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 CITY SECRETARY
 DALLAS, TEXAS

SUPPLEMENTAL AGREEMENT No. 11
 TO THE MASTER INTERLOCAL AGREEMENT
 Between
 DALLAS AREA RAPID TRANSIT
 And
 THE CITY OF DALLAS

SILVER LINE DESIGN AND CONSTRUCTION

This SUPPLEMENTAL AGREEMENT No. 11 to the MASTER INTERLOCAL AGREEMENT dated February 28, 1990, approved by Dallas City Council Resolution No. 90-0810 and DART Board Resolution No. 90 0036, as amended (the "Agreement"), is made and entered into by and between DALLAS AREA RAPID TRANSIT ("DART"), a regional transportation authority organized and existing pursuant to Chapter 452, Texas Transportation Code, and the CITY OF DALLAS (the "CITY"), a Texas home rule municipality (each a "Party" or collectively the "Parties") acting by and through their authorized representatives, and shall be effective on the date the last Party executes this Agreement.

RECITALS

WHEREAS, on August 13, 1983, DART was created as a regional transportation Authority for the purpose of providing public transportation and general transportation services within the DART service area; and

WHEREAS, pursuant to City Council Resolution 89-3272 adopted October 11, 1989, approval of DART's System Plan as adopted by the DART Board June 27, 1989, and revised July 1989; and

WHEREAS, the City recognizes that the transportation of the city's population, reduction of traffic congestion and other purposes as stated in Texas Transportation Code, Chapter 452, are in fact public essential purposes and for the benefit of its citizens; and

WHEREAS, pursuant to DART's enabling legislation, DART Board adopted policies, the City Charter, City Ordinances, and City Council adopted policies, the City of Dallas, as one of the municipalities of the DART service area, has a defined review and approval role in (1) the development of a public transportation system within the City, (2) the use of property within the City, and (3) the effect of transportation development on public and private land uses; and

WHEREAS, on March 28, 2018, the city Council adopted Resolution No. 18-0488 (the "Resolution") that provided, among other things, that the City Council would support the Project if DART agreed to enter into an agreement with the City assuring various commitments; and

WHEREAS, on January 22, 2020, the City Council adopted Resolution No. 200202 (the "Resolution") that prohibited freight rail service on an approximately three-mile segment in the northern part of the City of Dallas; and

WHEREAS, DART and the City share a common desire for an effective public transit system to be developed as quickly as possible, recognizing that early and continuous joint involvement in the development process is a necessary step toward that goal; and

WHEREAS, DART and City of Dallas have agreed on a process for the City to use available funding in the form of the Street Repair – Principal Arterial Streets System program for the planning, design, engineering and/or construction of transit-related activities inclusive of quiet zones from the existing interlocal agreement amended on October 8, 2019 (Resolution No. 190126); and

WHEREAS, DART and the City desire to enter into this Agreement to establish a cooperative working relationship and definitize the respective duties and responsibilities of the parties relating to the DART Silver Line Design and Construction project (the “Project”); and

WHEREAS, the Parties are each a “local government” as defined in the Interlocal Cooperation Act, as amended (Chapter 791, Texas Government Code, as amended, or “the Act”), whose governmental functions include the authority to provide for public transportation within their respective jurisdictions; and

WHEREAS, the Parties desire to enter this Agreement pursuant to the Act;

NOW, THEREFORE, for and in consideration of the mutual terms, conditions and covenants contained herein, the City and DART agree as follows:

I.

