

GRADE SEPARATED ROAD CROSSING LICENSE AGREEMENT

THIS License Agreement (“License”) is made by and between DALLAS AREA RAPID TRANSIT (“Licensor”), a regional transportation authority created, organized, and existing pursuant to Chapter 452, Texas Transportation Code (the “Act”), with offices at 1401 Pacific Avenue, Dallas, Texas 75202, and CITY OF DENTON (“Licensee”), a Texas Municipality, with offices at 401 North Elm Street, Denton, Texas 76201. Licensor and Licensee are individually referred to herein as a “Party” or collectively as “Parties.”

WHEREAS, Licensor owns certain railroad right-of-way within the city limits of the Licensee; and

WHEREAS, pursuant to that certain *Transportation and Access Agreement and Easement* dated and effective May 25, 2010, between Licensor and Denton County Transportation Authority (“DCTA”) (“the DCTA Agreement”), DCTA has been granted a rail operating easement for the purpose of constructing, installing, and maintaining a passenger rail system on and over Licensor’s railroad corridor (“the Corridor”) between Carrollton and Denton, Texas; and

WHEREAS, DCTA contracts with Rio Grande Pacific Corporation (“Rio Grande”) to provide the DCTA passenger service and railroad maintenance. Unless specified otherwise here within, the term “Railroad” shall collectively refer to DCTA and Rio Grande.

WHEREAS, Licensee intends to extend Mayhill Road north of Colorado Boulevard over and across the Corridor (road over rail) including an overpass with associated drainage, piers, footings, crash walls, beams, decking, roadway, lighting, signs and other related structures (all such improvements being collectively (“Public Road Crossing”) in accordance with Licensor’s and Railroad standards;

NOW THEREFORE, in consideration of the mutual agreements and covenants contained in this License, the receipt and sufficiency of which is hereby acknowledged by Licensor and Licensee, it is agreed as follows:

1. **Purpose.** Licensor hereby grants the License to Licensee for the purposes of constructing, reconstructing, installing, and maintaining a Public Road Crossing overpass with associated drainage, piers, footings, crash walls, beams, decking, roadway, lighting, signs and other related structures over, across, and within Licensee’s right-of-way (the “Permitted Improvement”) crossing the Corridor at Mile Post 725.07 of the Denton Line (**Latitude: 33.181126, Longitude: -97.088184**) in Denton, Denton County, Texas, more particularly described as shown in the plans marked Exhibit “A” dated December 3, 2021, attached hereto and incorporated herein for all pertinent purposes (the “Property”).

The Property shall be used by Licensee solely for the purpose of operating and maintaining the Permitted Improvement (the “Permitted Use”). Licensee’s right to enter upon and use the Property shall be limited solely to the Permitted Use and improved with the Permitted Improvement and only upon the terms provided herein. Licensee acknowledges and agrees that (i) the rights granted to Licensee pursuant to this License are solely contractual in nature and (ii) this License is not intended to convey and does not convey to Licensee any interest in real property, the Property, or any portion of the Corridor. This License may not be recorded.

2. **Term.** The term of this License shall begin on the date last signed by a Party (“Effective Date”) and continue thereafter until terminated by either Party as provided herein (“the Term”).

3. **Consideration.** The consideration for the granting of this License shall be:

3.01. The faithful performance by Licensee of all the covenants and agreements contained in this

License to be performed by Licensee, and

3.02. The payment of the sum of **TEN AND NO/100 (\$10.00) DOLLARS** cash in hand paid by Licensee to Licensors, and

3.03. The payment for the entire cost of constructing and maintaining the Public Road Crossing, and any facilities caused to be required thereof, and

3.04. The reimbursement by Licensee to the Licensors and Railroad for all actual labor and any materials necessary for the construction of the crossing on the Property incurred at the direction of Licensee or as otherwise allowed under this License, due within thirty (30) days upon presentation of an invoice therefor by Licensors or Railroad, and

3.05. The future costs of maintenance and reconstruction of the Permitted Improvement within the limits of the Property at the sole cost of Licensee.

4. Non-Exclusive License. This License is non-exclusive and is subject to (a) any existing utility, drainage, communication, or other facility or improvement located in, on, under, or upon the Property; (b) all vested rights presently owned by Railroad, utility, communication company, or any other entity located within the boundaries of the Property; (c) the DCTA Agreement; and (d) any existing lease, license, or other interest in the Property granted by Licensors to any individual, corporation, or other entity, public or private. The Property is provided only for the permitted purposes herein and is accepted by Licensee for those purposes in "as is" condition without warranty of any kind and subject to all defects, if any, whether known or otherwise.

