers and transit operation and travel time impacts.

Stop spacing is defined in accordance with the type of service provided. Rapid Ride and Frequent routes will generally have wider average stop spacing to encourage faster operations. Other service tiers will have tighter bus stop spacing.

Table 3.2 - Recommended Bus Stop Spacing Guidelines

Type of Service	Average Stop Spacing
Rapid Ride	0.75 mi.
Frequent	0.25 mi.
Local	900'
Local Coverage	900'
Shuttle, Express	As Needed

GEOMETRIC DESIGN CONSIDERATIONS

Bus routes should generally use arterial and collector streets that are designed to accommodate higher traffic volumes and larger, heavier vehicles. The use of residential streets should be avoided, unless their use is part of a terminal routing or provides access to a specific location of high ridership demand. Routing on private property, such as driveways or parking facilities, is not permitted unless a specific legal agreement assuring safe operating conditions and providing for adequate pavement maintenance has been executed. New routes and route modifications should be planned to operate over streets that meet the following minimum standards:

Fixed Route Buses

- Intersections with minimum turning radius of 30 feet;
- Pavement composition sufficient to support the axle loads of a bus;
- Minimum lane width of 11 feet;
- Overhead clearance of 11 feet; and,
- No curb-to-curb speed bumps (There are alternative traffic calming devices that can better accommodate buses).

Innovative and ADA Paratransit Services Vehicles

- Intersections with minimum turning radius of 25 feet;
- Pavement composition sufficient to support the axle loads of paratransit vehicles;
- Minimum lane width of 11 feet;
- Overhead clearance of 12 feet;
- Speed bumps not to exceed 6 inches in height and spaced at least 30 feet apart.
- Gates controlling access to a facility must remain open a minimum of 30 seconds.

DIRECTNESS OF SERVICE

Directness of service can be defined in several ways. First, directness plays a key role in the design of individual routes, and DART should design each route to be as direct as possible. Second, many customers must use more than one bus or train to complete a trip, and for these customers the full trip from origin to destination should be as short as possible. Directness of service standards address both scenarios.

Route Directness

Directness for individual routes is defined as the ratio of the automobile travel time between two points versus the travel time between those two points via the transit network, following the most convenient routing. Because transit service competes with automobile travel, attention must be given to designing routes that operate as directly as possible between points of trip origins and destinations. The objective is to maximize average speed for the bus and minimize travel time for passengers.

Occasionally, it may be desirable to deviate the bus route away from the most direct routing to serve a specific trip generator. It is especially important that any deviation be consistent with accommodating identified travel demand that would otherwise not be within the route's coverage area. Any deviation from the most direct routing must be consistent with providing service that is competitive with automobile travel. The following table provides DART travel time ratio guidelines by service classification.

Table 3.3 – Target Route Travel Time Ratios, by Route Classification

Type of Service	Target Directness
Rapid Ride	<1.2
Frequent	<1.4
Local	1.4
Local Coverage	1.4

Travel Directness on the Network

Many DART customers use more than one bus, train, or other service to travel from their starting point to their destination. For these customers, DART's goal is to offer reasonably competitive travel times versus comparable travel via personal automobile. Ideally, transit trips should require no more than two times the total travel time as a comparable automobile trip. This may not be feasible for very short or very long trips.

Because of the volume of multiple-link trips, convenience of transfers between different DART services becomes very important. Schedules and connecting facilities should be designed with transfer convenience in mind.

DART will work to design a service network that offers as many work commute customers as possible the opportunity to reach jobs by transit within sixty minutes overall travel time. For low-

income neighborhoods (defined by census tract and household income levels below 150% of the Federal poverty level), DART will regularly measure the number of jobs accessible from such neighborhoods within 60 minutes travel time relative to total jobs accessible by DART transit service.

Service changes will be analyzed to the extent that they can improve the share of jobs accessed within 60 minutes. DART will also periodically analyze access from low-income neighborhoods to grocery stores, educational centers, and other common destinations. DART will aim to increase the share of destinations reachable within an hour over time to the extent that resources are available for more direct and/or more frequent service.

SERVICE DUPLICATION

Service duplication is the operation of two or more routes or services along the same street segment or on closely parallel streets. Service duplication should not occur except where routes converge to serve Transit Centers, rail stations or activity centers, or where the combined capacity of multiple routes is needed to serve area destinations. Where it is necessary for routes to duplicate each other for significant distances, schedules should be coordinated to provide generally even headways on the common street segments to the extent possible.

SERVICE SPAN

Service span is the interval from the first time a vehicle enters revenue service to the time it leaves revenue service at the end of the day. Each of the three main service schedules (Weekday, Saturday, Sunday) are divided into periods that include the peak home-to-work commute periods in the morning and afternoon, the midday period, and the evening period of lower travel demand. Ridership characteristics, demand, and trip purpose differ greatly, depending on the time of day and day of the week (*e.g.,* Weekday, Saturday, Sunday).

Service hours for Frequent routes will be designed to allow workers to reach jobs that start as early as 6:00am and travel home from jobs that end as late as 11:00pm. As a consequence, core service will be available starting at 4:00am and continue until at least 1:00am (earlier or later where there is demonstrated demand for service). Early and late trips should be explicitly scheduled to serve early morning and late evening "line-ups" – scheduled times where bus and rail services converge to allow for wide-scale transfer activity.

Other local fixed-route services (including Local, and Local Coverage) will generally operate between 5:00am and Midnight, though some may start earlier in the morning and/or finish service after Midnight with demonstrated passenger demand, including connections to key early

morning and late evening transfers or line-ups that may occur outside of the regular service window.

Express services are normally scheduled to arrive at their key destination (usually Downtown) no later than 6:00am, and most offer trips scheduled in the evening for late workers or customers transferring from other routes. Midday service is provided where passenger demand warrants.

The following table defines the recommended daily service span for each of the service categories operated by DART.

Table 3.4. Recommended Daily Service Periods, by Service Category

SERVICE CLASS	WEEKDAY				SATURDAY				SUNDAY			
	AM/ PM Peak	Midday 9a - 3p	Evening 6p - 9p	Night 9p	Morning <9a	Midday 9a - 6p	Evening 6p - 9p	Night 9p	Morning <9a	Midday 9a - 6p	Evening 6p - 9p	Night 9p
Frequent	+	+	+	+	+	+	+	+	+	+	+	+
Express	+	*	*	-	-	-	-	-	-	-	-	-
Rapid Ride	+	*	*	*	*	*	*	*	*	*	*	*
Local, Local Coverage	+	+	+	+	+	+	+	+	+	+	+	+
Shuttle	+	+	+	*	*	*	*	*	*	*	*	*
GoLink	+	+	*	*	*	*	*	*	*	*	*	*
Paratransit*	+	+	+	*	+	+	+	*	+	+	+	*

+ Indicates service usually operated during this period.
* Indicates service may be operated during this period, but on a demand basis.
- Indicates service is traditionally not operated during this period.

Note: The AM/PM peak services periods for DART are 6:00 a.m. to 9:00 a.m. and 3:00 p.m. to 6:00 p.m., respectively.

*Note: ADA Paratransit Services operates on a schedule comparable to all DART fixed-route bus/rail services

SERVICE FREQUENCY

Service frequency, or headway, refers to the scheduled amount of time between consecutive trips on a transit line. The fewer or greater the number of minutes, the "shorter" or "longer" is the headway, respectively. The frequency on a route is determined on the basis of policy and passenger demand. It is generally recognized that certain minimum service frequencies should

be maintained on a route to ensure that individual routes operate at frequencies which are appropriate to the type of service they provide, and adequately address both existing and potential ridership demand.

In order to assure that a reasonable, attractive level of transit service is available throughout the DART system, minimal acceptable levels of service are defined. The following table identifies the maximum (longest) headways for each of the five fixed-route bus categories operated by DART. The values in this table represent the minimum service level to be offered if the decision is made to offer service during a particular service period. Service spans are identified in Table 3.4, above.