SCHEDULE/TRAFFIC CONTROL PLANS/WORK HOURS/PERMITS

- 1.0 During the construction phase of the Project, Hillcrest Road will be closed for no more than 25 weeks; provided, however, that in the event of any delay caused by the City of Dallas or Force majeure, the closure period will automatically be extended. All extension requests beyond the 25-week closure period, for circumstances other than caused by the City or Force Majeure, will be submitted in writing to the Dallas City Manager for consideration and approval. “Force Majeure” shall mean an act of nature, fire, earthquake, hurricane, flood, riot, civil commotion, terrorist act, landslide, explosion, epidemic, hostilities or war, a labor dispute which results in a strike or work stoppage affecting the Project or any obligations described in this Agreement, or any other cause or occurrence outside the reasonable control of the party claiming an inability to perform and which, by the exercise of due diligence, could not be reasonably prevented or overcome.
- 1.1 In the event the City, DART, and DART’s contractor mutually determine that an extended closure time is warranted, DART and DART’s contractor will provide proper notification to affected City residents at least one week prior to said closure time extension and including dynamic signage.
- 1.2 The City agrees to the concurrent construction activities on Coit Road and Hillcrest Road, but request that no concurrent work will be performed on the intersection of the rail line with Meandering Way or with Davenport Road while Hillcrest Road is fully closed to through traffic. Work on those streets can resume after Hillcrest Road is open to the public.
- 1.3 DART’s Contractor will be responsible for the coordination of signal adjustments required by the traffic control plan associated with the construction of the Project. The City will generate a cost estimate for reasonable services based on the approved traffic control plan and associated detour plans and will invoice DART’s Contractor.

DART's Responsibilities:

- 1.4. DART has provided a Critical Path Method ("CPM") schedule and Traffic Control Plan (comprehensive near term and high-level longer-term traffic control plan, as previously agreed to) in January 2020, and DART will provide an updated CPM and Traffic Control Plan. Changes to both documents will be provided to the City Manager's Office ("CMO") within ten (10) business days of approval by DART.

CITY'S Responsibilities:

- 1.5. The City will approve and grant permits to DART's Contractor in an expedited manner perform early construction packages as is customary with the design-build delivery method.
- 1.6. For the duration of the portion of Project work occurring within the corporate limits of the City, the City will allow Project work to occur during the hours of 7:00 a.m. to 9:00 p.m. on weekdays, and 9:00 a.m. to 7:00 p.m. on weekends.
- 1.7. The City will allow DART's Project contractor(s) to close lanes for utility relocations.
- 1.8. During the 25-week full closure of Hillcrest Road and any extensions permitted by the terms of this Agreement, the City will allow the closure of one lane in each direction on Coit Road.
- 1.9. The cost for signal adjustments for improvements to the City's traffic signal systems that are post completion of construction of the portion on the Project located within the City will be the responsibility of the City.

II.**SUBMITTALS****DART's Responsibilities:**

- 2.0. DART will provide or cause its Project contractor(s) to provide all submittals in writing to the CMO for distribution and review. Technical discussions and responses will be provided by the CMO in coordination with the City's Transportation Department. The CMO will submit all responses and comments in writing to, DART's Executive Vice President, Growth/Regional Development.
- 2.1. DART will provide the City 30% design plans only for Hillcrest and Coit Road.
- 2.2. DART will provide the City with 60%, and 100% Project design submittals. DART's contractor(s)' 60% design package will include a design report that addresses approach and assumptions.

CITY'S Responsibilities:

- 2.3. For the 30% Project design plans, the City will provide written comments within five (5) business days from the date received. Comments submitted after the five (5) business days shall not delay the design progression which will continue without penalty to DART and/or its contractor; provided, however, no delay shall relieve DART of its responsibility for the performance of its obligations under this Agreement.

- 2.4. For the 60% and 100% Project design plans, the City will provide written comments within ten (10) business days from the date received. Comments submitted after ten (10) business days will not delay the progression of design, or construction, which will continue without penalty to DART or its contractor; provided, however, no delay shall relieve DART of its responsibility for the performance of its obligations under this Agreement.

III.

HILLCREST ROAD

DART's Responsibilities:

