

INTERLOCAL AGREEMENT
between
DALLAS AREA RAPID TRANSIT and
CITY OF PLANO for
PUBLIC TRANSPORTATION IMPROVEMENTS

This Interlocal Agreement (“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 of the Texas Transportation Code (the “Act”), and CITY OF PLANO (“CITY”). DART and CITY may be referred to herein individually as a “Party” or collectively as “Parties.”

WHEREAS, pursuant to DART Board Resolution 220119, the DART Board of Directors directed the DART President & Chief Executive Officer to include \$214,250,000 in the Fiscal Year 2023 Budget for allocation to DART’s service area cities for Public Transportation System or Complementary Transportation Service purposes, as those terms are defined herein, consistent with the Act, hereinafter referred to as “Funds”); and

WHEREAS, pursuant to DART Board Resolution 220153, the Regional Transportation Council will program \$19,674,000 in federal funds to DART, which will allow DART to make an additional \$19,674,000 in local funds available to DART’s service area cities; and

WHEREAS, pursuant to DART Board Resolution 220154, each DART service area city is entitled to a receive a portion of the total funds available to the Service Area Cities, subject to the conditions contained in this Agreement; and

WHEREAS, the Parties are authorized to enter into this Agreement pursuant to Section 452.055(c) of the Act and Chapter 791 of the Texas Government Code; and

WHEREAS, CITY is a DART service area city that is entitled to receive \$28,437,000 in Funds if it uses such Funds to complete projects that will benefit DART’s Public Transportation System or provide Complementary Transportation Services (each as defined below) and otherwise complies with the terms and conditions of this Agreement; and

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the Parties, the receipt and sufficiency which is hereby acknowledged, the Parties agree as follows:

Section I. Definitions

- 1.1 Complementary Transportation Services means: (a) special transportation services for a person who is elderly or has a disability; (b) medical transportation services; (c) assistance in street modifications as necessary to accommodate the Public Transportation System; and

(d) any other service that complements DART's Public Transportation System, including providing parking garages. "Complementary Transportation Services" must be provided within the limits of DART's service area.

- 1.2 Eligible Project means a CITY project supporting DART's Public Transportation System or for Complementary Transportation Services that has been approved by DART in accordance with Section III of this Agreement.
- 1.3 Public Transportation means the conveyance of passengers and hand-carried packages or baggage of a passenger by any means of transportation.
- 1.4 Public Transportation System means (a) all property owned or held by DART for public transportation or complementary transportation service purposes, including vehicle parking areas and facilities and other facilities necessary or convenient for the beneficial use of, and the access of persons and vehicles to, public transportation; (b) real property, facilities, and equipment for the protection and environmental enhancement of all the facilities; and (c) property held in accordance with a contract with the owner making the property subject to the control of or regulation by DART and for public transportation or complementary transportation service purposes.
- 1.5 Effective Date means the date on which this Agreement was executed by a duly authorized representative of DART.

Section II. CITY's Obligations

- 2.1 Use of Funds. CITY shall use Funds only for an Eligible Project approved by DART in accordance with Section III of this Agreement.
- 2.2 Good Standing Requirement. CITY understands and agrees CITY shall not be entitled to receive any Funds until and unless the following preconditions are met:
 - a. Any outstanding debt owed to DART pursuant to any Interlocal Agreement or other Agreement whereby CITY is obligated to pay DART for goods and services provided or for the reimbursement of goods and services provided shall be current or fully paid; and
 - b. CITY shall have timely acted upon and fully satisfied all applications or submittals by DART or DART's contractor for permits, requests for project design review comments and approvals, traffic control plans and requests for documents or other information or permissions necessary for DART to proceed with advancement of its planned capital construction projects within the city limits of CITY and shall have paid for all other delays or forfeited such delay amounts from CITY's funds. CITY shall certify to DART in its application for reimbursement of Funds that all such requests have been either fully satisfied or timely acted upon by CITY and revision, clarification, or other response from DART is necessary for the submittal to comply with CITY ordinances or other laws. Section 2.2(b) applies to project design review comments, approvals, and

other such requests, which CITY shall approve or provide written comments to within fourteen (14) calendar days from the date received. For the avoidance of doubt, this section 2.2 of the Agreement applies to DART applications and submittals submitted to CITY prior to the Effective Date. This requirement does not obligate CITY to approve a permit or perform any other action in violation of its ordinances or other law.