5. Safeguard of Property. Licensee shall take diligent and sufficient measures to insure and safeguard the Property. It is understood and agreed that Licensors shall have no liability whatsoever for the safety or security of Licensee or Licensee's employees, officers, agents, contractors, invitees, assigns, or those holding under Licensee, nor for any personal property belonging to those individuals or entities. Notwithstanding any other provisions herein, Licensee expressly waives any claims, if any, against Licensors with respect to third party property or liability claims and claims regarding Licensee's property or the property of any Licensee's agents, employees, contractors or invitees.

6. Design, Construction, Operation and Maintenance. Licensors' use of the Property and adjoining property may include the use of electrically-powered equipment. Notwithstanding Licensors' inclusion within its system of measures designed to reduce stray current which may cause corrosion, **Licensee is hereby warned that such measures may not prevent live electrical current in proximity to the Permitted Improvement and that such presence could produce corrosive effects to the Permitted Improvement.** Cathodic protection and stray current corrosion control measures shall be made a part of the design and construction of the Permitted Improvement.

6.01. All design, construction, reconstruction, replacement, removal, operation, and maintenance of the Permitted Improvement on the Property shall be done in such a manner so as not to interfere in any way with the operations of Licensors or other Railroad operations.

6.02. During the design phase and prior to commencing any construction on the Property, a copy of the construction plans ("the Plans") showing the exact location, type, depth of the construction, any cathodic protection measures, and any working area shall be submitted for written approval to Licensors and Railroad. No work shall commence until the Plans have been approved in writing by Licensors and Railroad.

6.03. Licensee agrees to design, construct, and maintain the Permitted Improvement in such a manner so as not to create a hazard on or near the Property. Licensee agrees to pay for any damages which may arise by reason of Licensee's use of the Property.

6.04. Licensee agrees to institute and maintain a continuous testing program to determine whether

additional cathodic protection of its Permitted Improvement is necessary and if it is or should become necessary, such protection shall be immediately instituted by Licensee at its sole cost and expense.

6.05. Licensee shall provide to Licensors certified final construction drawings (“as-builts”) that are signed and sealed by a Texas Professional Engineer within sixty (60) days after the City issues a Letter of Acceptance of the Permitted Improvement, but in no event later than six (6) months following the last date of construction work on the Property by Licensee or Licensee’s contractor. Licensors and Licensee agree that Licensors will suffer damages in an amount currently not determinable by the Parties if “as-builts” are not timely provided by Licensee and it is impossible to determine in advance the amount of damages in these circumstances. Accordingly, the Parties agree, not as a penalty but as a measure of reasonable damages, that a fee of \$500 per month (prorated as applicable) until “as-builts” are provided represents reasonable compensation for Licensors’ actual damages suffered in lieu of timely receiving certified “as-builts” from Licensee as required herein.

6.06. Licensee or its contractor shall promptly remove all graffiti, trash (*e.g.*, debris, filth, carrion, junk, or garbage), encampments, obstructing trees, and other obstructing vegetation within the Corridor located on the Property and within a distance of 100 feet of either side of the Permitted Improvement. For the purposes of this section, “graffiti” means any visual blight or any unauthorized form of painting, scratching, writing, or inscription, regardless of the content or nature of the material, that has been applied to any structure or surface and is visible from any portion of the Corridor.

6.07. Licensee shall be responsible for design, maintenance, construction and repair of any additional drainage in the area of Licensee’s project so as to sufficiently avoid any new or additional flow on to Licensors’ property. To the extent permitted by Texas law, Licensee shall be responsible for all damage caused by new flow or insufficient drainage in the area directly caused by Licensee’s work on the Property or Licensee’s Permitted Improvement.

7. License Without Warranty. Licensors and Railroad make no representations as to the suitability of the Property for any particular purpose. The Property is available for Licensee’s use on a “as is, where is, and with all faults” basis. Licensors make no warranties whatsoever, including by example and not limitation, regarding subsurface or aerial installations on or near the Property. Licensee shall conduct its own inspection of same and will not rely on the absence or presence of markers or any information (if any) provided by Licensors.

8. Governmental Approvals. Licensee, at its sole cost and expense, shall be responsible for and shall obtain any and all licenses, permits, or other approvals from any and all federal, state, or local agencies required to carry on any activity permitted herein.

