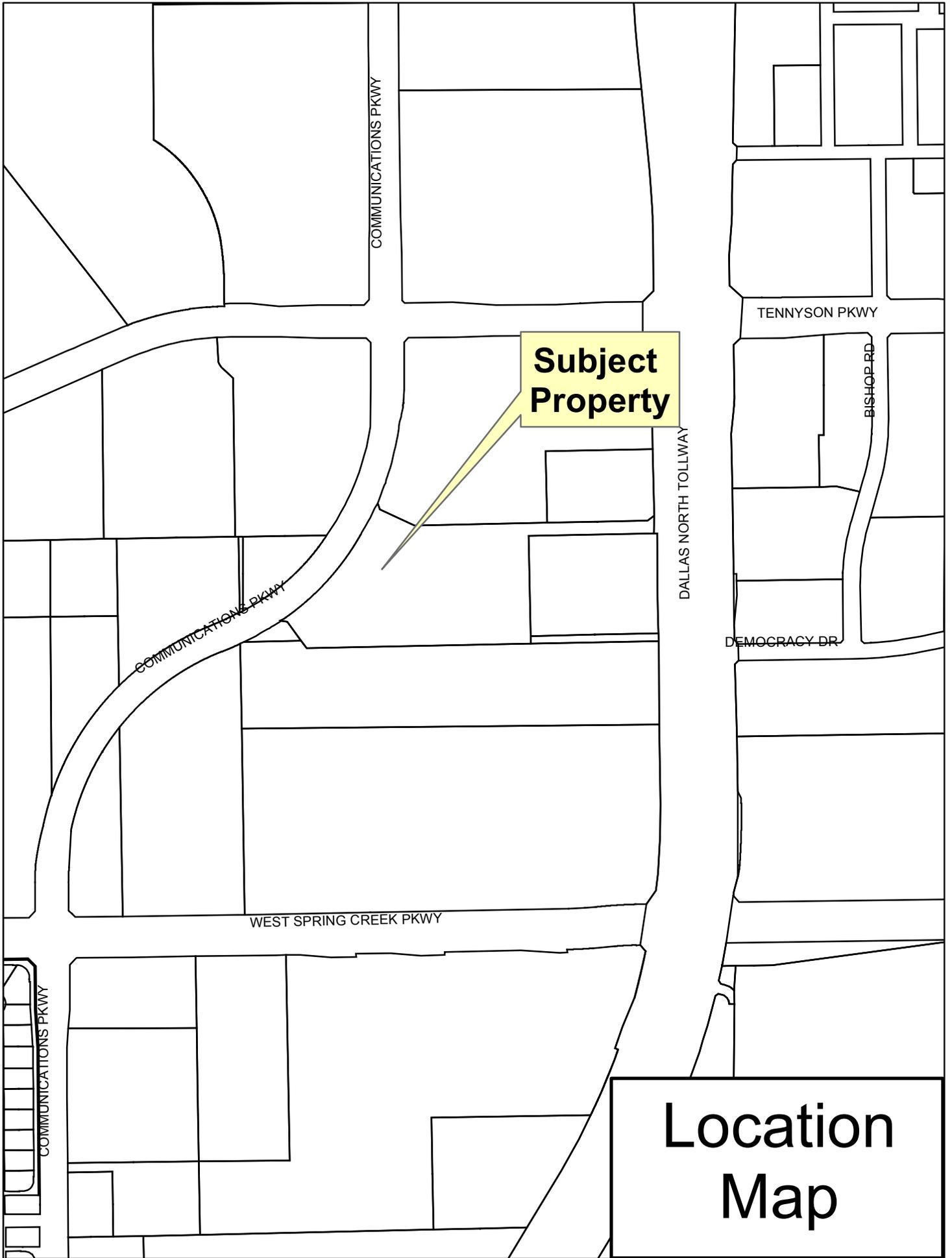




CITY OF PLANO COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY					
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory					
Council Meeting Date:		10/27/2014			
Department:		Public Works			
Department Head		Gerald Cosgrove			
Agenda Coordinator (include phone #):		Tiffany Stephens x 4264			
CAPTION					
<p>A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of a license agreement by and between the City of Plano and Dallas Area Rapid Transit (DART) for the use of approximately 43,000 square feet of land at the DART Northwest Plano Park and Ride for the use of sand and salt storage; authorizing its execution by the City Manager or his authorized designee; and providing an effective date.</p>					
FINANCIAL SUMMARY					
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP					
FISCAL YEAR:	2014-15	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget		0	400	0	400
Encumbered/Expended Amount		0	0	0	0
This Item		0	-10	0	-10
BALANCE		0	390	0	390
FUND(S): GENERAL FUND					
<p>COMMENTS: Funds are available in the 2014-15 Public Works budget for this expenditure. The remaining balance will be used for other professional services expenditures as needed by Public Works Administration.</p> <p>STRATEGIC PLAN GOAL: Partnering with DART to store sand and salt for West Plano during winter months relates to the City's goals of a Safe Large City and Partnering for Community Benefit.</p>					
SUMMARY OF ITEM					
<p>Staff recommends approval of the Agreement between the City of Plano and Dallas Area Rapid Transit (DART) for the use of the Northwest Plano Park and Ride facility for sand and salt storage until September 2017. This location will replace the sand and salt storage location under the Dallas North Tollway between Windhaven Parkway and Spring Creek Parkway. The City of Plano will construct a permanent facility at a location to be determined.</p>					
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies		
License Agreement					
Location Map					



**Subject
Property**

**Location
Map**

A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of a license agreement by and between the City of Plano and Dallas Area Rapid Transit (DART) for the use of approximately 43,000 square feet of land at the DART Northwest Plano Park and Ride for the use of sand and salt storage; authorizing its execution by the City Manager or his authorized designee; and providing an effective date.

WHEREAS, the City of Plano has a need to sand and salt its streets during the winter; and

WHEREAS, the existing sand and salt storage location for this part of town under the Dallas North Tollway (DNT) between Windhaven Parkway and Spring Creek Parkway is no longer available due to development in the area; and

