

PUBLIC ROAD CROSSING LICENSE AGREEMENT

THIS AGREEMENT ("License"), by and between DALLAS AREA RAPID TRANSIT, ("Licensor"), a regional transportation authority, created, organized and existing pursuant to Chapter 452, Texas Transportation Code, as amended (the "Act") and COLLIN COUNTY TOLL ROAD AUTHORITY, ("CCTRA"), a County Toll Road Authority in the state of Texas ("Licensee"), created, organized and existing pursuant to Chapter 284, Texas Transportation Code, as amended (the "Act") acting by and through its duly authorized board, whose mailing address is 2300 Bloomdale, Suite ~~6264~~192, McKinney TX 75071.

WITNESSETH:

WHEREAS, LICENSOR now owns certain railroad right-of-way within the unincorporated areas of the Licensee; and

WHEREAS, LICENSOR has a Trackage Rights Agreement with Dallas, Garland & Northeastern Railroad (the "Railroad"), whereby the Railroad is responsible for certain maintenance of existing at-grade highway-rail crossings; and

WHEREAS, Licensee desires to construct a new public road (Collin County Outer Loop), with concrete panels, concrete pavement, and asphalt approaches, in accordance with Licensor's standards, thereby creating a new at-grade highway-rail crossing; NOW, THEREFORE,

1. **Purpose.** Licensor hereby grants this License to Licensee for the purpose of constructing, reconstructing, installing and maintaining (the "Permitted Uses") an at-grade, 4-lane, 54-foot wide public road crossing. This road is planned to eventually be the west-bound frontage road to an overpass and an eastbound frontage road, comprising a total width of 120-feet. Of the four lanes of this west-bound frontage road, one is a right-turn lane, one is straight ahead, one is a left-turn lane and the fourth is an eastbound lane. This road crossing is located approximately 1,900-feet south of County Road 421, within Licensor's 100-foot wide right-of-way covering an area approximately 5,400 square feet. The road will cross Licensor's right-of-way at Mile Post 305.18, in Collin County, Texas, more particularly as shown in Exhibit "A", attached hereto and incorporated herein for all pertinent purposes (the "Property").

The term "public road crossing" shall include the concrete crossing material, pavement, grading, barricades, street lighting, drainage facilities, signs, pavement markings, active warning devices/signals, and approaches (the "Permitted Improvements").

The Property shall be used by Licensee, and the public, solely for the Permitted Uses and the Permitted Improvements, EXCEPT, HOWEVER, AND IT IS UNDERSTOOD BY BOTH LICENSOR AND LICENSEE THAT THE GRANTING OF THIS LICENSE SHALL NOT BE CONSTRUED IN ANY WAY TO CONSTITUTE A DEDICATION TO THE PUBLIC.

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

2.01. The faithful performance by Licensee of all of the covenants and agreements contained in this License to be performed by Licensee, and

2.02. The payment of the sum of **TEN AND NO/100 (\$10.00) DOLLARS** cash in hand paid by Licensee to Licensor, the sufficiency and receipt, of which is hereby acknowledged, and

2.03 The payment for the entire cost of constructing and maintaining the public road, including any drainage facilities caused to be required thereof, and

2.04 The reimbursement by Licensee to the Railroad for all labor and materials necessary for the construction of the crossing surface within the limits of the ties and installation of the active warning devices, within thirty (30) days upon presentation of invoice by the Railroad, and

2.05 If applicable, the future costs of reconstruction of the Permitted Improvements within the limits of the railroad ties within the road crossing, including those costs shown in Paragraph 12.02. This area of the road crossing may become impossible to maintain by the Railroad due to deterioration or obsolescence of the crossing material. In the event maintenance is no longer possible and reconstruction is necessary, Licensor and Licensee shall agree on the type of reconstruction, and Licensor shall reconstruct the road crossing within the limits of the railroad ties, at the sole cost of the Licensee.

3. **Term.** This License shall begin on the **1st day of May, 2012**, and shall be perpetual, subject to termination by either party as provided herein.