9. Licensors’ Standard Contract and Insurance. No work on the Property shall be commenced by Licensee or any contractor for Licensee (“Contractor”) until Licensee or Contractor shall have executed Licensors’ Construction Agreement and Contractor’s Right of Entry covering such work and furnished then current insurance coverage in such amounts and types as shall be satisfactory to Licensors. A company-issued photo identification of Licensee’s employees, contractors, or agents shall be required to work on the Property.

10. Duty of Care in Construction. Licensee and the Contractor shall use diligent care during the Term to avoid damaging any existing buildings, equipment, and/or vegetation on or about the Property and any adjacent property. If Licensee or its Contractor causes damage to the Property or to any adjacent property, Licensee shall or shall cause the Contractor to promptly replace or repair the damage at no cost or expense to Licensors or Railroad. If the damage presents a health or safety risk and Licensee or Contractor fails or refuses to promptly make or effect any such repair or replacement after notice from Licensors, then Licensors and/or Railroad shall have the right, but not the obligation, to make or effect any such repair or replacement at the sole cost and expense of Licensee, which cost and expense Licensee agrees to pay to Licensors and/or Railroad, as applicable, upon written demand.

11. **Environmental Protection.**

11.01. Licensee shall not use or permit the use of the Property for any purpose that may be in violation of any local, state, or federal laws pertaining to health or the environment, including but not limited to, the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), the Resource Conservation and Recovery Act ("RCRA"), the Clean Water Act ("CWA"), and the Clean Air Act ("CAA").

11.02. Licensee warrants that the Permitted Use of the Property will not result in the disposal or other release of any hazardous substance or solid waste on or to the Property, and that it will take all steps necessary to ensure that no such hazardous substance or solid waste will ever be discharged onto the Property by Licensee or its Contractor.

11.03. The terms "hazardous substance" and "release" shall have the meanings specified in CERCLA and the terms "solid waste" and "disposal" (or "disposed") shall have the meanings specified in the RCRA; PROVIDED, HOWEVER, that in the event either CERCLA or RCRA is amended so as to broaden the meaning of any term defined thereby, such broader meaning shall apply subsequent to the effective date of such amendment; and PROVIDED FURTHER, that to the extent that the laws of the State of Texas establish a meaning for "hazardous substance," "release," "solid waste," or "disposal," which is broader than that specified in either CERCLA or RCRA, such broader meaning shall apply.

11.04. To the extent permitted by law, **Licensee shall indemnify, defend, and hold Licensors and Railroad harmless against all cost of environmental clean up to the Property required by or resulting from Licensee's use of the Property under this License.**

12. **Mechanic's Liens Not Permitted.** Licensee shall fully pay for all labor and materials used in, on, or about the Property and will not permit or suffer any mechanic's or materialmen's liens of any nature to be affixed against the Property by reason of any work done or materials furnished to the Property at Licensee's instance or request.

13. **Maintenance of Completed Improvements.** The Permitted Improvement shall be maintained by Licensee in such a manner as to keep the Property in a good and safe condition. In the event the Licensee fails to maintain the Property as required, upon discovery, Licensors and/or Railroad shall notify Licensee of such occurrence in writing. In the event Licensee shall not have remedied the failure within fifteen (15) days from the date of such notice, Licensors and Railroad, individually or collectively, shall have the right, but not the obligation to remedy such failure at the sole cost and expense of Licensee. In the event Licensors and/or Railroad exercises its right to remedy Licensee's failure, Licensee agrees to promptly pay to Licensors and/or Railroad, as applicable, all costs incurred by Licensors and/or Railroad upon demand.

14. **Future Use by Licensors.**

14.01. This License is granted expressly subject and subordinate to the right of Licensors to use the Property for any purpose whatsoever and the right of DCTA to use the Property pursuant to the DCTA Agreement.

14.02. In the event that Licensors and/or Railroad shall, at any time subsequent to the date of this License, at their respective sole discretion, determine that the relocation of the Permitted Improvement shall be necessary or convenient for Licensors' or Railroad's use of the Property, Licensee shall, at its sole cost and expense, relocate the Permitted Improvement so as not to interfere with use of the Property by Licensors, Railroad, or their respective assigns. In this regard, Licensors and Railroad, either individually or collectively, may, but are not obligated to, designate other property for the relocation of the Permitted Improvement. Licensors and DCTA, whichever is applicable shall give a minimum of one hundred eighty (180) days' written notice of any required relocation of the Permitted Improvement pursuant to this Section 14.02 (the "Relocation Notice"). Licensee shall promptly commence to make the required changes thereafter and shall diligently complete the relocation as required within a reasonable period, but in any case not later than ninety (90) days after delivery of the Relocation Notice to Licensee unless otherwise

agreed in writing by Licensor. Nothing herein shall limit Licensor or Railroad from requiring relocation of the Permitted Improvement more than once during the Term of this License.