Table 3.5 - Maximum Service Headways (Minimum Service Level)

SERVICE CLASS	WEEKDAY HEADWAYS				SATURDAY HEADWAYS				SUNDAY HEADWAYS			
	AM/ PM Peak	Midday 9a - 3p	Evening 6p - 9p	Night 9p	Morning < 9a	Base 9a - 6p	Evening 6p - 9p	Night 9p	Morning < 9a	Base 9a - 6p	Evening 6p - 9p	Night 9p
Frequent	15	20	15	30	30	20	30	30	30	20	30	30
Express	30	60	60	-	-	-	-	-	-	-	-	-
Local	**15**	**30**	**30**	**30**	**30**	**30**	**30**	**30**	30	**30**	**30**	**30**
Local Coverage	30	60	60	60	60	60	60	60	60	60	60	60
Shuttles	30	60	60	60	60	60	60	60	60	60	60	60
Rapid Ride*	15	-	15	-	-	-	-	-	-	-	-	-

* Rapid Ride services that are available beyond weekday peak periods should generally follow Core service frequency levels

TRANSITION OF FIXED-ROUTE TO DEMAND-RESPONSIVE SERVICE

When DART fixed-route services fail to meet service performance standards, one potential option is to convert service to GoLink demand-responsive operation. Where two or more adjacent routes both fail to meet performance standards, conversion to GoLink operation becomes more feasible and potentially cost-effective.

Should conversion result in overall cost savings to DART, savings should be re-invested in bus service improvements (especially frequency) in other parts of the network.

TRANSITION OF DEMAND-RESPONSIVE TO FIXED-ROUTE SERVICE

When a DART GoLink performance reaches an average passengers per hour statistic of 10.0 or better for three consecutive quarterly periods (as reported by the Service Standards Monitoring Report), an analysis of the potential for converting the zone to fixed-route operation will be undertaken.

That analysis will include the review and analysis of the zone's trip manifests for the month of highest activity in the most recent quarterly reporting period. The beginning and end points of each trip made during that month will be identified and geocoded as origin/destination pairs. A cluster analysis of those points will be completed to identify concentrations of trips whose origins and destinations are sufficiently proximate to each other as to begin to define a potential route pattern.

If the existing travel patterns are not sufficiently clustered as to produce a viable route pattern. Conversion to a fixed route will be determined to be infeasible. If there is an identifiable, viable potential route pattern identified, the route will be defined, and a service schedule developed. The trip time data from the analyzed trip manifests will be analyzed relative to the proposed schedule and the schedule will be modified, if necessary, to optimize the number of trips that the proposed route can accommodate.

The ridership for the proposed route will be estimated based upon the existing GoLink zone ridership and the demographic characteristics of the community to be served. The ridership estimates will be compared to the operating parameters of the proposed route's schedule and the passengers per revenue hour and subsidy per passenger parameters calculated.

If the performance parameters of the proposed replacement route will meet DART standards for service productivity, the route will be programmed for implementation, replacing the GoLink zone at the next practical programmed service change date.

DEMAND-RESPONSIVE SERVICE DESIGN

GoLink service has evolved from the older DART On Call program, offering demand-responsive service with advanced technology and much greater deployment flexibility. GoLink zones are usually deployed in low-density commercial and/or residential settings, offering coverage in areas where fixed-route service may not be practical.
Deployment of GoLink service targets areas of at least six square miles (smaller areas in some special instances) where ridership levels are insufficient to support various fixed-route service types. Larger zones up to over 20 square miles have proven feasible; however, waiting and travel times tend to be longer for the larger zones, and the functional operation of larger zones should be carefully monitored. To the extent possible, zones should not overlap fixed-route service. All zones will have at least one anchor point located at a bus or rail facility with connections to the rest of the DART service network.

In normal GoLink operations, customers can travel between any two points within a zone or to and from the anchor point(s) for that zone. However, there are situations where a significant

destination lies a short distance beyond a zone (normally less than a mile from the zone boundary). If DART receives significant customer interest in access to such destinations and a staff assessment concludes that the destination will not compromise normal operating parameters, these destinations may be designated as "blue dot" locations and included in service for the zone. All blue dot locations should be shown on printed and electronic maps for a given zone.

DART uses a "mixed-supply" model for GoLink operations. This means that in all zones, customers will have the choice of service provided through DART contractors and service offered by transportation network companies. For DART-contracted service, operations will include a combination of dedicated/assigned vehicles and non-dedicated trips (e.g., taxis), with the mix determined by ridership demand and user needs (e.g., accessibility). GoLink is a sharedride service by design, and customers on any type of operated service may share rides with other customers.

Customers can schedule GoLink trips via a mobile application or by telephone. Trips scheduled by mobile app are more efficient and strongly preferred, and DART should work with customers to maximize the usage of mobile app bookings.

As an on-demand service, GoLink has operating parameters that are very different from fixed route operations. One of the most important GoLink operating parameters is waiting time, which is defined as the span of minutes from the rider's requested pickup time to the actual pickup time. The target for the average waiting time for the GoLink trips booked via mobile application is 15 minutes or less. For trips scheduled by telephone, the target waiting time is 30 minutes or less. When the average waiting time for trips exceeds these levels in a zone, DART staff will immediately evaluate the service arrangement for each zone and adjust resources as needed.

Travel times are also a key parameter for GoLink design. Shared ride operations will sometimes mean that customers will travel longer than a direct point-to-point trip would require otherwise. The actual travel time for each customer should not generally exceed two times the direct driving time. GoLink is a relatively new service, and as DART gains more experience with its operation, additional refinements to the service model should be evaluated and subsequently implemented if proven cost-effective and without adverse customer impact. As of 2021, two refinements under consideration and testing include zone-to-zone passenger travel (not allowed previously) and the use of "cluster" stops to consolidate boardings and alightings at designated locations within the zone.

SECTION 4: BUS/RAIL INTERFACE GUIDELINES

All transit systems expand and contract in response to changing travel demands. In June 1996, DART opened the first phase of the DART light rail system. In response to the need for bus service

to collect and distribute passengers for the rail service, a significant redesign of the bus network in areas served by rail was undertaken. The following section explains the set of guidelines specifically developed as a tool in aiding Service Planning and Scheduling staff in planning bus/rail interface activities. These guidelines are the result of in-depth research and years of staff experience in planning and implementing transit routes and service.

FUNCTIONS AT BUS/RAIL INTERFACE STATIONS

Functions relating to rail stations can be assigned to three categories: train operation, bus operation and other uses such as joint development. This section will focus solely on the development of guidelines relating to bus operations planning for rail stations.

Bus Operations Functions

Functions relating to bus operation at rail stations fall into three categories: boardings and alightings, waiting times, and bus layover.

Definitions:

Boarding	The act of entering a transit vehicle.
Alighting	The act of leaving a transit vehicle.
Waiting Time	The time interval that a bus or train waits to allow for transfers between routes or modes.
Layover Time	The time interval that a bus or train is scheduled to wait at the end of a trip to recover from unexpected delays in service. Layover time is provided to assure that the next scheduled trip departs on time.

Scheduling Bus Interface

To the extent possible, scheduled headways on bus routes serving rail stations will be identical to or evenly divisible by the scheduled train headway for each period of the day. Bus arrival and departure times at rail stations will be coordinated with train arrival and departure times.

During peak periods, bus schedules will be coordinated with the predominant passenger movement. When the predominant passenger movement is from bus to rail, buses will be scheduled to arrive at the station five minutes before the scheduled train departure in the predominant direction of travel. When the predominant passenger movement is from rail to bus, buses will be scheduled to depart the station five minutes after the scheduled train arrival in the

predominant direction of travel. During off-peak times, buses will be scheduled to arrive at the station five minutes before the departure of the next scheduled train.

When a bus route serves more than one rail station, a single station will be designated as the key station and schedule coordination will occur at the key station. The volume of passenger activity and the direction of travel of the majority of the passengers will determine the key station designation.

ADA Paratransit Feeder Service

Feeder service connects certified Paratransit passengers to a DART passenger facility for a reduced fare. A passenger facility is a Park and Ride, rail station, transfer location, or transit center. From there, passengers can transfer to bus and rail, and travel through the entire DART network.

Paratransit Feeder Service is booked like a regular Paratransit trip. When a passenger calls Scheduling, he or she will request a trip that begins or ends at a transit facility. The Scheduling Representative will confirm that the trip meets the feeder fare guideline and will schedule the trip. Due to the nature of Paratransit services, pick up and drop off windows will conform to Paratransit standards but would not necessarily meet a particular scheduled train arrival time. See Section 5 for Paratransit pick up and drop off standards.