- 3.0 DART will be fully responsible for the design and construction of the storm water lift/pump station including type of equipment and needed access (collectively, "lift/pump station"). DART will dedicate the lift/pump station to the City of Dallas pursuant to the terms of this Agreement. Location of the lift/pump station will be by mutual agreement of the City and DART. DART will submit design specifications and construction plans of the lift/pump station, including design specifications and equipment, to the CMO for review and approval in advance of construction of the lift/pump station. Should access to the lift/pump station be from DART's ROW, DART will grant to the City, at no cost to the City, access and right of ingress and egress, subject to reasonable advanced coordination with DART as stipulated in the master Interlocal Agreement, as amended.
- 3.1. DART will provide the City with final plans and as-builts for maintenance purposes specifically, hard-copy paper, record drawings, MicroStation and pdf formats, as is appropriate and standard in the industry.
- 3.2. DART will be responsible for acquisition of the real estate needed for the lift/pump station and acquisition of drainage easements; however, the City of Dallas will support DART in those acquisitions. State law requires DART to get City Council approval of each proposed eminent domain acquisition that is located in the City (See Section 452.058(c)(1), Texas Transportation Code). Therefore, support of acquisition efforts for project purposes and their impact to adjacent properties will have to be presented before the full City Council for their approval. DART acknowledges and agrees that the City's support of DART in acquiring needed real estate for the lift/pump station and drainage easements is limited to a cooperative working relationship between DART and the City in the expeditious development and implementation of an integrated rail transit system within the City of Dallas as permitted in accordance with Dallas City Charter, the City code, City and CMO policies, and all applicable laws. Such support is not a representation, indication, or covenant by the City that the City Council will approve any property acquisition.
- 3.3. DART will widen the dance studio (located at 17404 Hillcrest Rd., Dallas, TX 75252) driveway on McCallum Boulevard as mitigation for closing the driveway on Hillcrest Road.
- 3.4. DART will provide sidewalks on both sides of McCallum Boulevard within the limits of reconstruction of Hillcrest Road and McCallum.
- 3.5. DART will provide an 8-foot-wide raised sidewalk on the west side of Hillcrest Road that is vertically separated from traffic lanes and in compliance with Americans with Disabilities Act, as amended ("ADA") standards and requirements. A High-Intensity Activated Crosswalk ("HAWK") signal will be installed at the intersection of Hillcrest Road and Wester Way and a full traffic signal will be installed at the intersection of Hillcrest Road and McKamy Boulevard.

- 3.6. Track grade at Hillcrest Road will remain per the evolution of 10% Project design in compliance with the Project FEIS. Final top of rail elevation for the Project will be constructed at or below the existing top of rail.
- 3.7. The design speed for the Hillcrest Road segment intersecting the Project will be 30 mph. The City will work with DART to effectuate the proper posted speed limit on Hillcrest Rd. in accordance with applicable local, state, and federal statutes.

CITY's Responsibilities:

- 3.8. The City will be responsible for maintenance of the storm water lift/pump station upon final completion and acceptance of such facilities by the City.

**IV.
COIT ROAD**

DART's Responsibilities:

- 4.0 DART will design and install a traffic signal at Sugar Cane Way and Coit Road, in accordance with City standards.
- 4.1. DART will construct the evolution of 10% Design in accordance with the FEIS proposing Coit Road reconstructed as an elevated roadway 12 feet above existing grade (3 feet lower than the FEIS) Silver Line track constructed 11 feet below existing grade.
- 4.2. The design speed for Coit Road segment intersecting the Project will be 35 mph.
- 4.3. DART will have the segment of Coit Road affected by the Silver Line project designed and constructed to incorporate accessible sidewalks, in compliance with all applicable Americans with Disabilities Act, as amended ("ADA") standards and requirements.

CITY's Responsibilities:

- 4.4. The City will work with DART to effectuate the proper posted speed limit on Coit Rd. in accordance with applicable local, state, and federal statutes.

**V.
OTHER IMPROVEMENTS**

DART's Responsibilities:

- 5.0 DART will create left turn access (curb cut and concrete placement in the median only, nor does it include design and/or construction of left turn lanes, reconfiguration of the street or intersection(s), or modification(s))into the condominiums to the north and south of Campbell Road.
- 5.1 DART will install a betterment wall approximately 15-foot long on DART ROW along McCallum near Rocky Top Circle between the new tracks and the future City led hike and bike trail. DART will maintain the structural elements of the wall and the wall on the railroad side.

- 52 DART, through its contractor, will install an 8-foot high precast concrete wall along the back of the Ivy Montessori School and Fairhill School properties. DART will maintain the structural integrity of the entire wall and will address and remedy all other maintenance issues that may arise on or relating to DART's side of the wall.