WHEREAS, the City of Plano has not found a permanent facility to replace the DNT location; and

WHEREAS, DART is willing to enter into a license agreement attached hereto as Exhibit "A" allowing the City of Plano to use a portion of their Northwest Plano Park and Ride to store sand and salt; and

WHEREAS, upon full review and consideration of the license agreement and all matters attendant and related thereto, the City Council is of the opinion that the license agreement should be approved, and that the City Manager or his designee shall be authorized to execute the agreement on behalf of the City of Plano.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, THAT:

Section I. The terms and conditions of the proposal having been reviewed by the City Council of the City of Plano and found to be acceptable and in the best interests of the City of Plano and its citizens, are hereby in all things approved.

Section II. The City Manager or his authorized designee is hereby authorized to execute the agreement or any other documents in connection therewith on behalf of the City of Plano, substantially according to the terms and conditions set forth in the Agreement.

Section III. This Resolution shall become effective immediately upon its passage.

DULY PASSED AND APPROVED the 27th day of October, 2014.

Harry LaRosiliere, MAYOR

ATTEST:

Lisa C. Henderson, CITY SECRETARY

APPROVED AS TO FORM:

Paige Mims, CITY ATTORNEY

LICENSE AGREEMENT

THIS License Agreement ("License") is made by and between DALLAS AREA RAPID TRANSIT ("DART"), a regional transportation authority, created, organized and existing pursuant to Chapter 452, Texas Transportation Code, and CITY OF PLANO a Texas Municipal Corporation ("Licensee"), acting herein by and through its duly authorized representative, whose mailing address is 1520 K Avenue, Plano Texas 75074.

1. Purpose. DART hereby grants a license to Licensee solely for the purposes of constructing, installing, operating and maintaining an area comprising of approximately 43,000 square feet more or less for the storage of de-icing material (sand & salt mixture) (the "Permitted Improvements") located on the southwest corner of DART's Northwest Plano Park and Ride at 6830 Communications Parkway, Plano Texas 75024, as shown on **Exhibit "A"** attached hereto (the "Property").

Constructing, installing, operating and maintaining the Permitted Improvements shall be referred to herein as the "Permitted Use." Licensee's right of access, ingress and egress to the Property shall be limited solely to the Permitted Use.

The term "License Property" shall be that section of DART's Northwest Plano Park and Ride described in this agreement as shown on the attached Exhibit "A"

The term "DART Property" shall include all DART-owned property.