15. Relocation Benefits. The Parties hereto agree that the construction of the Permitted Improvement on the Property shall be and is subsequent to the acquisition of the Property by Licensor and the effective date of the DCTA Agreement. With respect to any relocation that serves a public purpose, Licensee hereby waives any and all claims that it may have under Chapter 460 of the Texas Transportation Code or otherwise regarding the payment of any and all relocation benefits and agrees that all costs associated with any relocation the Permitted Improvement shall be borne by Licensee. The waiver made by Licensee in this Section 15 shall apply regardless of the number of times the Permitted Improvement is relocated.

16. Duration of License. This License shall terminate and be of no further force and effect (a) in the event Licensee discontinues or abandons the use of the Permitted Improvement for thirty (30) days or more; (b) in the event Licensee relocates the Permitted Improvement from the Property; or (c) upon termination in accordance with the provisions of this License, whichever event first occurs.

17. COMPLIANCE WITH LAWS AND REGULATIONS. LICENSEE AGREES TO ABIDE BY AND BE GOVERNED BY ALL LAWS, ORDINANCES, AND REGULATIONS OF ANY AND ALL GOVERNMENTAL ENTITIES HAVING JURISDICTION OVER THE LICENSEE AND BY RAILROAD REGULATIONS, POLICIES, AND OPERATING PROCEDURES ESTABLISHED BY THE RAILROAD, OR OTHER APPLICABLE RAILROAD REGULATING BODIES.

18. INDEMNITY AND SHIFTING OF RISK. TO THE EXTENT PERMITTED BY LAW, LICENSEE AGREES TO RELEASE, DEFEND, HOLD HARMLESS, AND INDEMNIFY DALLAS AREA RAPID TRANSIT, DENTON COUNTY TRANSPORTATION AUTHORITY, RIO GRANDE PACIFIC CORPORATION, AND THEIR RESPECTIVE DIRECTORS, OFFICERS CONTRACTORS, EMPLOYEES, AND AGENTS (COLLECTIVELY "INDEMNITEES") FROM AND AGAINST ALL LOSS, DAMAGE, CLAIMS, COSTS, EXPENSES, INCLUDING ATTORNEY'S FEES, AND LIABILITY ARISING OUT OF, INCIDENT TO, OR RESULTING FROM LICENSEE'S ENTRY ON OR OVER THE PROPERTY OR ACTIVITY THEREON, INCLUDING ENTRY OR ACTIVITY BY LICENSEE'S EMPLOYEES, SUBCONTRACTORS, AGENTS OR INVITEES (COLLECTIVELY, TOGETHER WITH THE TERM LICENSEE, REFERRED TO HEREIN AS "LICENSEE PARTIES") OR ARISING FROM LICENSEE PARTIES' PERFORMANCE OR FAILURE TO PERFORM UNDER THIS LICENSE; EXCEPT THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE NEGLIGENCE (WHETHER SOLE, JOINT OR CONCURRENT) OF ONE OR MORE INDEMNITEES; AND IN THE EVENT OF JOINT OR CONCURRING NEGLIGENCE OR FAULT OF INDEMNITEES AND LICENSEE, RESPONSIBILITY AND INDEMNITY, IF ANY, SHALL BE APPORTIONED IN ACCORDANCE WITH THE LAW OF THE STATE OF TEXAS, WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY, DEFENSES, OR OTHER PROTECTIONS AVAILABLE TO THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS PARAGRAPH 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. THIS INDEMNITY SHALL NOT BE CONSTRUED AS A WAIVER OF ANY GOVERNMENTAL IMMUNITY FROM LIABILITY OR LAWSUIT, WHICH IMMUNITY IS EXPRESSLY RETAINED TO THE EXTENT IT IS NOT CLEARLY AND UNAMBIGUOUSLY WAIVED BY TEXAS LAW. IN THE EVENT ANY PART OF THE PROVISIONS OF THIS SECTION ARE DETERMINED BY STATUTORY AUTHORITY OR JUDICIAL DECISION TO BE VOID OR UNENFORCEABLE, THEN THIS SECTION SHALL NOT FAIL IN ITS ENTIRETY, BUT WILL BE ENFORCEABLE TO THE EXTENT PERMITTED BY LAW. THIS

INDEMNITY PROVISION AND ANY OTHER INDEMNITY PROVISION CONTAINED IN THIS AGREEMENT SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS LICENSE.