4. **Non Exclusive License.** This License is non-exclusive and is subject to (a) any existing utility, drainage or communication facility located in, on, under, or upon the Property owned by Licensor, any railroad, utility, or communication company, public or private; (b) to all vested rights presently owned by any railroad, utility or communication company, public or private, for the use of the Property for facilities presently located within the boundaries of the Property; and (c) to any existing lease, license or other interest in the Property granted by Licensor to any individual, corporation or other entity, public or private. Licensor is not aware and is not on notice of any vested rights, lease, license or other interest which would prohibit or limit the purpose of the Permitted Improvements, with the exception of the operation of the Railroad, and the future use by Licensor.

5. **Design, Construction, Operation and Maintenance.** Licensor's use of the Property and adjoining property may include the use of electrically powered equipment. Notwithstanding Licensor's 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 electrical current being present in proximity to the Permitted Improvements and that such presence could produce corrosive effects to the Permitted Improvements.**

5.01. All design, construction, reconstruction, replacement, removal, operation and maintenance of the Permitted Improvements on the Property shall be done in such a manner so as not to interfere in any way with the operations of Licensor or with any railroad operations. In particular, cathodic protection or other stray current corrosion control measures of the Permitted Improvements as required shall be made a part of the design and construction of the Permitted Improvements.

5.02. During the design phase and prior to commencing construction on the Property, a copy of the construction plans showing the exact location, type and depth of the construction, any cathodic protection measures and any working area, shall be submitted for written approval to Licensor and the Railroad (the "Railroad", whether one or more) when the construction is going to be within the area of Railroad operations. Such approval shall not be unreasonably withheld. No work shall commence until said plans have been approved by Licensor and Railroad.

5.03. Licensee agrees to design, construct, reconstruct and maintain the Permitted Improvements in such a manner so as not to create a hazard to the use of the Property, and further agrees to pay any damages which may arise by reason of Licensee's use of the Property under this License, as limited by section 15, below.

5.04. Licensee agrees to institute and maintain a reasonable testing program to determine whether or not additional cathodic protection of its Permitted Improvements is necessary and if it is or should become necessary, such protection shall be immediately instituted by Licensee at its sole cost and expense.

5.05. Licensee covenants and agrees to contract and enter into a cost reimbursement agreement with the Railroad to further specify how cost reimbursements will take place. Such reimbursements shall include the original construction of all active warning devices and crossing surface within the limits of the ties. Licensee also agrees to be responsible for the cost of future reconstruction upon the expiration of the useful life of the crossing surface.

5.06. Licensee or its contractor shall remove all trees and other vegetation within the railroad right of way for a distance of 300 feet in all four quadrants of the right of way.

5.07. Licensee shall be responsible for maintenance and liable for damage for any and all additional drainage created by Licensee's project distributed onto and within Licensor's right of way from the point of entry to the exit point of Licensor's Property.

5.08. Licensee shall provide traffic control during construction or maintenance operations to accommodate work by Railroad.

5.09. **Absence of markers does not constitute a warranty by Licensor that there are no subsurface installations on the Property.**

5.10. If at any time, traffic volume or other circumstances should warrant a grade separation for the crossing licensed hereunder, Licensee shall be responsible for the installation of such grade separation to Licensor's standards, at no cost to Licensor.

6. **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 governmental agencies, federal, state or local, and required to carry on any activity permitted herein.

7. **Licensor's Standard Contract and Insurance.** No work on the Property shall be commenced by Licensee or any contractor for Licensee until such Licensee or contractor shall have executed Licensor's Standard Contractors Agreement covering such work, and has furnished insurance coverage in such amounts and types as shall be satisfactory to Licensor.

8. **Duty of Care in Construction.** Licensee or its contractor shall use reasonable care during the construction period and thereafter, to avoid damaging any existing buildings, equipment and vegetation on or about the Property and any adjacent property owned by or under the control of Licensor. If the failure to use reasonable care by the Licensee or its contractor causes damage to the Property or such adjacent property, the Licensee and/or its contractor shall immediately make appropriate replacement or repair the damage at no cost or expense to Licensor. If Licensee or its contractor fails or refuses to make such replacement, Licensor 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 Licensor upon demand.