- c. CITY shall also have paid to DART, or forfeited from CITY's Funds, all costs and expenses resulting from any delays to the construction of DART's planned capital projects which are caused or attributable to CITY, for example (as illustration and not limitation) delayed actions by CITY officials or requests by CITY for betterments that are not required for the DART capital project to be constructed and operated in accordance with federal, state, or local laws in effect as of the Effective Date. Such costs caused by or attributed to CITY include but are not limited to delay damages claimed or incurred against DART or DART's contractor.

2.3 Cooperation Requirement. CITY agrees to work collaboratively with DART employees and contractors and employ its best efforts to assist DART in achieving its goals, including completion of any capital project located within the city limits of the CITY. DART, in its sole discretion, determines what constitutes "best efforts" which include, but are not limited to:

- a. Expeditiously reviewing and responding to any request by DART or its contractors related to DART's planned capital construction projects within the city limits of CITY;
- b. Promptly providing the basis for denial if CITY denies any DART or DART contractor's request and the particular actions necessary to garner approval;
- c. Proposing and accepting reasonable solutions to expeditiously resolve design or construction conflicts or concerns;
- d. Treating DART's requests reasonably and indiscriminately; and
- e. Facilitating the expeditious progression of a dispute resolution through the dispute resolution process outlined in Section IX.

2.4 Certification of CITY Meeting Requirements. CITY shall have met the requirements of Section 2.2 and 2.3 before any project is approved and before funds are distributed to CITY. For any individual project submitted by CITY for approval or for any request by CITY for reimbursement, DART shall review the CITY's position under Section 2.2 and 2.3 and if CITY is in compliance, DART shall certify to the Board of Directors that CITY has met these requirements. If DART does not certify the CITY's compliance under Section 2.2 and 2.3, CITY will be informed within fourteen (14) calendar days of any deficiencies or matters requiring immediate action. In addition to Section 2.2.c, CITY expressly consents to DART subtracting from the Funds or CITY will pay upfront all costs incurred by DART that are associated with CITY's delayed actions or related to requests by CITY for betterments that are not required for or are unrelated to the DART project to be constructed

and operated in accordance with federal, state, or local laws in effect as of the Effective Date.

- 2.5 Project Design, Construction, and Maintenance. All activities associated with implementation and operation of an Eligible Project, including planning, design, construction, and maintenance, shall be the responsibility of CITY, unless otherwise agreed to by DART.
- 2.6 Insurance. CITY shall obtain and maintain, and shall require its contractors to obtain and maintain, adequate insurance or self-insurance coverage to effectively protect against the risks associated with each Eligible Project.

Section III. DART Approval of Eligible Projects

- 3.1 Allowable Projects and Activities. A project proposed by CITY shall be related to improvement of, or provide a benefit to, DART's Public Transportation System or provide Complementary Transportation Services and be approved by DART in accordance with Section 3.2 of this Agreement. Eligible activities for which the Funds may be used include, but are not limited to, planning, environmental impact studies, engineering, final design, right-of-way acquisition, construction, testing, inspection, or surveying, and the cost of contracting with providers of Complementary Transportation Services.
- 3.2. CITY Submittal of a Project. CITY will submit to DART a description of a proposed project, a cost estimate, and a statement demonstrating how the proposed project will benefit DART's Public Transportation System or will provide Complementary Transportation Services.
- 3.3 Future DART System Projects. Section 3.2 notwithstanding, CITY may submit to DART a proposal to reserve some or all of its Funds for one or more future DART system projects, such as construction of an infill station on a rail line, provided the project has been identified in DART's approved Transit System Plan and adopted twenty-year financial plan as of January 1, 2024. However, if DART or CITY determines not to implement the future DART system project(s) identified by CITY, CITY may submit an alternative project provided it can satisfy the critical deadlines identified in Section 4.3. If the critical deadlines have passed, DART shall retain the reserved Funds and may, in its sole discretion, work with CITY to identify an alternative use of the Funds.
- 3.4 DART Approvals. DART staff will have fourteen (14) calendar days to review and respond to the proposed Project(s).
- 3.5 Eligible Projects. Only after a proposed project has been approved by DART in writing shall the proposed project be deemed an Eligible Project for the purposes of this Agreement.