BUS SYSTEM MODIFICATION GUIDELINES

Service Guidelines

Access between rail and bus systems should be maximized, and access time should be minimized. Additionally, impacts on non-rail bus riders (*i.e.*, through bus riders) should be minimized. Bus-to-rail access time should be minimized by diverting appropriate bus routes from their previous routes to stops near rail station entrances. Bus lines should not be diverted when:

- Bus route diversion (circuitous routing) time is greater than walking time from the closest stop on the existing route to the rail station entrance;
- Travel time on bus to access rail exceeds 30 minutes for the majority of the passengers;
- Overall travel time (bus/rail) exceeds the existing bus travel for the majority of the passengers;
- The street system, traffic patterns, and limited curb space for stops limits physical access; or,

- The negative impacts for through bus riders are greater than the benefits gained by connecting riders (measured in time).

Parallel express or limited stop bus routes within a corridor served by rail should be discontinued or modified when the route will compete with the rail line for ridership. Rail service will replace the non-stop portion of these bus routes. The local service portion of a limited stop route that duplicates rail service should be modified to become a rail station feeder route.

APPLICATION OF GUIDELINES

The following sections outline the practical application of these guidelines,

Terminating Routes

Bus routes that end within one mile of a rail station should be extended to terminate at that station. Routes that terminate at distances greater than one mile from a rail station should be extended to the station if the rerouting establishes a valuable link in the overall transportation network by providing a connection to a major traffic generator, or by realizing a reduction in travel time for a significant number of riders.

Through Routes

Through routes, with respect to rail lines, are routes that intersect the rail line, and continue beyond it to serve another market area. The extent to which a through bus route will be diverted to serve a rail station is dependent upon the type of bus interchange facilities that are provided and upon the density of ridership in proximity to the station. When significant transferring to and from the rail line is anticipated, the route should be diverted.

Parallel Routes

A bus route that runs parallel to the rail line can be diverted to serve the rail stations if the following criteria are met:

- The route can be used as a line-haul route in case of an interruption of service on the rail line;
- Walking distance from the closest stop on the route to the rail station entrance is greater than one-quarter mile;
- Total bus diversion time in one direction is five minutes or less;
- Average peak period load at the point of diversion is less than 50% of seated capacity;

- There is sufficient curb space available for arriving and departing buses; and,
- Access to the station stops can be obtained without circuitous routing.

Intersecting Routes

A bus route that intersects a rail line can be diverted to serve the closest rail station, provided the following criteria are met:

- Total bus diversion time in one direction is five minutes or less;
- Average peak period load at the point of diversion is less than 75% of the seated capacity;
- There is sufficient curb space available for arriving and departing buses; and, • Access to the station stops can be obtained without circuitous routing.

New Routes

A new feeder service can be implemented to serve one or more rail stations if a particular need can be demonstrated, and if an area is not within one half mile of an already existing bus route.

REVIEW OF ROUTE CHANGES

After the implementation of the new rail service and the rerouting of the bus lines to serve the stations, service usage of the rerouted services should be monitored at six-month intervals. If a diverted route is not meeting the minimum standards for its category as identified in this document after 24 months, with attempts for improvements, it should be considered for rerouting back to its original and direct route.

SECTION 5: RAIL SERVICE DESIGN GUIDELINES

DART operates (directly or for funding partners) several distinct types of rail service to meet the diverse demands of travel within the Service Area, including light rail, commuter rail, and streetcar.

- **Light rail** is designed to provide regular, frequent service throughout its service day seven days per week, with stop spacing designed to ensure faster travel speeds. LRT services are part of the core frequent route network.

- **Commuter rail** is designed to provide a more limited service level focused primarily on longer distance home-to-work commutes trips although off-peak and weekend service may be offered in response to demand.
- **Streetcar** service usually operates on-street, usually in higher-density areas with high ridership potential. Stops are more tightly spaced than light or commuter rail operations. Operation in exclusive or transit-only lanes is preferred to achieve more optimal running speeds.

RAIL SERVICE SPAN

Service span refers to the interval from the first time a train enters revenue service to the time the last train leaves revenue service at the end of the day. The following table defines the recommended daily service periods for the DART Light Rail system.

Light rail services are part of the core frequent route network should operate all hours between 4:00am and 1:00am, seven days per week. Commuter rail and streetcar services will often have more limited service hours, depending upon market conditions.

The following table defines the recommended daily service span for each of the rail service categories operated by DART.

Table 5.1. Recommended Rail Daily Service Periods

SERVICE CLASS	WEEKDAY				SATURDAY				SUNDAY			
	AM/ PM Peak	Midday 9a - 3p	Evening 6p - 9p	Night 9p - 1a	Morning < 9a	Midday 9a - 6p	Evening 6p - 9p	Night 9p - 1a	Morning < 9a	Midday 9a - 6p	Evening 6p - 9p	Night 9p - 1a
Light Rail	+	+	+	+	+	+	+	+	+	+	+	+
Commuter	+	+	+	*	+	+	+	*	*	*	*	*
Streetcar	+	+	*	*	+	+	*	*	*	*	*	*

+ Indicates service usually operated during this period.
* Indicates service may be operated during this period, but on a demand basis.
- Indicates service is traditionally not operated during this period.

Note: The AM/PM peak services periods for DART are 6:00 a.m. to 9:00 a.m. and 3:00 p.m. to 6:00 p.m., respectively.

It is recognized that demand characteristics vary in differing portions of the DART Service Area. Because of these demand characteristics, it is appropriate to reduce the Light Rail service period along certain outlying segments of individual lines to be commensurate with the level of demand.

These modifications to the service period are appropriate in both the early morning and night periods and may be established based on specific evaluation of ridership demand.

RAIL SERVICE FREQUENCY

Headway is the scheduled time between consecutive trains on a rail line. Service frequency on a line should be determined based upon passenger demand. It is, however, generally recognized that certain minimum service frequencies should be maintained on a line to ensure that service is attractive to the public and that the needs of transferring passengers are accommodated.

Commuter Rail service is somewhat different from both Bus and Light Rail service in ridership demand characteristics and physical operating constraints of the railroad over which the service operates. The physical operating constraints, particularly the extent of single-track line segments, limit the frequency of service that can be operated.

The standards for service frequency for the Commuter Rail service have been developed to be consistent with both the physical constraints and the highly peaked demand characteristics of typical commuter ridership. The following table summarizes the minimum acceptable service frequencies for the DART portion of the Commuter Rail line.

The following table summarizes the minimum acceptable service frequencies for DART Light Rail service.

Table 5.2 - Maximum Rail Service Headways (Minimum Service Level)

SERVICE CLASS	WEEKDAY HEADWAYS				SATURDAY HEADWAYS				SUNDAY HEADWAYS			
	AM/ PM Peak	Midday 9a - 3p	Evening 6p - 9p	Night 9p - 1a	Morning < 9a	Base 9a - 6p	Evening 6p - 9p	Night 9p - 1a	Morning < 9a	Base 9a - 6p	Evening 6p - 9p	Night 9p - 1a
Light Rail	15	20	20	30	30	20	30	30	30	20	30	30
Commuter	30	60	60	-	-	-	-	-	-	-	-	-
Streetcar	20	20	20	30	30	20	30	30	30	20	30	30

RAIL SYSTEM PHYSICAL DESIGN

Because of the capital-intensive nature and relative permanence of rail system development, a comprehensive planning process is involved in developing alignments, selecting station locations, projecting ridership and ridership characteristics, defining the nature of station design requirements and building the physical facilities used in delivering both Light Rail and Commuter Rail Service.

DART complies with the planning guidelines of the Federal Transit Administration in selecting rail alignments and developing station locations. The process is thoroughly documented in the various reports required in completing the Major Investment Study that precedes the construction of a rail line.

DART has developed and continually reviews and updates a Design Criteria Manual that specifies the standards for the design of physical facilities.

These studies and manuals codify DART's standards for such issues as alignment, station spacing and design elements.

Commuter Rail Station Spacing Considerations

The spacing of stations along the Commuter Rail line was developed consistent with projected patterns of ridership demand. The RAILTRAN Corridor Planning and Implementation Study (Final Report, June 11, 1992) identifies that placement of the stations was based upon base ridership projections, a potential station site's development suitability (high density, mixed use, industrial and low density), transit access and linkage potential, timing for joint development, availability and strength of joint venture partners and ridership increase from joint development. Each proposed station location was evaluated according to a rating and weighting system based on these factors.

SECTION 6: ADA PARATRANSIT SERVICES – STANDARDS AND DEFINITIONS

This section incorporates standards and definitions for eligibility for DART's ADA Paratransit services and codifies policies governing the use of the service.

