

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING AN INTERLOCAL AGREEMENT WITH DALLAS AREA RAPID TRANSIT FOR ENHANCEMENTS OF AREAS ALONG THE SILVER LINE ALIGNMENT; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS:

SECTION 1. The Interlocal Agreement with Dallas Area Rapid Transit for enhancements of areas along the Silver Line alignment, attached as **Exhibit A** and incorporated herein, is hereby approved and the City Manager is authorized to execute the agreement.

SECTION 2. This Resolution shall take effect from and after its date of adoption.

DULY RESOLVED AND ADOPTED by the City Council of the Town of Addison, Texas, on this the **8th** day of **SEPTEMBER** 2020.

TOWN OF ADDISON, TEXAS

Joe Chow, Mayor

ATTEST:

APPROVED AS TO FORM:

Irma Parker, City Secretary

Brenda N. McDonald, City Attorney

EXHIBIT A

INTERLOCAL AGREEMENT
between
TOWN OF ADDISON AND DALLAS AREA RAPID TRANSIT
for
ENHANCEMENTS OF AREAS ALONG SILVER LINE ALIGNMENT

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, Texas Transportation Code, and TOWN OF ADDISON (the "TOWN"), a Texas home rule municipal corporation and shall be effective on the date signed by the last of the parties to sign (the "Effective Date"). DART and the TOWN are referred to collectively herein as "the Parties" and each individually as a "Party".

RECITALS

WHEREAS, regional passenger rail service substantially benefits regional mobility and improves air quality initiatives; and

WHEREAS, development of the Dallas Area Rapid Transit (DART) Silver Line Corridor Regional Rail Project (Silver Line Project or Project) will provide connectivity from Terminal B at Dallas/Fort Worth International Airport (DFW Airport) to Shiloh Road in Plano, Texas and will travel through the Town of Addison; and

WHEREAS, Addison has strongly supported transit-oriented development (TOD) and regional mobility initiatives and projects including the Silver Line on the Cotton Belt Corridor; and

WHEREAS, the TOWN intends to contribute funds to support the design and construction of the Silver Line Regional Rail Project; and

WHEREAS, the TOWN and DART desire to enter into this Agreement providing for the respective duties and responsibilities of the TOWN and DART in relation to design, construction and financing of the Silver Line Regional Rail Project.

NOW, THEREFORE, in consideration of the premises and mutual promises and covenants contained herein to be performed by the parties, DART and TOWN agree as follows:

ARTICLE 1 DART'S RESPONSIBILITIES

- 1.01 DART shall develop the Silver Line Corridor Regional Rail Project in congruence with the DART Service Plan.
- 1.02 Single Point of Contact. DART shall designate by Notice and provide to the TOWN the name and contact information for the single point of contact for communication and other interface regarding all aspects of the Silver Line Corridor Regional Rail Project.
- 1.03 Development and Construction. DART shall construct the Cotton Belt Regional Rail Project in congruence with the DART Service Plan as amended, the applicable Financial Plan(s) and construction and engineering documents. DART shall, subject to events of Force Majeure, cause Completion of Construction of the Project, to occur in accordance with the Revenue Service Date

EXHIBIT A

approved by DART. All work shall be provided in accordance with applicable federal, state and local laws, regulations and ordinances.

- 1.04 Expenditure of Funds. DART shall only expend funds provided by the TOWN under this Agreement for costs of projects meeting the requirements in Section 374.036 of the Local Government Code.
- 1.05 Project Plans. TOWN shall have opportunity to review construction plans and documents related to the following items of interest to TOWN prior to DART issuing such documents for construction. TOWN shall provide their responses/feedback, in writing, within ten working days following issuance from DART. The plans shall include what is in Section 3.01.