2. Term. The term of this License shall begin on the **1st day of November, 2014** and continue thereafter until the **1st day of September, 2017**.

3. Consideration.

3.01. The consideration for the granting of this License shall be the payment by Licensee to DART the sum of **TEN AND NO/100 (\$10.00) DOLLARS** payable in advance (the "License Fee") and other considerations as listed on **Exhibit "B"**, attached hereto and made a part hereof.

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; (b) all vested rights presently owned by any railroad, utility or communication company, within the boundaries of the Property; and (c) any existing lease, license or other interest in the Property.

5. Design, Construction, Operation and Maintenance.

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 DART.

5.02. By acceptance of this License, Licensee agrees to design, construct and/or 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.

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

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, required to carry on any activity permitted herein.

7. DART's Construction Agreement 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 DART's Construction Agreement and Contractor's Right of Entry covering such work, and has furnished insurance coverage in such amounts and types as shall be satisfactory to DART.

8. Photo Identification. A company-issued photo identification of Licensee's employees, contractors or agents shall be required to work on the Property.

9. Duty of Care in Construction. Licensee or its contractor shall use reasonable care during the construction period and thereafter, to avoid damaging any existing improvements, fixtures, equipment or other personal property or vegetation located on the Property or on any adjacent property owned by or under the control of DART. If Licensee or its contractor causes damage to the Property or such adjacent property, Licensee and/or its contractor shall immediately repair any damage at no cost to DART. If Licensee and/or its contractor fail to make such repairs, DART shall have the right, but not the obligation, to make such repairs at the sole cost of Licensee, which cost Licensee agrees to pay DART upon demand.

10. Environmental Protection.

10.01. Licensee shall comply with all laws, regulations, and ordinances related to environmental protection.

10.02. Licensee shall not use or permit the use of the Property for any purpose that may be in violation of any laws pertaining to health or the environment, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), the Resource Conservation and Recovery Act of 1976 ("RCRA"), the Texas Water Code and the Texas Solid Waste Disposal Act.

10.03. 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 insure that no such hazardous substance or solid waste will ever be discharged onto the Property by Licensee or its Contractors.

10.04. 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.

10.05. Without waiving the doctrines of sovereign immunity and immunity from suit, and to the extent permitted by the laws and Constitution of the State of Texas, Licensee shall indemnify and hold DART harmless against all cost of environmental clean up to the Property resulting from Licensee's use of the Property under this License.

10.06. WITHOUT WAIVING THE DOCTRINES OF SOVEREIGN IMMUNITY AND IMMUNITY FROM SUIT, AND TO THE EXTENT PERMITTED BY THE LAWS AND CONSTITUTION OF THE STATE OF TEXAS, LICENSEE AGREES TO FULLY INDEMNIFY, DEFEND, AND HOLD HARMLESS DART FROM AND AGAINST ANY AND ALL CONTRACTUAL OR NEGLIGENCE CLAIMS, DEMANDS, CAUSES OF ACTION, PENALTIES, FINES, SUITS, ACTIONS, ADMINISTRATIVE PROCEEDINGS (INCLUDING INFORMAL PROCEEDINGS), SETTLEMENTS, CONSENT ORDERS, GOVERNMENT ORDERS, JUDGMENTS, LOSS, DAMAGE, LIABILITIES, COSTS AND EXPENSES (INCLUDING, BUT NOT LIMITED TO ATTORNEYS' FEES (INCLUDING ON APPEAL), CONSULTANTS' FEES, LITIGATION COSTS, EXPERT WITNESS FEES, AND EXPENSES OF INVESTIGATION, REMOVAL, REMEDIATION, OR OTHER REQUIRED PLAN OR RESPONSE ACTION) OF WHATSOEVER NATURE, CHARACTER, OR DESCRIPTION THAT ANY PERSON OR ENTITY HAS OR MAY HAVE OR ARE INCURRED BY OR ASSERTED AGAINST DART AT ANY TIME, BY REASON OF, IN CONNECTION WITH, RELATED TO OR ARISING IN WHOLE OR IN PART OUT OF THE BREACH OF ANY REPRESENTATION, WARRANTY OR OBLIGATION IN THIS SECTION BY LICENSEE, ITS EMPLOYEES, AGENTS, CONTRACTORS, SUBCONTRACTORS OR ANY OTHER PARTY UNDER THE LICENSEE'S DIRECTION AND CONTROL, OR THE FAILURE OF THE LICENSEE TO MEET ITS OBLIGATIONS UNDER

THIS SECTION IN A FULL AND TIMELY MANNER.