DETERMINING ELIGIBILITY

DART follows the Americans with Disabilities Act (ADA) of 1990 eligibility standards for paratransit services. People with disabilities in the following categories are eligible to receive paratransit services.

- Category I - Applicants who cannot independently use DART bus or rail service, even with training.
- Category II - Applicants who can use or learn to use an accessible public transit system, but the system is not fully accessible.

- Category III - Applicants who have a specific impairment that prevents them from getting to or from a bus stop or rail station.

Applicants must follow these steps to be considered for Paratransit Services:

- Step 1 - Complete a Paratransit Certification form.
- Step 2 - Obtain a written verification of your disability from a physician.
- Step 3 - Return form and verification documents to Paratransit mail services.
- Step 4 - Complete in-person paratransit eligibility assessment by an Eligibility and Training Specialist.

TRAVEL CHARACTERISTICS AND OPERATING PARAMETERS

This section describes the standards by which individual passenger trips are accommodated. These standards define both performance characteristics of the ADA Paratransit service and its availability to clients.

Origin to Destination Service

Origin-to-destination service, providing service from a rider's origin to the rider's destination, must be provided. Curb-to-curb or door-to-door may be provided.

Pick Up Windows and Timely Service

- On time – Vehicle arrives at the pickup location within the established pickup window.
- Early – Vehicle arrives and departs with the rider before the established pickup window begins.
- Late – Vehicle arrives after the end of the established pickup window and the rider boards the vehicle.
- Missed trips – Occur when the vehicle arrives 1 minute or more after the pickup window and the trip is not conducted either because the customer is no longer there, or the customer decides not to take the trip because it is now late.
- Trip Length – Trips should be comparable to the length of comparable fixed route trips to include walking time to the stop/station from the origin address, waiting time, invehicle time (for all trip segments), transfer times and walking time from the final stop/station to the destination address. The average trip length is considered to be about 90 minutes and

a trip may exceed or fall below the average depending on the specific circumstances of the individual trip.

Capacity Constraints

The agency shall not limit the availability of complementary paratransit service to ADA paratransit eligible individuals by any of the following:

- Restrictions on the number of trips an individual will be provided;
- Waiting lists for access to the service; or
- Any operational pattern or practice that significantly limits the availability of service to ADA paratransit eligible persons. Such patterns or practices include, but are not limited to substantial numbers of significantly untimely pickups for initial or return trips, substantial numbers of trip denials or missed trips, or substantial numbers of trips with excessive trip lengths.
- Operational problems attributable to causes beyond the control of the agency.

Subscription Trips

Subscription service may not absorb more than fifty percent of the numbers of trips available at a given time of day, unless there is non-subscription capacity.

Service Availability

FTA guidelines mandate that ADA service be available within a ¾-mile buffer around bus routes and a ¾-mile radius around rail stations during all times that the routes and train lines are in operation.

Current DART practice is to provide service anywhere within the DART 5ervice Area, and if we receive a trip request outside of our normal operating hours, we provide service if there is fixed route service available in the requested area(s) at that time.

Reservation Service

ADA Paratransit service normally requires advance reservations one day in advance of desired travel. Online reservations are currently offered 8am-5pm Weekdays, with an automated system available at other times.

SECTION 7: SERVICE QUALITY

An important element of the success of the service DART provides to its customers is the quality of that service. Service quality is directly related to customer satisfaction, which translates into the retention of existing riders and the attraction of new riders. This section specifically addresses the quality issues of vehicle loading and on-time performance.

VEHICLE ASSIGNMENT

It is DART's standard to assign its revenue service vehicles in a manner that is consistent with ridership demand while assuring that all vehicles are used fairly and equitably throughout the system regardless of vehicle type, equipment or age. Revenue service vehicles will be assigned in the following manner.

Assignment by Type - Specialized routes services will receive vehicles specifically designed to meet the unique features of those routes and services. GoLink zones will be assigned smaller vehicles chosen for size and maneuverability commensurate with demand responsive operation. Express routes will receive the single-door buses designed for their particular loading characteristics.

Assignment by Capacity - Other routes and services will be assigned buses based upon their observed ridership demand with bus seating capacity and load factor standards governing the assignment. SmartBuses will be assigned to routes with per-trip on-board passenger loads consistent with their seating capacity. Mid-sized 31-foot transit coaches will be assigned to routes with per-trip on-board passenger loads consistent with their 26-seat capacity. Full-sized 40-foot transit coaches will be assigned to routes with per-trip on-board passenger loads consistent with their 39-seat capacity.

Assignment to Operating Facilities – Revenue service vehicles will be assigned to operating facilities first on the basis of the requirement for specialized vehicles then in consideration of the demand characteristics of the routes assigned to operate from the facility and finally, as nearly as possible, proportionately to the age and amenities of the sub-fleet of the vehicle types available throughout the system. The assignment of vehicles among operating facilities will be reviewed prior to each service change and more often if necessary, to assure that vehicle use characteristics are balanced across the fleet.

Dally Assignment of Vehicles – The daily assignment of vehicles to blocks (a "block" is the tour of duty for a bus for a day) will be by rotation. Among the vehicles assigned to the facility of the

type required for a particular block the rotation will assure that each vehicle of the appropriate type has an equal chance of being assigned to each block.

VEHICLE LOADING

Vehicle loading refers to the average number of passengers on board a vehicle during a specified period of time divided by the total seating capacity of those vehicles. The following table shows the vehicle loading guidelines that are used for developing service levels that best meet the need of DART's current and potential future riders and ensure that patronage is not discouraged by overcrowding vehicles. The guidelines are based on vehicle capacities and are designed to balance safety, passenger comfort and operating efficiency.

Table 7.1 - Acceptable Vehicle Loads by Time Period

Time Period	Express	Frequent / Local/ Rapid	Light Rail/ Streetcar	Commuter Rail
Peak Period	100 %	125 %	150 %	100 %
Peak Hour	100 %	150 %	175 %	100 %
Midday	100 %	100 %	125 %	100 %
Evening	100 %	100 %	125 %	100 %

Vehicle loading standards are applied on an average basis over the time period in question. It is recognized that, on occasion, individual trips may experience loading that exceeds the stated standards for short periods of time and for relatively short distances because of peaking demand for service. These instances are considered acceptable performance. Service levels will be reviewed when individual trips exceed the standard loading factor for a period of greater than six consecutive months.

An additional element of service quality related to vehicle loading occurs when the load factor exceeds 100 percent. While DART standards define circumstances under which it is acceptable for passengers to stand, it is acknowledged that standing for extended periods of time may be a deterrent to ridership growth. In examining load factors that approach DART's standards for maximum loads, the proportion of the vehicle trip's total revenue time during which passengers stand should be examined.

If load factors at the maximum load point of a bus route or rail line on which the standard permits standing exceed 95 percent of the standard load factor for an hour, the proportion of trip time that includes any standing passengers will be analyzed. If the proportion of the total trip time that includes standing passengers exceeds 65 percent, corrective action in the form of headway adjustments or capacity augmentation should be considered.

ON-TIME PERFORMANCE

DART's schedules are our contract with our passengers for timely, reliable service that accommodates their travel within reasonable time frames, allowing them to accurately plan trips with confidence. The DART bus and light rail system is a fully integrated network of interconnected routes and strategically located facilities that facilitate and often require the individual traveler to transfer among routes and between modes. The degree to which service adheres to published schedules is a significant contributor to the ability of customers to use the network with confidence.

Managing On-Time Performance

DART's buses and trains will regularly operate according to their schedules when those who develop the schedules and those who manage the delivery of service work cooperatively to identify issues that compromise on-time performance and behave proactively to identify and correct issues that prevent on-time performance.

Automatic Vehicle Location (AVL) technology provides data that will identify and quantify the issues that compromise on-time performance. As reports become available from the AVL system, Schedule Analysts should review reports for those routes where on-time performance is identified as being more than ten percent below the currently adopted system on-time performance standard. Potential corrective actions should be identified and investigated. Solutions that are viable and affordable should be reviewed with Field Operations staff and a plan for implementing change developed.

Similarly, Field Operations staff should review the AVL reports for those routes where on-time performance is identified as being more than ten percent below the currently adopted system on-time performance standard. Specific investigations of potential causative factors should be undertaken and documented. In the instance of Operator performance issues, appropriate intervention should occur. When other issues, including passenger loading factors, traffic or street conditions or run time allocation are identified, those specific issues should be

documented and communicated to the Service Planner and Schedule Analyst responsible for the route.