ARTICLE 2 TOWN'S OBLIGATIONS

- 2.01 Single Point of Contact. TOWN shall designate by Notice and provide to DART the name and contact information for the single point of contact for communication and other interface regarding all aspects of the Silver Line Corridor Regional Rail Project.
- 2.02 Expedited Reviews. As may be practical, TOWN shall provide a good faith effort to expedite reviews and approvals of all DART submittals and applications, including, but not limited for, all required permits, traffic control, road and street closures that are in any way, directly or indirectly, related to the Silver Line Corridor Regional Rail Project.
- 2.03 Waiver of Fees. TOWN agrees to waive all fees and charges, if any, for permits, applications, platting, zoning, construction, or any other TOWN services that are in any way, directly or indirectly, related to the Silver Line Corridor Regional Rail Project.
- 2.04 Real Estate Acquisition. TOWN agrees to fully cooperate and will support DART with the acquisition of any easements, rights of way, property rights or real estate required for the Silver Line Corridor Regional Rail Project within the corporate limits.
- 2.05 Full Funding. The TOWN shall pay DART in full as follows:

The TOWN shall deposit in full the amount of forty three thousand six hundred sixty dollars and sixteen cents (\$43,660.16) which represents the total project cost of the Enhancements of Areas Along Silver Line Alignment within thirty (30) days of execution of this Agreement. Exhibit B includes cost breakdown of each enhancement. The total project cost includes design, construction, construction contingency, construction management, testing, and other capital project support costs (soft costs)

Refunds. If DART and the TOWN determine that the amount of a Reimbursement Payment was less or greater than the correct amount to which the DART was entitled (together with such records, reports and other information necessary to support the determination), the TOWN shall pay DART, or DART shall pay to the TOWN within thirty (30) days of the applicable adjustment.

If at the time of the final accounting, TOWN has paid more than actual costs incurred for the Project Costs, DART shall reimburse TOWN no later than thirty (30) days after date of the final invoice for the same.

Upon written request, TOWN may review all documents supporting the amounts invoiced by DART, for a period of one year after the date of the final payment.

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ARTICLE 3 DART OBLIGATION

- 3.01 DART shall provide the following:
- Design and construct six (6) foot tall steel decorative fence with mow strip at a length of 4,112 linear feet located between Addison Center Station and Addison Road on both sides of the rail line, 12-foot from center of nearest track. (Exhibit A)
- 3.02 DART will inform the TOWN in writing of the proposed final costs. DART will provide TOWN with periodic reports reflecting the actual costs, including changes from the current budget provided in Exhibit B. Cost and schedule impacts resulting from any changes in the documents and design made during construction, requested by the TOWN, will be the responsibility of the TOWN. DART will process change orders less than \$1,450.12 resulting from any changes in the design or construction that are within the authorized contingency provided in Exhibit B, without prior notification from DART to the TOWN. DART will notify TOWN of any individual cost impacts resulting from any change orders of \$1,450.12 or more, and DART will provide TOWN a copy of the proposed change order for review, prior to execution of the change order. In the event of unforeseen conditions that result in the increase in costs identified in Exhibit B, DART will notify TOWN, and the change order causing that impact and any additional change orders causing further increases in costs identified in Exhibit B shall be provided by DART to the TOWN for review and consideration for funding by the TOWN. DART will not approve any change order causing or allowing an increase in costs identified in Exhibit B without the consent of the TOWN. The Parties acknowledge that in the event of a change order exceeding \$1,450.12 or an increase in costs identified in Exhibit B, time will be of the essence to reach mutual agreement regarding funding and to obtain TOWN Council and DART Board action, as necessary, to avoid delay in implementation of the Project.
- 3.03 DART will maintain full ownership, control and all rights to design and construction of the Project. Notwithstanding any other provision herein, if Project is completed for less than costs identified in Exhibit B, then DART shall refund to TOWN the amount calculated as the difference between costs identified in Exhibit B and actual final Project costs, not to exceed the amount of TOWN contribution.

ARTICLE 4 TERMINATION

- 4.01 If either party believes the other party is in default of this Agreement, the non-defaulting party shall provide written notice to the other party specifying the basis for such default and allowing the defaulting Party thirty (30) days from receipt of the notice to cure such default. In the event the default is not cured within such period, the non-defaulting party shall notify the defaulting party of termination of this Agreement.
- 4.02 Should a court of competent jurisdiction determine the TOWN'S or DART'S immunity from suit is waived in any manner other than as provided in Subchapter I of Chapter 271, TEXAS LOCAL Government Code, as amended, the TOWN and DART hereby acknowledge and agree that in a suit against either party for breach of this Agreement:
- a) The total amount of money awarded is limited to actual damages in an amount not to exceed the balance due and owed by either party under this Agreement;
 - b) The recovery of damages against either party may not include consequential damages or exemplary damages;
 - c) Neither party may recover attorney's fees; and
 - d) Neither party is entitled to specific performance or injunctive relief against the other party.