Section IV. Financial Considerations

- 4.1 Eligibility for Reimbursement. CITY's expenditure of funds for a proposed project prior to DART's approval of such project in accordance with Section 3 of this Agreement may render such expenditures ineligible for reimbursement by DART. DART shall have no obligation to reimburse CITY for any Eligible Project undertaken prior to DART's approval therefor and DART is not obligated to provide Funds for activities performed or costs incurred prior to the execution of this Agreement.
- 4.2 Disbursement of Funds. DART will disburse Funds to CITY only if CITY is in good standing per Section 2.2 or meets the cooperation requirement per Section 2.3, and has received certification under Section 2.4 for Eligible Projects approved by DART in accordance with the following terms:
- a. General. DART will reimburse CITY for the actual cost of an Eligible Project up to the cost as approved by DART and/or up to the amount of remaining Funds available to CITY. DART shall have no obligation to pay to CITY an amount greater than the amount of Funds available to CITY if DART has approved more than one Eligible Project for CITY. Unless otherwise agreed by DART, DART shall not be responsible to pay the cost of cost overruns. To the extent permitted by law, CITY shall RELEASE AND HOLD DART HARMLESS from all claims or liabilities arising from the use of the Funds or implementation or operation of an Eligible Project.
 - b. Eligible Projects Estimated to Cost \$250,000 or Less. DART may, in its sole discretion, distribute up to 50% of the cost of an Eligible Project after project approval. DART will distribute the remainder of the Funds, up to an amount not to exceed the Eligible Project cost, upon substantial completion of the Eligible Project and receipt of a request for payment with supporting documentation of actual project costs incurred.
 - c. Eligible Projects Estimated to Cost More than \$250,000. DART may, in its sole discretion, distribute \$125,000 or up to 10% of the cost of an Eligible Project, whichever is greater, after project approval. DART may, in its sole discretion, further distribute up to 40% of the approved cost of the Project after receipt of notice to proceed by CITY to its contractor for an Eligible Project. The remainder of the Funds will be distributed after receipt of a request for Funds along with supporting documentation of achievement of substantial completion under CITY's contract documents and evidence of actual Project costs incurred.
 - d. Eligible Projects under Section 3.3. If requested by CITY in accordance with Section 3.3, DART will set aside in a reserve fund all or a portion of CITY's Funds to be used to implement a future DART system project that is included in DART's approved Transit System Plan and adopted twenty-year financial plan. These reserved Funds shall remain available until expended on the identified project or until project completion, whichever comes first, notwithstanding Section 4.3; provided, however, that if DART removes the project from its long-term capital plans, or if the amount of Funds held exceeds the amount needed for the project, the reserved Funds shall be

transferred to DART's reserve funds according to the Financial Standards in place at the time, and the reserve account for the Funds shall be closed.

- e. Invoicing. CITY may submit a single reimbursement request for all Eligible Projects; however, CITY may submit no more than one reimbursement request for Funds per month, inclusive of all Eligible Projects. DART will have fourteen (14) calendar days to review and respond to CITY reimbursement requests for Funds.
 - f. Payment. DART's President & Chief Executive Officer or delegate must approve all Fund distributions. DART will distribute undisputed Funds no sooner than fourteen (14) calendar days after approval, and no later than thirty (30) calendar days after approval.
- 4.3 Critical Deadlines. Except as expressly provided herein, the Funds are available for a limited time. CITY must submit proposed projects to DART for approval by January 31, 2024. Contracts for Eligible Projects must be awarded by CITY by February 28, 2025. Eligible Projects must achieve substantial completion by January 30, 2026. Requests for Funds must be submitted by April 30, 2026. Funds not duly requested by CITY by April 30, 2026, shall be transferred to DART's reserve funds according to the Financial Standards in place at the time, and separate accounts in DART's accounting system for the purposes of this Agreement shall be closed.
- 4.4 Audit Rights. If a subsequent review of Eligible Project documentation reveals that Funds were expended in violation of this Agreement, CITY shall promptly reimburse such Funds to DART.

Section V. Termination

5.1 DART Termination.

- a. If CITY fails to timely meet any of the critical dates identified in Section 4.3 or otherwise comply with the terms of this Agreement, DART may terminate this Agreement by providing thirty calendar days' written notice. Upon termination of this Agreement by DART under this Section 5.1(a), CITY shall return to DART any Funds (a) advanced but not yet used for an Eligible Project; or (b) used for a non-qualifying activity or purpose in violation of this Agreement; and DART shall have no further obligation to CITY under this Agreement.
- b. Additionally, DART shall have the right to terminate this Agreement under Section VI.

5.2 Expiration of Agreement. This Agreement shall terminate automatically upon the earlier of distribution or forfeiture of \$28,437,000 in Funds to CITY and April 26, 2026; provided, however, obligations identified in Section 3.3 and 10.7, shall survive termination. The total distribution of Funds to CITY shall be offset by deductions made pursuant to Section 2.2(c).

Section VI. Withdrawal of Service Area City

If an eligible municipality calls an election to withdraw from DART, no new applications for funding will be considered, payments under existing agreements will be immediately suspended and no new or pending applications will be recommended for funding.