Factors that should be specifically addressed when investigating on-time performance issues include:

- Scheduled cycle time relative to headway and coordination requirements
- Allocation of cycle time among route segments and recovery time
- Consistency of scheduled time among routes sharing common segments
- Location of time points relative to route length and transfer connection needs
- Time of trip departures from ends of lines, rail stations and Transit Centers
- Consistency of bus operation with traffic flow along route segments
- Consistency in definition of physical time point location (*e.g.*, at the bus stop nearest the time point, entering the intersection, departing the intersection)
- Timely arrivals at transfer points including rail stations and Transfer Centers

On-Time Performance Standard

Transit operations encounter many situations that prevent precise schedule adherence at each and every time point. It is necessary to establish measurement standards that acknowledge this reality. Those standards should not, however, become license to complacency in scheduling or delivering service to DART's customers. A measurement standard is established for reporting on-time performance.

Analysis of schedules and supervision of day-to-day service delivery should not rely exclusively on the measurement standard but should review route and trip performance to identify chronic variance from schedules, investigate causative factors and intervene appropriately. Any route or trip whose raw on time performance statistics (the actual time that vehicles encounter time points compared to scheduled time, excepting early arrivals at terminal points) when taken over a period of six weeks or more is more than ten percent below the system on-time performance target should be investigated and appropriate intervention initiated.

Separate standards have been identified for services that operate in mixed traffic (bus, streetcar) versus services that operate in dedicated rights-of-way (light rail, commuter rail). The time window that defines on time performance is tighter for services that operate in a dedicated corridor.

Specific reporting standards have been established for DART services:

- **Bus, Streetcar** - A vehicle is considered to be on time if it departs its scheduled time point no more than 59 seconds before and no more than four minutes and 59 seconds after the scheduled time.
- **Light Rail, Commuter Rail** - A train is considered to be on time if it departs its scheduled time point no more than 59 seconds before and no more than two minutes and 59 seconds after the scheduled time.

Measurements will normally occur at defined timepoints for each scheduled service.

Reporting of On-Time Performance

Reports developed from data collected by the AVL system will be used to report on time performance.

Special Considerations for Light Rail Operations

The complexity of the light rail system operation through the junctions of lines, particularly those entering/departing the Dallas CBD, requires that a very high level of attention be given to on-time performance. The precision required to achieve acceptable operation includes adherence to departure times with an accuracy of 30 seconds at times when the most frequent service is scheduled.

It is necessary for the Rail Operations Supervisors and Train Controllers to carefully monitor on-time performance to meet these very precise operating parameters. Departures for end of line points and departures from stations immediately preceding critical junction locations cannot be allowed to vary from scheduled time without negatively impacting the performance of the entire light rail system. Monitoring of schedule adherence must be performed at locations that permit corrective action to maintain service quality and reliability.

On-Time Performance Goal Setting

On-time performance will be reviewed annually as a part of the development of the Business Plan. The purpose of this review is to establish target percentages for on-time service for the upcoming fiscal year and to ensure that an acceptable level of on-time reliability is maintained. Setting different targets for different service types may be appropriate.

SECTION 8: RESOURCE MANAGEMENT

Public transit systems in North America have become public enterprises increasingly dependent on public funding at both the local and national level. This dependence, along with a growing demand for public transit service, has placed severe strains on available resources.

To avoid excessive fares and a loss of transit patronage, the practice of subsidizing fares is typical throughout the transit industry. DART is no exception to this norm. In fact, as it became responsible for public transit in the Dallas area, one of DART's first actions was to reduce the fares charged for bus service, further subsidizing the passenger's ride. To assure effective, rational resource management DART utilizes three indicators when measuring the performance of transit service.

UTILIZATION OF RESOURCES – Passengers Per Revenue Hour

Passengers per revenue hour is defined as the number of passengers boarding one bus during one hour in revenue service. This measure is DART's measure of the utilization of service delivery resources. Routes having higher passengers per revenue hour ratios are generally better utilizing resources such as equipment, fuel and personnel than those with lower ratios.

UTILIZATION OF CAPACITY – Passenger Miles per Revenue Mile

This is the ratio of the passenger-miles traveled on the route to the revenue vehicle-miles traveled on that route. It can be visualized as the average passenger load carried along the length of the route and can be easily related to the seating capacity of the bus serving that route (ranging from 17 for the ARBOC "Smart" bus fleet to 37 for most of the 40-foot fleet).

FISCAL RESPONSIBILITY – Subsidy per Passenger

Subsidy per passenger is DART's measure of fiscal responsibility. Subsidy per passenger is the public funding requirement to make up the difference between cost per passenger and revenue per passenger. This cost and revenue relationship for a route permits evaluation of the effects of differing ridership and fare levels on route performance. This measure effectively ties the impact of public support of transit directly to the use of the service. Unlike other performance measures, higher subsidy/passenger numbers indicate diminished performance, and lower numbers indicate improved performance.

SECTION 9: SERVICE PERFORMANCE EVALUATION POLICY

DART utilizes passengers per revenue hour, passenger miles per revenue mile, and subsidy per passenger statistics as key performance indicators. These measures, as defined in Section 8, provide the agency with very detailed information relating to utilization of service capacity, utilization of resources, and fiscal responsibility, and offer an effective, objective set of measures of resource management.

PERFORMANCE TARGETS

Following each quarter of the fiscal year, DART will evaluate whether each route has met the performance targets for its assigned route category. The routes will be compared within a category, rather than with the system's performance as a whole, in order to account for the unique characteristics of each route category. For example, Express routes are characterized by a large number of trips oriented to a single employment center, for example, with performance measures that vary significantly from other route types.

Methodology for Calculating Performance Targets and Evaluating Routes

For a given quarter, DART will compile, as appropriate for service type, every route's total ridership, total revenue hours, total revenue miles, total passenger miles, total operating cost, and total operating revenue. These quantities will then be summed within each route category. Then, the performance measures listed in Section 8 will be calculated for each route and for each route category as a whole.

The three route category performance targets will then be calculated as follows:

A. Utilization of Resources Target = 0.75 * (Total passengers divided by total revenue hours in that category)
B. Utilization of Capacity Target = 0.75 * (Total passenger miles divided by total revenue miles in that category)
C. Fiscal Responsibility Target = 1.33 * (The difference between total operating cost and total operating revenue in that category divided by total passengers)

For demand-response services with dedicated vehicles (e.g., GoLink), only target C will be used, since mixed-supply model used for these services means that riders per hour statistics are no longer relevant.

CORRECTIVE ACTION

Routes that fail to meet any of the performance targets in their route category will be targeted for action directed toward improving performance.

Specific actions to improve performance include:

- Targeted marketing;
- Service frequency changes;
- Service period and service day adjustments;
- Rerouting;
- Rescheduling;
- Eliminating nonproductive route segments;
- Consolidation of segments into other routes;
- Replacement with GoLink service; and
- Elimination of the route when none of the above actions are viable or prove successful.

Routes that meet one or more targets but fail to meet others will also be evaluated for improvement. In some instances, positive ridership growth trends will be sufficient to improve performance.

Resources from reduced or replaced services should be reinvested to improve service in other parts of the DART network. Staff shall develop a plan to reallocate resources from reduced or replaced services in accordance with ridership/coverage ratio policies as adopted by the Board of Directors.

ROUTE DEVELOPMENT STANDARDS

DART Performance Measures are applied to mature routes that have been functioning for a number of years. New or significantly modified routes require a development period during which to mature and achieve full ridership potential. This development period is typically 24 months.

If standards are not met after 18 months, service should be reviewed, and the corrective action should be taken on the route. A route should reach maturity after 24 months. At this time, if no improvement in performance is noted, the route should be considered for discontinuation. If at any stage, a route fails to reflect the expected level of development, corrective action should be considered. However, it is important that such factors as transit need and general trends in ridership be considered in conjunction with performance measures when route discontinuance appears necessary.

SERVICE PERFORMANCE REPORT

To ensure that individual routes are reviewed appropriately against targets, a Service Standards Monitoring Report is included in the Quarterly Operations and Financial Report to the DART Board of Directors. This report includes the relevant performance measures for each route or service and the performance targets for each route category. Service Planning staff review this report and develop plans to respond to those routes whose performance requires corrective action. Routes that fail to meet standards appropriate for their category for two or more consecutive quarters are targeted for action on a semiannual basis.