9. Environmental Protection.

9.01. 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").

9.02. 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 Contractors.

9.03. 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.

9.04. **Licensee shall indemnify and hold Licensor and Railroad harmless against all cost of environmental clean up to the Property resulting from Licensee's use of the Property under this License.**

10. **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.

11. **Maintenance of Completed Improvements.** After the Permitted Improvements have been constructed, the active warning devices/signals and the grade crossing within the limits of the railroad ties (subject to Paragraph 2.05 and 5.05) shall be maintained by the Railroad. Licensee shall maintain all other Permitted Improvements. In the event the Licensee fails to maintain the Permitted Improvements or Property as required, upon discovery, Licensor shall notify Licensee of such occurrence in writing. In the event Licensee shall not have remedied the failure within ten (10) days from the date of such notice, Licensor shall have the right, but not the obligation to remedy such failure at the sole cost and expense of Licensee. In the event Licensor exercises its right to remedy Licensee's failure, Licensee agrees to immediately pay to Licensor all costs incurred by Licensor upon demand.

12. Future Use by Licensor.

12.01. This License is made expressly subject and subordinate to the right of Licensor to use the Property for any purpose whatsoever.

12.02. Licensee fully understands that Licensor plans future development of the rail corridor for passenger rail service. Future development may require Licensee to upgrade the Permitted Improvements to accommodate a dual track passenger system, relocation of the Permitted Improvements or utilities, installation of a Positive Train Control System, and any other required instrumentation. Licensee fully understands that all Permitted Improvements are subject to the above development of the rail corridor by

Licensor, and any relocation of the Permitted Improvements and existing improvements will be at the sole cost of Licensee.

12.03 In the event that Licensor's Board of Directors determines that any portion of the Permitted Improvements interferes with Licensor's transportation purposes as authorized in Chapter 452 of the Texas Transportation Code, Licensor may require the Permitted Improvements to be modified or adjusted so as not to interfere with said transportation purposes. In the event that it is not possible for the Permitted Improvements to be modified or adjusted so as not to interfere with Licensor's transportation purposes, Licensor may require Licensee to remove the Permitted Improvements from the affected portion of the Property only, following twelve (12) months' written notice of such required removal. Licensor shall work in good faith with Licensee to minimize the amount of the Property and the Permitted Improvements that require modification, adjustment or removal.

13. **Duration of License.** This License shall terminate and be of no further force and effect (a) in the event Licensee shall discontinue or abandon the use of the Permitted Improvements; (b) in the event Licensee shall voluntarily relocate the Permitted Improvements from the Property; (c) upon termination in accordance with paragraph 18 of this License, whichever event first occurs; PROVIDED, HOWEVER, that any indemnifications provided for herein shall survive such termination for a period of two (2) years from the date of termination.

14. **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, and Licensee agrees to indemnify and hold Licensor harmless from any failure to so abide and all actions resulting therefrom. Licensee acknowledges the Federal Railroad Administration (FRA) requirements for whistles at at-grade public and private road crossings and requirements for Positive Train Control (PTC) for controlling and monitoring train movements to assure safety and efficiency when passenger service is implemented.

15. **Indemnification.**

15.01. Licensee shall defend, protect and keep Licensor forever harmless and indemnified against and from any penalty, or damage, or charge, imposed for any violation of any law, ordinance, rule or regulation of the use of the Property by Licensee, whether occasioned by the neglect of Licensee, its employees, officers, agents, contractors or assigns holding under Licensee;