CITY's Responsibilities:

- 53 The City agrees to engage with Ivy Montessori School and Fairhill School regarding the non-structural maintenance of the schools' side of the panel wall.

VI.
CONSTRUCTION

- 6.0 The City, DART, and DART's Project contractor(s) will work diligently to minimize the impact to surrounding neighborhoods.

DART's Responsibilities:

- 6.1. DART's contractor(s) will maintain access, to adjacent properties, businesses, and places of worship for pedestrians and motorist.
- 6.2. DART's contractor(s) will submit requests for inspections using the City's approved fee schedule.
- 6.3. DART's contractor(s) will comply with the National Pollutant Discharge Elimination System (NPDES) requirements:
- 6.4. The City will issue one ROW permit per crossing for all work activities, including all work performed by DART' contractor(s) and their subcontractors at the crossing.

VII.
SPECIAL REQUESTS/TECHNOLOGY AND SAFETY

DART's Responsibilities:

- 7.0 DART, through its contractor, will be responsible for the development of the diagnostic report and documentation, and will design and construct amenities for Quiet Zones, as mitigation for the Project in accordance with FRA requirements.
- 7.1. DART's initial operating plan is based on 30-minute headways; operating 20-minute headways is not currently planned in the 20-year financial plan but could be considered by the DART Board in the future. The operating plan and hours of revenue service are based on passenger demand. Any change to headway will be briefed to the City Council and will require public hearings for a service change authorized by the DART Board.

CITY's Responsibilities:

- 7.2. The City will prepare, process and submit the applications (for Quiet Zones) to the Federal Railroad Administration (FRA).

VIII.
HIKE AND BIKE TRAIL

- 8.0 DART understands the importance of the Veloweb hike and bike trail project (the "Trail") and that it is an important project for the North Central Texas Council of Governments, City of Dallas, the cities in the DART Service Area, and the North Texas region. To facilitate the inclusion of the trail project and not incur any delays on the Project, DART and the City agree that:

DART's Responsibilities:

- 8.1. DART will incorporate the Trail design into the next available design progression submittal. The City will provide DART with the proposed Trail location with respect to the Project tracks, and pedestrian crossing at the Hillcrest Road, Coit Road, Campbell Road intersections.
- 8.2. DART will continue to show NCTCOG and the City's 10% trail design effort in all other areas, within the City except for Hillcrest and Coit road crossings, which will be shown at 100% design. Updated trail design will be reflected on DART plans when funding and design is provided.

CITY's Responsibilities:

- 8.3. The City will review and process all submittals without delay or penalty to DART or its contractor(s) until this critical information is provided to DART, and a reasonable expectation of incorporation can be included in the then next stage of drawings.
- 8.4. The City will coordinate with NCTCOG and DART on future design and construction in its jurisdiction in conjunction with the Silver Line Project. The City is responsible for outreach activities relating to the Trail Project.

IX.
DISPUTE RESOLUTION

- 9.0 DART and the City will make good faith efforts to resolve any issues or disputes which may arise under this Agreement. The City and DART acknowledge and agree that *time is of the essence* at all levels of resolving issues or disputes. Unresolved issues or disputes will be forwarded to the City's Director of Transportation or an Assistant Director of Transportation and the DART Vice President of Capital Design and Construction or their equivalent for consideration and disposition. If an issue or dispute cannot be resolved, it will be elevated to the City Assistant Manager and the DART Executive Vice President of Growth/Regional Development or their equivalent for consideration and disposition. If an issue or dispute still cannot be resolved, it will be elevated to the City Manager and the DART President/Executive Director as the final arbiters of the issue or dispute in accordance with the powers and authorities vested in them, unless City Council or DART Board determination is required or requested.

X.**APPLICABLE DESIGN AND CONSTRUCTION STANDARD**

10.0 Comply with current applicable federal, state, and local standards.

XI.**COMMUNITY OUTREACH**

11.0 For the community outreach, each party to this ILA will support the other party in its outreach efforts. DART will be responsible for the outreach activities on the Silver Line Project, and the City will be responsible for the outreach activities on the Trail Project.