10.07. WITHOUT WAIVING THE DOCTRINES OF SOVEREIGN IMMUNITY AND IMMUNITY FROM SUIT, AND TO THE EXTENT PERMITTED BY THE LAWS AND CONSTITUTION OF THE STATE OF TEXAS, THE INDEMNITY CONTAINED HEREIN SHALL SURVIVE THE TERM OF THIS LICENSE.

10.08. WITHOUT WAIVING THE DOCTRINES OF SOVEREIGN IMMUNITY AND IMMUNITY FROM SUIT, AND TO THE EXTENT PERMITTED BY THE LAWS AND CONSTITUTION OF THE STATE OF TEXAS, LICENSEE'S OBLIGATION HEREIN TO INDEMNIFY, DEFEND AND HOLD HARMLESS SHALL NOT APPLY TO CLAIMS ARISING OUT OF (1) CONTAMINATION, RELEASES, HAZARDOUS AND REGULATED MATERIALS, SOLID WASTE, PROCESS WATER OR THE ENVIRONMENTAL CONDITION OF THE LICENSE PROPERTY PRIOR TO THE LICENSE DATE; (2) CONTAMINATION, RELEASES, HAZARDOUS AND REGULATED MATERIALS, SOLID WASTE, PROCESS WATER, OR OTHER ENVIRONMENTAL CONDITION MIGRATING ONTO/ABOVE/BELOW, OR FROM LICENSE PROPERTY, NOT CAUSED BY LICENSEE OR THIRD PARTIES UNDER LICENSEE'S DIRECTION AND CONTROL; (3) CONTAMINATION, RELEASES, HAZARDOUS MATERIALS, SOLID WASTE, PROCESS WATER OR OTHER ENVIRONMENTAL CONDITION ON, AT, OR FROM THE LICENSE PROPERTY NOT CAUSED IN WHOLE OR IN PART BY THE LICENSEE, ITS EMPLOYEES, AGENTS, CONTRACTORS, SUBCONTRACTORS OR ANY OTHER THIRD PARTY UNDER CONTRACTOR'S DIRECTION OR CONTROL.

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

12. Maintenance of Completed Improvements.

12.01. The Permitted Improvements shall be maintained by the Licensee in such a manner as to keep the Property in a good and safe condition. In the event Licensee fails to maintain the Property as required, upon discovery DART shall notify Licensee of such occurrence in writing. In the event Licensee does not remedy the failure within ten (10) days from the date of such notice, DART shall have the right, but not the obligation to remedy such failure at the sole cost of Licensee. In the event DART exercises its right to remedy Licensee's failure, Licensee shall immediately pay all costs incurred by DART.

13. Future Use by DART.

13.01. This license is made expressly subject and subordinate to the right of DART to use the Property for any purpose whatsoever.

13.02. In the event that DART shall, at any time determine that the adjustment or removal of the Permitted Improvements is necessary or convenient for DART's use of the Property, Licensee shall, at its sole cost and expense adjust or remove said Permitted Improvements so as not to interfere with DART's or DART's assigns' use of the Property. A minimum of thirty (90) days written notice shall be given by DART for the required adjustment or removal of the Permitted Improvements, unless extended by mutual agreement.

14. Relocation Benefits. Licensee acknowledges that it is not entitled to relocation benefits from DART and that Licensee shall be responsible for all costs for removal or relocation of the Permitted Improvements.

15. 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.