EXHIBIT A

- 4.03 If TOWN does not provide the funding as specified in Exhibit B, this Agreement shall automatically terminate without further action of the Parties.

ARTICLE 5 GENERAL TERMS

- 5.01 All recitals are hereby incorporated into this Agreement as if fully set forth herein.
5.02 Notice. Notices by or to either party provided under this Agreement shall be in writing and delivered by certified mail return receipt requested, or customarily used hand or overnight delivery with proof of delivery to the addresses shown below.

| | | | |
|-------------------|----------------------------------------------------|-------------------|--------------------------------------------|
| If to DART: | Gary C. Thomas, President/Executive Director | If to TOWN: | Wes Pierson, City Manager |
| Mailing Address: | PO Box 660163 Dallas, Texas 75266- 7213 | Mailing Address: | PO Box 9010 Addison, Texas 75001 |
| Physical Address: | 1401 Pacific Avenue Dallas, Texas 75202 | Physical Address: | 5300 Belt Line Road Dallas, Texas 75254 |

- The above contact information may be modified in writing by a party on behalf of that party by notice given in accordance with this section.
- 5.03 Audits by DART and the TOWN. DART and the TOWN reserves the right to perform audits of records related to this Agreement. Audits may encompass an examination of all financial transactions, all accounts and reports, as well as an evaluation of compliance with the terms and conditions of this Agreement.
- 5.04 Contractual Relationship. It is understood and agreed that the relationship described in this Agreement between the parties is contractual in nature and is not to be construed to create a partnership of joint venture or agency relationship between the parties. No party shall be liable for any debts incurred by the other party in the conduct of such other party's business or functions.
- 5.05 Subcontracting. Nothing in this agreement shall prevent DART from using a contractor or agent to perform the duties and responsibilities contemplated by this Agreement. If DART contracts with another entity or individual to perform any or all of its obligations under this Agreement, DART shall enter into written contractual agreements requiring such entity or individual to comply with the applicable provisions of this Agreement.
- 5.06 Compliance with Regulations. During the performance of this Agreement, each party, for itself, its assignees, and successors agrees to comply with all applicable local, state, and federal regulations.
- 5.07 No Third-Party Beneficiaries. Nothing in this Agreement shall be construed as creating any liability in favor of any third party against DART or the TOWN. Additionally, this Agreement shall not be construed as relieving any third party from any liability to DART or TOWN.
- 5.08 Assignment. Neither party shall assign this Agreement in whole or in part without first obtaining written consent from the other party, which may be withheld for any reason.
- 5.09 Responsibility. TOWN and DART agree that each shall be responsible for the acts or omissions of its officials, officers, employees or agents as provided by Texas law, in the performance of this Agreement.
- 5.10 Immunity Retained. Nothing contained in this Agreement shall be construed as constituting a waiver of the TOWN's or DART's governmental immunity from suit or liability, which is expressly reserved to the extent allowed by law.
- 5.11 Captions. 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.

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- 5.12 Governing Law and Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of Texas. The Parties agree venue shall lie in Dallas County, Texas.
- 5.13 Number and Gender. Whenever used herein, unless the context otherwise provides, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all other genders.
- 5.14 Severability and Legal Construction. In the event any one or more of the provisions contained in this Agreement shall be for any reason 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 near as possible the original intent of the Parties.
- 5.15 Merger and Agreement. This instrument constitutes the entire agreement of the parties with respect to the matters contemplated herein and supersedes any prior dealings between the parties on this subject matter. This Agreement may be modified or amended only in writing, signed by both Parties.
- 5.16 Nondiscrimination. In its performance of this Agreement, DART and the TOWN each warrant that it shall not discriminate against any person on account of race, color, religion, national origin, sex, age, disability, genetic information, veteran status, sexual orientation, gender identity or any other characteristic protected by law.
- 5.17 No Waiver. Neither of the parties 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 the 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.
- 5.18 Authorization to Act. By their signatures below, the representatives of the TOWN and DART state that they are authorized to enter into this Agreement. The TOWN and DART will each provide documentation that this Agreement has been authorized by its respective governing body.