15.02. Licensee shall at all times protect, indemnify and it is the intention of the parties hereto that Licensee hold Licensor harmless against and from any and all loss, cost, damage or expense, including attorney's fees, and including claims of negligence, arising out of, or from any motor vehicle accident or other occurrence when caused by the willful misconduct or negligence of Licensee, and then only to the extent of the proportion of any fault determined against Licensee for its willful misconduct or negligence on or about the Property causing personal injury, death, or property damage, except when caused by the willful misconduct or negligence of Licensor, their officers, employees or agents, and then only to the extent of the proportion of any fault determined against Licensor for its willful misconduct or negligence;

15.03. Licensee shall at all times protect, indemnify and hold Licensor and Railroad harmless against and from any and all loss, cost, damage or expense, including attorney's fees, arising out of or from any and all claims or causes of action resulting from any failure of Licensee, its officers, employees, agents, contractors or assigns in any respect to comply with and perform all

the requirements and provisions hereof, and then only to the extent of the proportion of any fault determined against Licensee for its willful misconduct or negligence.

15.04 Nothing herein shall increase the liability of the Licensee or Licensor to the other party, or any third party, where such liability is limited under state or federal laws, including the Texas Tort Claims Act. Licensor and Licensee each specifically assert such sovereign immunity to those not parties to this License that either or both would have absent this License.

16. Termination of License. At such time as this License may be terminated or cancelled for any reason whatever, Licensee, upon request by Licensor, shall remove all improvements and appurtenances owned by it, situated in, under or attached to the Property and shall restore the Property to the condition existing at the date of execution of this License, at Licensee's sole expense.

Licensor acknowledges that the planning and engineering costs to the Licensee in developing and building the tollway known as the Outer Loop resulting in the construction of the Permitted Improvements cannot easily be modified, or re-aligned. Therefore, Licensor, notwithstanding any provision in this License to the contrary, agrees as follows:

a. No assignment, license, or lease will be made by Licensor which will prevent, harm or diminish the Licensee's proposed use of the Permitted Improvements.

b. No termination of this License by Licensor pursuant to Section 18.03 below will occur without notice to Licensee of the reason for such termination. Licensee shall have 60 days to cure any alleged default, or condition within its control, to avoid termination. In the event Licensee is unable to cure the alleged default, if any, Licensee shall have the right to construct an overpass for the Outer Loop in the same location as an alternative to termination of the this License. Or, in the alternative, pay for the rail line to be elevated above the Permitted Improvements, if agreed by the parties. The Licensee shall have a reasonable time to design and construct any overpass. No termination may occur in less than one year after the expiration of the time to cure, which shall include time to plan and begin construction of an overpass.

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17. 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.**

18. Methods of Termination. Subject to section 16 above, this License may be terminated in any of the following ways:

18.01. Written agreement of both parties;

18.02. By either party giving the other party one year's written notice; or

18.03. By either party, upon failure of the other party to perform its obligations as set forth in this License, after the expiration of one year after written notice is given.

19. Miscellaneous.

19.01. 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
P. O. Box 660163 Or 1401 Pacific Avenue
Dallas, Texas 75266-7210 Dallas, Texas 75202-7210
Attn: Railroad Management

LICENSEE: Collin County Toll Road Authority
2300 Bloomdale, Suite ~~6264~~192
McKinney TX 75071

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

19.02. Governing Law. This License shall be construed under and in accordance with the laws of the State of Texas.

19.03. 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.

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

19.05. 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.

19.06. Authorization. Licensee shall furnish to Licensor a certified copy of minutes or a City Resolution adopted by the governing body of Licensee, authorizing the execution of this License on behalf of the Licensee, or other proof sufficient to establish the authority to execute this License.

19.07. 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.

IN WITNESS WHEREOF, the parties have executed this License in multiple originals this ____ day of _____, 2012.

LICENSOR: DALLAS AREA RAPID TRANSIT

BY: _____
NORMA DE LA GARZA-NAVARRO
Vice President
Commuter Rail & Railroad Management

LICENSEE: COLLIN COUNTY TOLL ROAD AUTHORITY

BY: _____
KEITH SELF
County Judge, in his capacity as Chairman,
Collin County Toll Road Authority
Collin County, Texas