Section VII. Legislative Activities of Service Area City

If the withdrawal election fails and the municipality remains in the DART Service Area, payments under existing agreements will resume. However, if the withdrawal election is successful and the municipality withdraws from DART, no further applications shall be addressed or received from such CITY and no new allocations of funds under this agreement shall be made to the municipality. The agreements for all eligible projects shall provide that in such circumstances the agreement shall be deemed mutually cancelled and removed from the program, no further funding or reimbursement will be provided for the project by DART and funds previously paid for the eligible project by DART shall be included as part of the CITY's total financial obligation to DART.

Section VIII. Termination of Prior Programs

- 8.1 Local Assistance Program. The parties agree that CITY will submit all requests for reimbursement for the Local Assistance Program, which terminated in 2004, no later than March 31, 2023, and that immediately following final disposition of the request(s), all remaining funds shall be transferred to DART's reserve funds according to the Financial Standards in place at the time, and the related separate accounts in DART's accounting system shall be closed.
- 8.2 Transit Principal Arterial Street System Program. The parties agree that CITY will submit all requests for reimbursement for the Transit Principal Arterial Street System Program no later than June 30, 2023, and that immediately following final disposition of the request(s), all remaining funds shall be transferred to DART's reserve funds according to the Financial Standards in place at the time, and the related separate accounts in DART's accounting system shall be closed.
- 8.3 Transit Related Improvement Program. The parties agree that CITY will submit all requests for reimbursement for the Transit Related Improvement Program, which terminates on September 30, 2025, no later than September 30, 2027, and that immediately following final disposition of the request(s), all remaining funds shall be transferred to DART's reserve funds according to the Financial Standards in place at the time, and the related separate accounts in DART's accounting system shall be closed.

Section IX. Dispute Resolution

DART and CITY will make good faith efforts to resolve any issues or disputes which may arise under this Agreement. CITY and DART acknowledge and agree that *time is of the essence* at all levels of resolving issues or disputes related to the Funds. 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 Finance or their equivalent for consideration and disposition. If an issue or dispute cannot be resolved, it will be elevated to CITY's Assistant City Manager and the DART Executive Vice President/Chief Financial Officer or their equivalent for consideration and disposition. If an issue or dispute cannot be resolved, it will be elevated to CITY's City Manager and the DART President & Chief Executive Officer as the final arbiters of the issue or dispute in accordance with the powers and authorities vested in them.

Section X. Miscellaneous

10.1 Notices. Notice shall be provided in writing at the following addresses:

DALLAS AREA RAPID TRANSIT
1401 Pacific Avenue
Dallas, Texas 75202-7210
cfo@dart.org
Attn: EVP, Chief Financial Officer

CITY OF PLANO
1520 K Avenue
Plano, Texas 75074
deniset@plano.gov
Attn: Finance Director

Copy to:
DART General Counsel
P.O. Box 660163
Dallas, TX 75266-7255

Either Party may designate a different address for receipt of notice by giving written notice of such change of address.

- 10.2 Governing Law; Voting Requirements for Initiation of Suit Against CITY. This Agreement 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 Agreement shall be commenced in a state district court of competent jurisdiction in Dallas County, Texas. DART shall not name or implead a non-principal municipality (CITY) or its officers or employees except upon a two-thirds vote of the DART Board.
- 10.3 Entirety and Amendments. This Agreement embodies the entire agreement between the Parties and supersedes all prior agreements and understandings. This Agreement may be amended or supplemented only by a written instrument executed by the Parties.
- 10.4 No Joint Enterprise. The Parties do not intend that this Agreement be construed as finding that the Parties have formed a joint enterprise. 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.
- 10.5 Third Party Beneficiaries. There are no third-party beneficiaries to this Agreement.
- 10.6 Construction and Interpretation. This Agreement shall not be construed against the drafting Party.

- 10.7 Severability. If any provision of this Agreement 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. Except for the time periods that CITY must submit applications for eligible projects, all sections of the Interlocal Agreement survive and remain in force and effect.
- 10.8 No Waiver of Governmental Immunity. By entering into this Agreement, neither Party waives or diminishes any defenses available to it, including, by example and without limitation, governmental immunity and statutory caps on damages.
- 10.9 No Discrimination. In the 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, veteran status or other protected group of persons.
- 10.10 Signature Authority. Each of the individuals signing this Agreement warrants that he or she is duly and properly authorized to execute this Agreement on behalf of his or her respective Party.

DALLAS AREA RAPID TRANSIT

Nadine S. Lee
President & Chief Executive Officer

Date: _____

CITY OF PLANO

City Official

Title: _____

Date: _____