16. Indemnification.

16.01. Without waiving the doctrines of sovereign immunity and immunity from suit, and to the extent permitted by the laws and Constitution of the State of Texas, Licensee shall at all times defend, protect, indemnify and hold DART harmless against and from any penalty or damage or charge imposed for any violation of any law, ordinance, rule or regulation arising out of the use of the Property by Licensee, its officers, employees, agents, contractors, or assigns, or those holding under Licensee;

16.02. Without waiving the doctrines of sovereign immunity and immunity from suit, and to the extent permitted by the laws and Constitution of the State of Texas, Licensee shall at all times defend, protect, indemnify and hold DART harmless against and from any and all loss, cost, damage or expense, including attorney's fees, arising out of or from any accident or other occurrence on or about said Property resulting from use of the Property by Licensee, its officers, employees, agents, customers and invitees;

16.03. Without waiving the doctrines of sovereign immunity and immunity from suit, and to the extent permitted by the laws and Constitution of the State of Texas, Licensee shall at all times defend, protect, indemnify and hold DART harmless against and from any and all loss, cost, damage or expense, including attorney's fees arising out of any failure of Licensee or its officers, employees, agents, contractors or assigns in any respect to comply with and perform all the requirements and provisions of this License; except that indemnity provided for in this Paragraph shall not apply to any liability resulting from the sole negligence of Licensor, its officers, agents, or contractors, and in the event of joint and concurrent negligence of Licensee and Licensor, responsibility, if any, shall be apportioned comparatively in accordance with Texas Law.

17. Insurance. Licensee or its Third Party Administration shall handle the administration, monitoring and resolution of pollution, property damage, and bodily injury claims arising out of their use of the DART facility. All third party settlements and releases shall include a release in favor of DART.

17.01. Licensee shall, at all times during the term of this Agreement and extended terms thereof, provide and maintain, or cause to be provided and maintained, the following types of insurance protecting the interest of Licensee against any loss, cost or expense, of any kind arising out of the Service to be provided hereunder. DART shall be named as an additional insured on (2-3) below and provided a waiver of subrogation on (1-3). DART shall be provided with a certificate of insurance from an insurance company or companies acceptable to DART, at least twenty (20) days prior to the commencement of performance hereunder. Licensee agrees to give DART written notice immediately upon becoming aware that its insurance policies will be cancelled or not renewed. In the event Licensee allows any coverage to lapse during the terms hereof, DART shall have the right to terminate this Agreement. In addition, notwithstanding anything to the contrary contained in this Agreement, Licensee shall have the right to provide the insurance required of Licensee under this Agreement on a self-insured or retained basis. If Licensee elects to do so, the rights and remedies of DART against Licensee shall be not less than the rights and remedies DART would have in the event licensee had maintained the insurance required under this Agreement with Third-party carriers.

1). Workers' Compensation Insurance.

- Licensee shall provide statutory benefits under the Worker's Compensation Act of the State of Texas and/or any other State or Federal Law or Laws applicable to the Contractor's employees performing the work under this Agreement.
- **Employers' Liability Insurance** with limits of liability of not less than \$500,000.00 each accident, \$500,000.00 each employee for disease and \$500,000.00 policy limit for disease.
- Endorse with a Waiver of Subrogation Endorsement, waiving the carrier's right of recovery under subrogation or otherwise from Licensor.

2). Commercial General Liability Insurance with limits of not less than \$1,000,000.00 for bodily injury and property damage per occurrence with a general aggregate of \$1,000,000.00 and a products and completed operations aggregate of \$1,000,000.00. There shall not be any policy exclusions or limitations for Contractual Liability covering Contractor's obligations herein, Personal Injury, Advertising Liability, Medical Payments, Fire Damage, Legal Liability, Broad Form Property Damage and Liability of Independent Contractors.

3). Commercial Automobile Liability Insurance covering all owned, hire and no owned vehicles used in connection with this Agreement with a combined single limit for bodily injury and property damage liability of not less than \$1,000,000.00 per claim.

17.02. **No Recourse.** Companies issuing the insurance policies herein described shall have no recourse against DART for payment of any premiums or assessment for deductibles, such premiums and deductibles being the sole responsibility and risk of Licensee.

18. 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 DART which DART is under no obligation to grant.

19. Termination of License. This license shall continue until terminated prior to September 1, 2017 in one of the following ways:

- 19.01 By written agreement of both parties;
- 19.02 By either party giving the other party ninety (90) days written notice;
- 19.03 By either party, upon failure of the other party to perform its obligations as set forth in this License, after having been given ninety (90) days notice and opportunity to cure;

PROVIDED, HOWEVER, that any indemnifications provided for herein shall survive such termination.