BASELINE SERVICE

DART's goals of sound resource management are not met in a social or political vacuum. Considerations of fiscal responsibility and resource optimization, primarily efficiency-related criteria, must not conflict with DART's responsibility as a regional taxing authority with an obligation to provide an adequate level of service to all contributing entities. DART has an obligation to consider the needs of the poor, the transit dependent, the elderly, and the disabled. Service changes should not affect these groups disproportionately and should not decrease their mobility.

DART's commitment to service equity is the concept of Baseline service. Routes are considered for Baseline classification only when the performance of the route is poor relative to the routes of its service classification, and provided the route serves one or more locations of "critical need" to the transit dependent population. As part of the process, routes designated as Baseline are allowed an additional 12 months maturity time as protection from corrective actions up to and including discontinuation.

A route is classified as Baseline only under the following conditions:

- The route has had an initial maturity time of at least 24 months;
- The route has failed to meet any of its performance targets for two or more consecutive quarters; and,
- The route is the only route providing service within ¼ mile of a location with a critical need for the transit dependent population.

Because the purpose of Baseline classification is to provide the route, and its passengers, with a "grace period" of 12 months to improve to satisfactory performance, after the 12-month period is completed, the route will be subject to same corrective action as other routes. During the 12-month period, Service Planning and Scheduling staff will work to develop alternative service

options for the passengers, in the event that the route does not improve. Routes are not eligible for Baseline classification in consecutive years.

Baseline Definition and Categories

A Baseline route is one providing the only service within one-quarter mile of a location with a critical need for the transit dependent population. If more than one route serves a location, then neither route would be considered Baseline since one route could be eliminated and the location would still retain service. If two routes serve a location of critical need and one of the routes is eliminated, the remaining route would be designated Baseline because it would be the sole route providing service to that location. Baseline locations fall into the following four broad categories:

- Subsidized Housing
- Social Services
- Medical Facilities
- Low Income Areas

These categories focus on the nature of the human services provided and the economic situation of the citizens likely to require these services. The basic services available to these residents would not be accessible without the existence of bus service. Listed below is a description of each category.

Subsidized Housing Locations

This category consists of multi-family public housing complexes either operated by the Dallas Housing Authority (DHA) or subsidized by the federal Housing and Urban Development (HUD) department under Section 8 and/or Section 236 programs. Single-family residences are not included since the focus of Baseline services are on concentrations of demand. A requirement of 50 or more boardings per day is established for HUD locations at the bus stop nearest the location; however, all DHA operated low-income multi-family housing units are eligible regardless of unit quantity.

Social Service Locations

This category consists of social service locations that are publicly funded and operated, including but not limited to schools, colleges and universities, multi-service centers, public welfare offices. Some privately operated social service locations serve a transit dependent population and are of

importance to many low-income residents; no clear approach is, however, available to differentiate among those agencies that serve transit dependents and those that do not.

Medical Facilities

This category consists simply of public hospitals or satellite health clinics (i.e., Parkland Memorial Hospital (PMH), Veterans Administration Medical Center (VA), etc.), and does not include private hospitals or clinics regardless of their "for-profit" or "not-for-profit" classification. For consideration in this category, a hospital must have at least 50 beds in addition to being publicly operated.

Low Income Areas

This category identifies concentrations of primarily low-income riders. "Low-income," for this purpose, is defined where the population within a census block group has an average income that fall below 150% of the federal poverty level average for the DART Service Area. This percentage (150%) was established to expand the economic reach of this category to encompass significant groups of low-income riders.

Baseline Designation

Baseline designation is a function of the regular monitoring process of all routes. As routes are evaluated, all routes failing to meet any of their performance targets for two consecutive quarters are subject to a Baseline screening process. Once a route fails to meet any of its performance targets for two consecutive quarters, screening is done to determine whether or not the definition of Baseline applies. If the definition does not apply, the route is subject to the same corrective actions as all other routes. If the Baseline definition does apply, the route is designated Baseline.

Upon designation as Baseline, the route will be carefully analyzed to determine whether very infrequent fixed-route service or GoLink services would be most appropriate. If GoLink service is the most appropriate service as a replacement, the route would be replaced by GoLink service. If GoLink is not a suitable replacement, service levels of the route will be modified to meet Baseline specifications. If this modification will result in an increase in service for the route, no change will be made to the service levels of the route. The minimum service levels for routes designated as Baseline are as follows:

Table 9.2 - Minimum Service Levels for Baseline Routes

BASELINE SERVICE	WEEKDAY HEADWAYS				SATURDAY HEADWAYS				SUNDAY HEADWAYS			
	AM/ PM Peak	Midday 9a - 3p	Evening 6p - 9p	Night 9p - 1a	Morning < 9a	Midday 9a - 6p	Evening 6p - 9p	Night 9p - 1a	Morning < 9a	Midday 9a - 6p	Evening 6p - 9p	Night 9p - 1a
All Service Types	60	60	60	60	60	60	60	60	60	60	60	60

Baseline service is scheduled on an "as-needed" basis, but with a maximum headway of 60 minutes, assuming service was available before the Baseline designation. Weekend service levels are applicable only for those routes that had weekend service before Baseline designation. Under no circumstance should a route's Baseline designation add service.

GoLink service may be a more suitable replacement where the route alignment covers a sufficiently large area to meet the minimum requirements for GoLink service (e.g., area of approximately six square miles. Other situations will be more suitable to continue as a limited fixed-route operation.

Once designated Baseline, a route will have an additional 12 months for achieving one or more of its performance targets. During this 12-month period, Service Planning and Scheduling staff will continue to monitor the performance of the route; however, staff will also use this time to pursue alternative services for passengers in the event that it has not improved according to adopted standards.

At the end of the twelve-month period the designation of Baseline will be removed regardless of the route's performance, thus making the concept of Baseline a one-year process.

SECTION 10: ON-STREET PASSENGER SUPPORT FACILITIES

The following general guidelines are intended to facilitate the proper placement of DART bus stops and set the standards for bench and shelter placement. Because the topic of bus stops involves a detailed discussion of sign design, placement, and safety, it is DART practice to pattern its bus stop practice after the well-established and proven Transit Cooperative Research Program, Report 19, Guidelines for the Location and Design of Bus Stops prepared by the Texas Transportation Institute. This document may be accessed on-line at (http://onlinepubs.trb.org/Onlinepubs/tcrp/tcrp_rpt_19-a.pdf) It is recommended that all DART staff with bus stop responsibilities become familiar with TCRP Report 19.

The following summary may be especially useful when a bus stop location decision must be made by staff in the field and there is insufficient time to review TCRP Report 19. In general, stops

should be located in the vicinity of demonstrated or potential ridership generators where the stop can be sited safely. Safety issues take precedence over issues of convenience.

BUS STOP PLACEMENT

Signalized Intersections

Current practice at intersections with traffic signals is to locate bus stops nearside. This allows the bus to use the red light stop time for passenger boarding and alighting and to avoid making a second stop after the intersection. One exception to this practice is where exclusive right turn lanes prevent the location of a nearside stop close to the intersection. In such a case the preference is for either a far-side stop after the intersection, a mid-block stop, or a near side stop prior to the right turn lane. Generally, the far-side stop is more convenient for transfer passengers where applicable.

Unsignalized Intersections

At unsignalized intersections, far-side stops are preferred for safety reasons. Far-side stops should be located no closer than approximately 80 feet to the intersection to allow for adequate space to prevent automobiles from backing into the intersection.

If far-side stops are not possible, bus stops should be located mid-block or nearside. In placing these signs, special care should be taken to locate the stops far enough back from the cross street to preserve cross and parallel traffic sight distances and allow traffic traveling parallel to the bus route an unobstructed view of the intersection and traffic control signs, if present.

Left-Turning Buses

Left turns – especially at unprotected intersections -- should be minimized in the route design process to the extent possible.

At locations where buses turn left at an intersection, bus stops are generally located either (1) mid-block or sufficiently near-side (*a distance of 100 feet per lane that must be crossed to make the left turn is recommended*) to allow the bus to access the left turn lane, or (2) sufficiently farside after the turn to allow the bus to pull straight along the curb after the turn. The choice is usually dependent on opportunity to consolidate stops for multiple routes, thereby assisting transfer passengers and minimizing costs.