XII.**LIABILITY**

12.0 To the extent permitted by law, DART and City agree that each party is responsible for its individual negligent acts and deeds as well as the negligent acts and deeds of their respective contractors, employees, representatives, and agents. The provisions of this Section are solely for the benefit of the Parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity. The provisions of this Section shall survive termination of this Agreement. There shall be no third-party beneficiaries to this Agreement.

XIII.**NOTICES**

13.0 Any notice required or permitted to be given by any Party to another shall be in writing and shall be deemed to have been duly given when sent by certified mail, return receipt requested, in postage paid envelope addressed to the Party at the Party's address as set out below:

DART: Dallas Area Rapid Transit
1401 Pacific Avenue
Dallas, Texas 75202
Attention: President/Executive Director

With a copy to: Dallas Area Rapid Transit
1401 Pacific Avenue
Dallas, Texas 75202
Attention: General Counsel

City of Dallas: Department of Transportation
1500 Marilla Street, L1B5
Dallas, Texas 75201
Attention: Director of Transportation

With a copy to: City of Dallas
City Attorney's Office
1500 Marilla, 7DN
Dallas, Texas 75201
Attention: City Attorney

The above notice information may be modified by giving written notice of such change to the other Party in accordance with the notice requirements above without requiring as amendment to this Agreement.

XIV.
ENTIRE AGREEMENT

- 14.0 All other terms, provisions, conditions, and obligations of the Agreement between City and DART shall remain in full force and effect, and said Agreement and this Supplemental Agreement No. 11 shall be construed together as a single contractual agreement. This Agreement embodies the entire agreement of the Parties relating solely to the prohibition of freight service along the section of the Project alignment located in the City of Dallas. This Agreement does not supersede, satisfy, or govern any other requirements stated in the Resolution. Other than specifically set forth herein, this Agreement may be modified, amended, or terminated only in writing, signed by both Parties.

XV.
CONTRACTUAL RELATIONSHIP

- 15.0 It is understood and agreed that the relationship described in this Agreement between the Parties is contractual in nature between independent parties and is not to be construed to create a partnership, joint venture, joint enterprise or agency relationship between the Parties. Nor shall either Party be liable for any debts incurred by the other Party in the conduct of such other Party's business or functions.

XVI.
ASSIGNMENT

- 16.0 No Party may assign this Agreement in whole or in part, without first obtaining the written consent of the other Party, which may be withheld for any reason.

XVII.
NO WAIVER

- 17.0 No Party shall be deemed, by any act or omission, to have waived any of its rights or remedies hereunder unless such waiver is in writing and signed by the waiving Party, and then only to be extent specifically set forth in such writing. A waiver with reference to one event shall not be construed as continuing or as a bar to or waiver of any right or remedy as to a subsequent event.

XVIII.
CAPTIONS

18.0 The captions, headings, and arrangements used in this Agreement are for convenience only and shall not in any way affect, limit, amplify, or modify its terms and provisions.

XIX.
NUMBER AND GENDER

19.0 Words of any gender used in this 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.

XX.
GOVERNING LAW

20.0 This Agreement shall be construed and enforced in accordance with the laws and court decisions of the State of Texas.

XXI.
VENUE

21.0 This Agreement shall be enforceable in Dallas County, Texas, and if legal action is necessary to enforce it, exclusive venue shall lie in a state court of competent jurisdiction in Dallas County, Texas.

XXII.
SEVERABILITY AND LEGAL CONSTRUCTION

22.0 In the event any one or more of the provisions contained in this Agreement shall be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision(s) hereof, and this Agreement shall be revised so as to cure such invalid, illegal, or unenforceable provision(s) to carry out as nearly as possible the original intent of the Parties.

XXIII.
NONDISCRIMINATION

23.0 In its performance of this Agreement, each Party warrants that it shall not discriminate against any person on account of race, color, sex, religious creed, age, disability, ethnic or national origin, or veteran status.

XXIV.**NO KICKBACKS**

- 24.0 Each Party warrants that, to the best of their knowledge and belief, no trustee, officer, employee, or agent of the other Party has been or will be employed, retained or paid a fee, or otherwise has received any personal compensation or consideration in connection with the obtaining, arranging, negotiation or performance of this Agreement.