19. **Termination of License.** At such time as this License may be terminated or canceled for any reason whatsoever, Licensee, upon request by Licensor, shall remove all improvements and appurtenances owned by it, 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 Property to a condition satisfactory to Licensor, at Licensee's sole expense.

20. **Assignment.** Licensee shall not assign or transfer its rights under this License in whole or in part, or permit any other person or entity to use the License hereby granted without the prior written consent of Licensor which Licensor **is under no obligation to grant.**

21. **Methods of Termination.** In addition to such other means as set forth in this License, this License may be terminated in either of the following ways:

21.01. By written agreement of the Parties; or

21.02. By either Party giving the other Party thirty (30) days written notice.

22. Miscellaneous.

22.01. **Notice.** When notice is permitted or required by this License, it shall be in writing and shall be deemed delivered when delivered in person or when placed, postage prepaid, in the U.S. Mail, Certified, Return Receipt Requested, and addressed to the Parties at the following addresses:

LICENSOR: Dallas Area Rapid Transit
 1401 Pacific Avenue
 Dallas, Texas 75202-7210
 ATTN: Railroad Management

LICENSEE: City of Denton
 401 North Elm Street
 Denton, Texas 76201

Either Party may from time to time designate another and different address for receipt of notice by giving written notice of such change of address.

22.02. **Governing Law.** This License shall be construed under and in accordance with the laws of the State of Texas. Any action brought by a party to enforce any provision of this License shall be commenced in a state district court of competent jurisdiction in Dallas County, Texas.

22.03 **Attorney Fees.** In the event that Licensor chooses to initiate legal proceedings to enforce any provisions of this License, upon prevailing Licensor shall be entitled to recover court costs and reasonable attorney fees from Licensee.

22.04. **Entirety and Amendments.** This License embodies the entire agreement between the Parties and supersedes all prior agreements and understandings, if any, relating to the Property and the matters addressed herein, and may be amended or supplemented only by a written instrument executed by the Party against whom enforcement is sought.

22.05. **Parties Bound.** This License shall be binding upon and inure to the benefit of the Parties and their respective heirs, personal representatives, successors and assigns.

22.06. Number and Gender. Words of any gender used in this License 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.

22.07. No Joint Enterprise. The Parties do not intend that this License be construed as finding that the Parties have formed a joint enterprise. The purposes for which each Party has entered into this License are separate and distinct. It is not the intent of any of the Parties that a joint enterprise relationship is being entered into and the Parties hereto specifically disclaim such relationship. This License does not constitute a joint enterprise, as there are no common pecuniary interests, no common purpose and no equal right of control among the Parties hereto.

22.08. Counterparts. The Parties may execute this License in multiple originals and when taken together, those originals constitute a whole.

22.09. Third Party Beneficiaries. It is agreed between the Parties and deemed that there are no third-party beneficiaries to this License.

22.10. Construction and Interpretation. This License shall not be construed against any Party due to drafting as both Parties have or are entitled to consult legal counsel.

22.11. Severability. If any provision of this License is determined to be illegal or unenforceable in any respect, such determination will not affect the validity or enforceability of any other provision, each of which will be deemed to be independent and severable.

22.12. No Waiver of Governmental Immunity. Licensor shall not be deemed to and does not agree to waive or diminish any defenses available to it, whether pursuant to this License or otherwise, including by example and without limitation, as to governmental immunity.

22.13. Signature Authority. Each of the individuals signing this License on behalf of the either Party warrants that he or she is duly and properly authorized to execute this License on behalf of their respective Party.

(Signatures on Following Page)

IN WITNESS WHEREOF, the Parties have executed this License in multiple originals on the date last signed below.

LICENSOR: DALLAS AREA RAPID TRANSIT

By: _____
BONNIE MURPHY
Vice President
Commuter Rail and Railroad Management

Date: _____

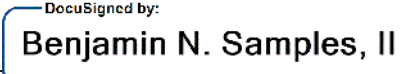
LICENSEE: CITY OF DENTON, TEXAS:

By: _____
Sara Hensley
City Manager
215 E. McKinney
Denton, Texas 76201

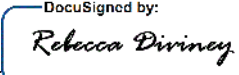
ATTEST:
ROSA RIOS, CITY SECRETARY

By: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

By:  _____
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THIS AGREEMENT HAS BEEN BOTH REVIEWED AND APPROVED
as to financial and operational obligations and business terms.

By:  _____
CE9F2B4E4B6745F...
Rebecca T. Diviney
Director of Capital Projects/City Engineer
Capital Projects Department