Right-Turning Buses

At locations where buses turn right at an intersection, a stop can be located either nearside or far side depending on the opportunities for other routes to share the stop, enhancing transfer convenience. As noted above, nearside stops are preferred at signalized intersections. Where possible, nearside stops should be located at distances no closer than 20 feet from the intersection to allow for "squared off" bus burns. Far-side stop locations should provide enough distance for the bus to pull straight to the curb following the turn.

Passenger Boarding and Alighting

It is DART's recommended practice to place bus stops along raised curb areas with sidewalks when possible and provided other criteria are met. This provides passengers with safe and convenient boarding and alighting. Stop placement should avoid vehicle doors opening in close proximity to catchment basins, newspaper stands, and other such pedestrian hazards.

"Good Neighbor" Practice

It is DART's recommended practice to place bus stops in locations that minimize conflict with adjacent residences and businesses. Whenever possible, and within the above criteria, stops should be located in unused areas along property lines, as opposed to near building doors and windows. These stops should also avoid blocking private signs. A location which places a barrier such as a fence between the stop and adjacent buildings, especially residences, is preferred, assuming passenger access is reasonable. In addition, stop locations should avoid interference with driveways.

Temporary Stops

In locations where bus stops are likely to remain for less than six months, consideration may be given to the placement of temporary stops. When considering a location for a temporary stop, all criteria for permanent stops should be considered. The decision to place a temporary stop should consider the likelihood that a temporary sign may be vandalized, removed, or relocated improperly during the temporary period.

PLACEMENT OF AMENITIES

Amenities as described in this section are bus shelters, benches, smart shelters and free standing solar lights. The placement of amenities at bus stops helps to provide passenger convenience and increases system ridership.

All bus stops within the DART service can be considered for an amenity. DART staff will evaluate amenity candidate locations. Staff will use the below general criteria and point system to determine if an amenity can be installed at a DART bus stop.

Amenities Point System

An Amenities Point System will be used to determine an existing bus stop is a candidate for an amenity. A bus stop must have 50 points to be considered for a bus shelter, 25 points to be considered for a bench, 12 points to be considered for a free-standing light and 90 points to be considered for a smart shelter.

In addition to the point system, there are minimum guidelines for placement of amenities for certain types of services. Shelters should be placed at least one per mile for frequent service routes. Benches should be placed at least one per mile for local coverage routes. Finally, Smart Shelters should be placed at all Rapid Ride stops.

The following table describes the details.

Table 10.1: Point System for Bus Stop Amenities

Category	Points
Bus Shelter	**50 Points Required**
Average Daily Boardings	1 point per average daily boarding
*Sensitive Use Area	10 points
Low income population (150% of poverty level)	10 points
Frequent Services	Placed 1 per mile minimum
Transfer Locations	40 points
Bench	**25 Points Required**
Average Daily Boardings	1 point per average daily boarding

*Sensitive Use Area	5 points
Low Income Population (150% of poverty level)	5 points
Low Midday Frequencies (Local coverage routes)	Placed 1 per mile minimum
Free Standing Lights	**12 Points Required**
Average Daily Boardings	1 point per average daily boarding
High Crime Area (Assault and Individual Robbery)	2.5 points
Stop serves routes with 30 or more minute headway at night	2.5 points
Smart Shelter	**90 Points Required**
Average Daily Boardings	1 point per average daily boarding
Rapid Ride Routes	Automatically placed at all Rapid Ride stops

*Sensitive use areas defined in this document are as follows:

- Hospitals
- Schools
- Senior Citizen Activity Centers
- Rehabilitation Centers
- Social Service Agencies
- Medical Facilities

ADDITIONAL CONSIDERATIONS FOR PLACEMENT OF AMENITIES

Where a bus stop location meets minimum point standards, staff will conduct a detailed evaluation and review for potential placement of amenities at the location. Some of the key considerations that are reviewed include:

- The amenity must be able to be safely located without obstructing American Disability Act (ADA) access;
- There must be sufficient public right-of-way to install the amenity. If a portion of the amenity is in private right-of-way, a right of entry from the property owner will be required;
- The bus bench must not be located where an existing shelter or bench is located, unless additional seating capacity is required;

- Shelter locations and drawings must receive the approval of the participating municipality and the other governing authorities as required;
- Existing locations with vandalized, defective, or destroyed amenity will receive priority for a new amenity, unless the site is determined to be a "location of habitual vandalism or damage;
- Potential placement of bike or scooter facilities as needed; and
- Free standing solar lights will be installed at shelters that do not have solar lights.

Public or Private Partnerships

DART has devised a private shelter policy for private or public entities that desires a shelter or bench at a location that does meet point amenity point requirements. This policy allows the public or private entity to participate financially in the placement of the desired shelter or bench. It requires the public or private entity to build the amenity pad (per DART specifications) and DART provide the amenity.

DART will also provide standards and guidance for businesses, government entities, and neighborhoods who wish to install their own shelters or bus stop amenities in some situations.

Relocation and Removal of Stops, Benches, and Shelters

As a part of DART's good neighbor policy, DART staff endeavors to be responsive to requests for bus stop adjustments where passenger safety, comfort and convenience are not compromised. When a request is made to remove or relocate a bus stop, cooperation with requesting residents or owners of residences or businesses that are adjacent to bus stops is appropriate when ridership levels and the availability of a reasonable alternative location affords reasonable accommodation of DART riders.

Where stops are located at intervals of 750 feet or less, requests to remove or relocate stops may be accomplished through consolidation of adjacent stops at an appropriate location. Consolidation of stops may have the positive result of improving travel time and resolving adjacency issues.

It is DART policy to not remove or relocate bus stops, bus benches or bus shelters when such action would negatively impact passenger convenience, safety or comfort. DART policy prohibits bus stop removal or relocation where such requests have the appearance of being motivated by bias on the basis of the ethnicity, income level or social status of passengers using the bus stop location.

RAIL STATION PASSENGER SUPPORT FACILITIES

DART standards for most rail station amenities are identified in the DART Light Rail Project Design Criteria Manual, Volume I. In general, rail stations are provided, as a minimum, with the following amenities:

- Canopies
- Windscreens
- Seating
- Lighting
- Trash Cans
- Telephones
- Ticket Vending Machines
- Schedule Information Displays
- Bus Shelters
- Bus Benches
- Kiosks
- Digital Guide-A-Rides

At stations projected to have significant levels of passengers who access the station by automobile, parking is provided.

Standard DART bus shelter shall be installed at every rail station bus bay. If there is sufficient right-of-way, a shelter shall be installed at rail station bus pull out bays.

Standard DART benches are to be installed if seating demand exceeds bus shelter capacity. Benches should not be located in areas that disrupt passenger flow or ADA access. The total amount of seating area may be adjusted based upon demand.

Agenda Report

Board Meeting ☒

Voting Requirements:
Majority

DATE: **May 28, 2024**

SUBJECT: **Approval of DART Strategic Plan Goals and Objectives and Updated Vision Statement and Mission Statement**

RECOMMENDATION

Approval of the DART Strategic Plan Goals and Objectives, as shown in Exhibit 1 to the resolution, and updated Vision Statement and Mission Statement.

COMMITTEE CONSIDERATIONS

. On March 19, 2024, the Committee-of-the-Whole moved this item by majority vote to the March 26, 2024 Board of Directors meeting. This date was subsequently changed to the May 28, 2024 Board of Directors meeting.

FINANCIAL CONSIDERATIONS

- Approval of this resolution has no impact on the FY 2024 Budget or 20-Year Financial Plan.
- Future 20-Year Financial Plans will include expenses and revenue associated with implementation of the Strategic Plan, subject to review and approval by the DART Board.

BUSINESS PURPOSE

- Staff will seek approval of the DART Strategic Plan Goals and Objectives in order to format and publish the plan. Approval of an updated Vision Statement and Mission Statement aligned with the new strategic vision and goals will also be sought.
- This action will help achieve Board Strategic Priority 5: Enhance DART's role as a recognized local, regional and national transportation leader.
- On February 23, 1988 (Resolution No. 880024), the DART Board adopted the agency's Mission Statement, and amended it on January 22, 1991 (Resolution No. 910016), September 28, 1999 (Resolution No. 990194), and February 11, 2020 (Resolution No. 200020).
- On November 28, 2006 (Resolution No. 060196), the DART Board adopted the agency's Vision Statement and amended it on February 11, 2020 (Resolution No. 200019).
- In prior years, the DART Board adopted Strategic Priorities to guide agency efforts. This was done in 2015 (Resolution No. 150046) and in 2020 (Resolution No. 200023).