XXV.**DURATION OF AGREEMENT**

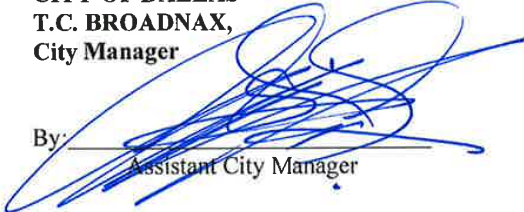
- 25.0 The term of this agreement shall commence on the date of its execution and will terminate upon mutual consent of both parties.

XXVI.**DEFAULT**

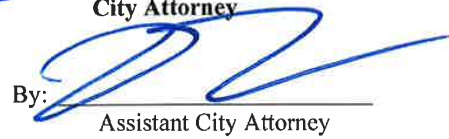
- 26.0 In the event that either party shall deem the other party to have failed to comply with any of the provisions in this agreement and that such party is in default, notice shall be given to the defaulting party specifically setting out the reasons for the belief that such party is in default. In the event that the defaulting party fails to correct such default within thirty (30) days- of such notice, the non-defaulting party may, at its option/ in addition to any other remedies available to the non-defaulting party at law or in equity, terminate the agreement by giving written notice to the defaulting party of such termination.

EXECUTED this, the 9th day of Sept., 2020, by City, signing by and through its City Manager, duly authorized to execute same by Resolution No. 20-1166, adopted by the Dallas City Council on August 12, 2020, and by DART, signing by and through its undersigned official, duly authorized to execute same by DART Board Resolution No. 200082 approved on August 11, 2020

CITY OF DALLAS
T.C. BROADNAX,
City Manager

By: 
Assistant City Manager

APPROVED AS TO FORM:
CHRISTOPHER J. CASO,
City Attorney

By: 
Assistant City Attorney

DALLAS AREA RAPID TRANSIT

By: 
Gary C. Thomas, President/Executive Director

201166
August 12, 2020

WHEREAS, on August 13, 1983, Dallas Area Rapid Transit (DART) Authority was created as a regional transportation authority organized and existing pursuant to Chapter 452, Texas Transportation Code, for the purpose of providing public transportation and general transportation services within the DART service area, which includes the City of Dallas, a Texas home rule municipal corporation, and surrounding regions; and

WHEREAS, on February 28, 1990, City Council authorized a Master Interlocal Agreement between DART and City regarding DART's system and establishing a cooperative and supportive relationship between DART and City by Resolution No. 90-0810; and

WHEREAS, the Master Interlocal Agreement has undergone numerous supplementations and amendments over the years as City and DART have sought to address newly arising circumstances, issues, needs and projects, and to refine and improve the relationship; and

WHEREAS, DART is currently designing and planning the construction and operation of a 26-mile rail line between Dallas Fort Worth International Airport and the City of Plano known as the Cotton Belt Project and referred to as the Silver Line (the "Project"); and

WHEREAS, the Project alignment follows the existing Cotton Belt rail line that passes through the cities of Plano, Richardson, Dallas, Addison, Coppell, and Carrollton; and

WHEREAS, on March 28, 2018, the City Council adopted Resolution No. 18-0488 (the "Resolution") that provided, among other things, that the City Council would support the Project if DART agreed to enter into an agreement with the City assuring various commitments; and

WHEREAS, DART and the City desire to enter into an agreement to establish a cooperative working relationships, respective duties, and responsibilities of the parties relating to the Project.

Now, Therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

201166

August 12, 2020

SECTION 1. That the City Manager is hereby authorized to execute a Supplemental Agreement No. 11 to the existing Master Interlocal Agreement between the City of Dallas and DART, approved as to form by the City Attorney, that establish certain obligations, conditions, roles, and responsibilities for the implementation and the long term maintenance associated with the portion of the Project located within the City of Dallas.

SECTION 2. That the Agreement will remain in effect so long as the Master Interlocal Agreement between the City and DART remain in effect.

SECTION 3. That this resolution shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so resolved.