20. Action Upon Termination of License. At such time as this license may be terminated or canceled for any reason whatsoever, Licensee, upon request by DART, shall remove all improvements and appurtenances owned by it, situated in, on, under or attached to the Property, regardless of whether or not such improvements were placed thereon by Licensee or others, and shall restore the Property to a condition satisfactory to DART, at Licensee's sole expense.

21. Miscellaneous.

21.01. 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:

DART: Dallas Area Rapid Transit
1401 Pacific
P. O. Box 660163
Dallas, Texas 75266-7230
ATTN: Right of Way Management

LICENSEE: City of Plano
1520 K Avenue
Plano, Texas 75074
Attn: City Manager / Assistant City Manager

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

21.02. Attorney Fees. In the event that either party is required to initiate legal proceedings to enforce any provisions of this License, the prevailing party shall be entitled to recover court costs and reasonable attorney fees as allowed by law.

21.03. Governing Law and Venue. This License shall be construed under and in accordance with the laws of the State of Texas and venue shall lie in Collin County.

21.04. Entirety and Amendments. This License embodies the entire agreement between the parties and supersedes all prior agreements and understandings, if any, relating to the Property and the matters addressed herein, and may be amended or supplemented only by a written instrument executed by both parties.

21.05. 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.

21.06. Authority to Execute. The signatories to this License certify that each has the authority to enter into this agreement on behalf of the party represented.

21.07. Effective Date. This License shall be effective on the date signed by the last signing party.

LICENSOR:

DALLAS AREA RAPID TRANSIT

By: _____

Timothy H. McKay, P.E.
Executive Vice President
Growth/Regional Development

Date Signed: _____

LICENSEE:

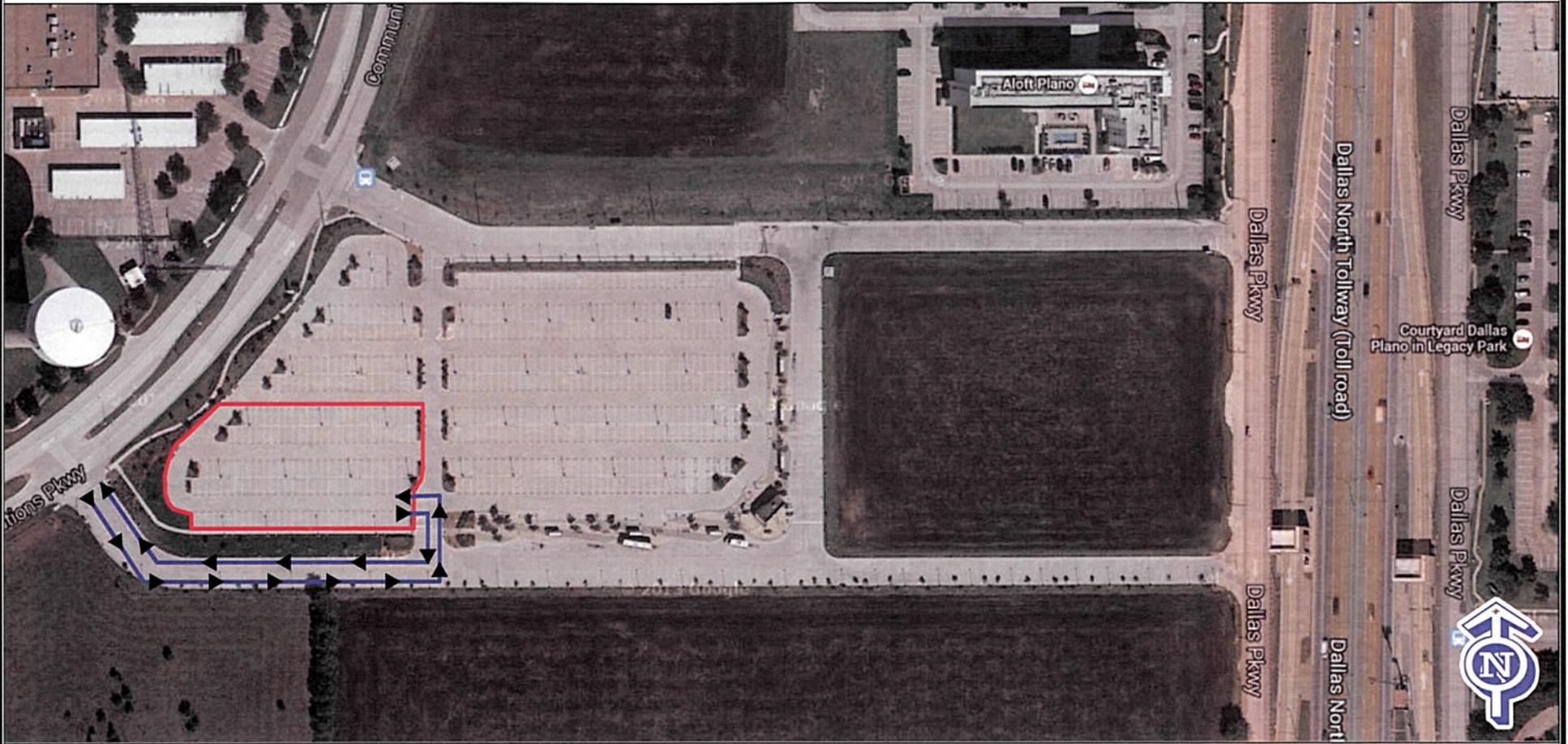
CITY OF PLANO

By: _____

Printed Name: _____

Title: _____

Date Signed: _____

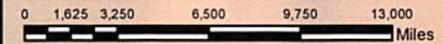


Legend

-  Licensed Area
-  Truck / Vehicle Route

**DALLAS AREA RAPID TRANSIT
LICENSE AGREEMENT**

CITY OF PLANO
Storage of De-icing Material
EXHIBIT "A"



STREET ADDRESS
NW Plano Park & Ride
6830 Communications Pkwy
Plano, TX 75093



EXHIBIT "B"

OTHER CONSIDERATIONS

1. Licensed area is limited to the area shown on Exhibit "A".
2. Licensee shall install a security fence around the perimeter of the licensed area and shall install signage on the fence indicating City of Plano's contact information to call for issues and/or concerns. Licensee is responsible for resolving any and all complaints from the neighbors or the Community.
3. Licensee shall provide de-icing services to DART at the Northwest Plano Park & Ride in the event of inclement weather. Licensee shall apply de-icing material to the facility entrances and DART bays at no cost to DART and shall coordinate the application of this material with DART's Maintenance Department.
4. Licensee shall hire a professional videographer mutually approved by both parties. Licensee shall provide video and photographs of the licensed area to DART before Licensee occupies the space, and on the following dates.
 - a. February 28, 2015
 - b. September 1, 2015
 - c. February 28, 2016
 - d. September 1, 2016
 - e. February 28, 2017
 - f. September 30, 2017
5. Licensee shall at the end of the License term, remove the fence, any materials and restore the property to the previous condition and to the satisfaction of DART.
6. Vehicle and/or equipment fueling, repair, and maintenance activities shall be prohibited on DART Property.
7. Leaking, damaged, or broken equipment shall be removed from DART property immediately upon discovery.
8. Licensee shall maintain on the License Property sufficient clean up materials to address any spill or leak from its equipment. Spilled and/or leaked products and materials shall be promptly cleaned up by Licensee in a manner that satisfies the requirements of applicable regulatory authorities. Licensee shall notify DART after discovering a spill and/or leak. Notification shall be made as soon as possible but shall not exceed 24 hours after discovery. Notification details shall include all clean up and reporting actions that have been or are anticipated to be taken.
9. Licensee shall be fully responsible for fulfilling all spill reporting requirements imposed by the US Environmental Protection Agency, Texas Commission on Environmental Quality (TCEQ), and any other regulatory authority having jurisdiction over the License Property.
10. Used spill cleanup materials as well as any other wastes generated by Licensee shall be promptly removed from DART property. Licensee shall be defined as the "Generator" of these waste materials, sign all disposal documents, and be solely responsible for proper disposal.
11. Licensee shall be fully responsible for compliance with all requirements of the TCEQ, Texas Pollution Discharge Eliminations System (TPDES) requirements for the License Property.
12. All structures built or placed on DART property shall have water-tight roofs and be fully enclosed or otherwise constructed in a manner as to prevent intrusion by blowing rain and/or storm water sheet flow.
13. Sand, salt and any other tracked or accumulated materials and/or debris shall be promptly removed from the pavement, curb gutters, and/or storm drains.