- On June 17, 2022, the DART Board conducted a workshop to launch discussions of a new Strategic Plan visioning process. Reputational goals with customers, employees and stakeholders were developed to set a foundation for future strategic planning efforts.

- On September 27, 2022 (Resolution No. 220133), the DART Board adopted the President & Chief Executive Officer's FY 2023 Goals which included a goal to conduct a comprehensive and inclusive strategic planning process and publish a new strategic plan reflecting updates to DART's mission, vision, goals, and objectives that will guide the agency's policy and investment priorities over the next 10 years, and that this be completed by March 31, 2024.

- In November 2022, DART initiated the strategic planning process via a series of interviews with a cross-section of stakeholders representing DART cities, DART Board members, DART staff, partner agencies and organizations, rider groups, and industry leaders. This included a review of recent employee and customer engagement survey results. Information from these interviews was used to establish where we are, referred to as Point A.

- The strategic planning process was a topic at several Board workshops during 2023, including: February 17, 2023 to discuss Point A insights and key themes of the strategic vision, referred to as Point B; June 16, 2023 to review the strategic vision and discuss the six strategic goals; and November 17, 2023 to review the process and distribute the initial draft of the Strategic Plan.

- DART has also conducted senior management team (SMT) workshops and meetings to review the strategic vision and goals and support plan development. SMT workshops were held in May/June 2023, September 2023, and February/March 2024.

- A series of department leadership meetings were held in June 2023 and September 2023 to inform the development of objectives and initiatives for each strategic goal, along with responsible departments and estimated timelines.

- In September 2022 information on the vision and goals was sent to all employees. On September 22, 2023, an all-staff meeting was held to discuss the strategic vision and goals, and a follow up survey was conducted to assess understanding of the information.

- One-on-one Board member meetings were conducted in January and February 2024 to obtain input on the initial draft content of the Strategic Plan provided at their November 2023 workshop. A summary of feedback and an updated final draft of the Strategic Plan was provided during a February 27, 2024 mini-workshop.

- Staff reviewed questions and comments from the February 27 mini-workshop at the March 8, 2024 Board workshop, including proposed edits to the Seamless Mobility section. While there was broad support for the plan, some Board members suggested additional language regarding financial considerations.

- At the March 19, 2024, Committee-of-the-Whole (COTW) meeting, staff presented additional revised language to address Board member comments. The DART COTW moved the item by majority vote to the DART Board for future consideration.

LEGAL CONSIDERATIONS

Section 452.056(a) of the Texas Transportation Code authorizes DART to construct, develop, plan and operate a public transportation system within the service area.

Section 452.054 of the Texas Transportation Code authorizes DART to exercise all powers necessary or useful in the construction, repair, maintenance, or operation of the public transportation system.

DRAFT

RESOLUTION

of the

DALLAS AREA RAPID TRANSIT BOARD

(Executive Committee)

Approval of DART Strategic Plan Goals and Objectives and Updated Vision Statement and Mission Statement

WHEREAS, on June 17, 2022, the DART Board conducted a workshop to launch discussions of a new Strategic Plan visioning process and established reputational goals with customers, employees, and stakeholders to set a foundation for future strategic planning efforts; and

WHEREAS, on September 27, 2022 (Resolution No. 220133), the DART Board adopted the President & Chief Executive Officer's FY 2023 Goals which included a goal to conduct a comprehensive and inclusive strategic planning process and publish a new strategic plan reflecting updates to DART's mission, vision, goals, and objectives that will guide the agency's policy and investment priorities over the next 10 years, and that this be completed by March 31, 2024; and

WHEREAS, in November 2022, DART initiated the strategic planning process via a series of interviews with a cross-section of stakeholders representing DART cities, DART Board members, DART staff, partner agencies and organizations, rider groups, and industry leaders. This included a review of recent employee and customer engagement survey results. This information was used to establish where we are, referred to as Point A; and

WHEREAS, the strategic planning process was a topic at DART Board workshops during 2023, including: February 17, 2023 to discuss Point A insights and key themes of the strategic vision, referred to as Point B; June 16, 2023, to review the strategic vision and discuss the six strategic goals; November 17, 2023, to review the process and distribute the initial review draft of the Strategic Plan; and February 27, 2024, to review feedback on the initial draft and present a revised final draft; and

WHEREAS, DART has also conducted senior management team workshops and meetings to review the strategic vision and goals and support development of objectives and initiatives for each strategic goal, along with responsible departments and estimated timelines; and

WHEREAS, the DART Board has reviewed and desires to update the agency’s Strategic Plan Goals and Objectives; and

WHEREAS, on February 23, 1988 (Resolution No. 880024), the DART Board adopted the agency’s Mission Statement, and amended it on January 22, 1991 (Resolution No. 910016), September 28, 1999 (Resolution No. 990194), and February 11, 2020 (Resolution No. 200020); and

WHEREAS, the DART Board has reviewed and desires to update the Mission Statement; and

WHEREAS, on November 28, 2006 (Resolution No. 060196), the DART Board adopted the agency’s Vision Statement and amended it on February 11, 2020 (Resolution No. 200019); and

WHEREAS, the DART Board has reviewed and desires to update the Vision Statement.

NOW, THEREFORE, BE IT RESOLVED by the Dallas Area Rapid Transit Board of Directors that:

Section 1: The Strategic Plan Goals and Objectives as shown in Exhibit 1 are hereby approved.

Section 2: The DART Vision Statement is updated as: Your first-in-mind mobility partner.

Section 3: The DART Mission Statement is updated as: We create best-in-class mobility experiences that help people and communities connect and flourish.

Section 4: The President & Chief Executive Officer or her designee is authorized to format and publish the Strategic Plan to reflect the updated Vision Statement, Mission Statement, Goals, and Objectives.

Section 5: Future Budgets and 20-Year Financial Plans will be aligned with the Strategic Plan and will include expenses and revenue associated with implementation of the Strategic Plan, subject to review and approval by the DART Board of Directors.

Approval of DART Strategic Plan Goals and Objectives and Updated Vision Statement and Mission Statement

Prepared by:

/s/ Kay Shelton

Kay Shelton
Chief of Staff

Approved as to form:

/s/ Gene Gamez

Gene Gamez
General Counsel

Approved by:

/s/ Nadine S. Lee

Nadine S. Lee
President & Chief Executive Officer

Exhibit 1

Strategic Plan Goals and Objectives

1. **EMPOWERED AGENCY:** Build a nimble organization that can act quickly and effectively by streamlining processes and empowering employees.
   - 1A Streamline the most critical processes first.
   - 1B Create new or improved processes to expedite decisions and responsiveness.

2. **CULTURE OF CONTRIBUTION:** Create a culture that aligns roles and responsibilities with the DART vision, deepens organizational trust, and encourages growth.
   - 2A Build trust across the agency.
   - 2B Foster greater collaboration among departments
   - 2C Create an environment where employees can be successful.
   - 2D Cultivate opportunities for employee growth and discovery.

3. **QUALITY SERVICE:** Deliver a quality customer experience defined by strong rider advocacy and built on professional pride and continuous improvement.
   - 3A Ensure customers feel secure on DART at all times.
   - 3B Create a culture of customer service and employee pride around the DART brand.
   - 3C Ensure operational reliability, safety, and quality through state of good repair and modernization.
   - 3D Enhance customer engagement to develop partners for life.

4. **SEAMLESS MOBILITY:** Integrate mobility options to create a seamless travel experience defined by frequency and reliability that positions DART as first in mind.
   - 4A Use the 10x10 frame of reference for service planning with consideration of a balanced approach and route performance measures.
   - 4B Collaborate with partners to create coordinated, seamless, end-to-end trip experiences.
   - 4C Enhance customer information and wayfinding.

5. **FANTASTIC SPACES:** Create fantastic spaces that add value to our communities, enhance the rider experience, and foster a sustainable and thriving region.
   - 5A Maximize the value and use of DART property assets.
   - 5B Create appealing and engaging spaces for riders and communities to enjoy.

6. **STRATEGIC RELATIONSHIPS:** Position DART as a collaborative leader and recognized regional economic and mobility asset.
   - 6A Build trusting relationships with partners that can help DART accelerate progress toward Point B.
   - 6B Consider long-term changes to improve outcomes.