IN WITNESS, WHEREOF, the Parties have executed this Agreement in multiple originals effective as of the date of the last signed by a Party.

EXECUTED this ____ day of _____, 2020 by Authority of Town of Addison City Council Resolution No. _____, adopted on _____;

TOWN OF ADDISON

BY: _____
Wes Pierson, City Manager

Attest:

Irma Parker, City Secretary

Approved as to form:

Brenda McDonald, City Attorney

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EXECUTED this ____ day of _____, 2020 by Authority of DART Board of Directors Resolution No. _____, adopted on _____;

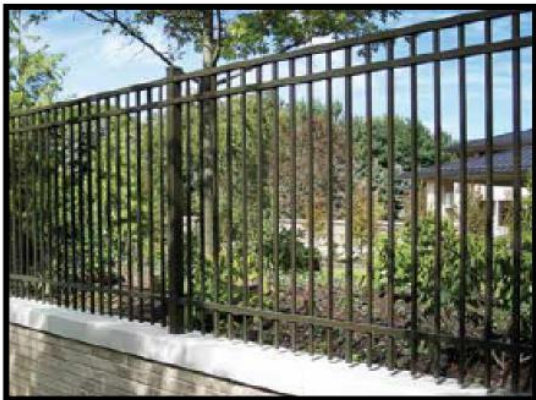
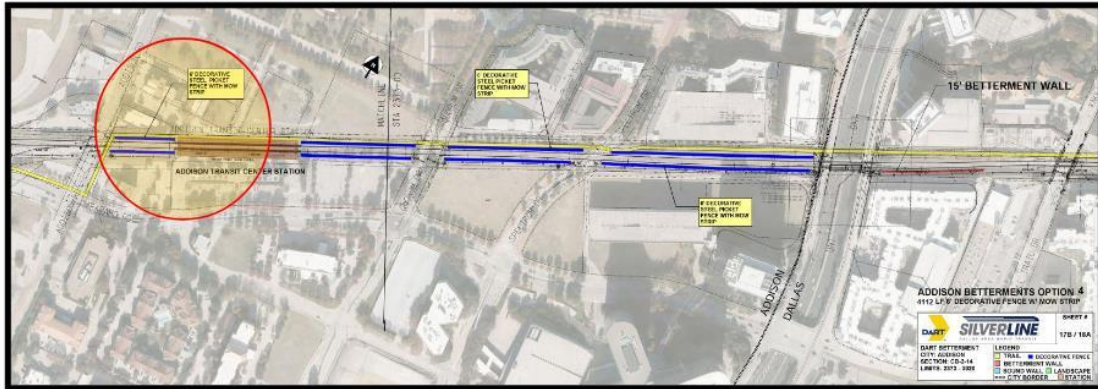
DALLAS AREA RAPID TRANSIT

BY: _____
Gary C. Thomas
President/Executive Director

EXHIBIT A

EXHIBIT A REPRESENTATIVE ENHANCEMENTS

Note: Final selections and other specifications will be determined by mutual agreement between DART and TOWN.



MAJESTIC™

Echelon Plus Majestic has a *contemporary feel* that incorporates a *flush top rail* which produces a stately and streamlined appearance. This fence style *highlights the landscape* by blending with the surrounding architectural design.

- *3 Rail / 4 Rail options available*
- *Flush or Standard bottom options available*

EXHIBIT A

EXHIBIT B COST ITEMIZATION

Town of Addison Betterments

| Total Budget | | Betterment Funds | | | | Town Contribution | | | |
|---------------------------|--------------|------------------|------------|---------------------|---------------------|--------------------|-------------------|----------------------|--------------------|
| | \$512,000.00 | | | | | | | | |
| | Quantity | Unit | Unit Price | Total | Remaining Funds | AWH Price | 4% Contingency | DART Fee for Service | Extended Price |
| Option 4 | | | | | | | | | |
| 6' Steel Decorative Fence | 4112 | LF | \$103.90 | \$427,236.80 | | | | | |
| Mow Strip | 4112 | LF | \$29.43 | \$121,016.16 | | | | | |
| Total Option 4 | | | | \$548,252.96 | -\$36,252.96 | \$36,252.96 | \$1,450.12 | \$5,957.09 | \$43,660.16 |