

## **ECONOMIC DEVELOPMENT AGREEMENT**

This Economic Development Agreement (the "Agreement") is entered into by and between the City of Lewisville, Texas, a home rule city, duly acting by and through its City Manager ("City"), and Trinsic Acquisition Company LLC, its successors and assigns ("**Developer**") (jointly, "**Parties**").

### **WITNESSETH:**

**WHEREAS**, pursuant to Chapter 380 of the Texas Local Government Code (hereinafter referred to as "**Statute**"), the City adopted an Economic Incentive Policy for making economic development incentives and grants on June 20, 2016 (hereinafter referred to as "**the Policy Statement**"); and

**WHEREAS**, the Policy Statement constitutes appropriate guidelines and criteria governing economic development agreements to be entered into by the City as contemplated by the Statute; and

**WHEREAS**, in order to maintain and/or enhance the commercial, economic, and employment base of the Lewisville area to the long-term interest and benefit of the City, in accordance with said Statute, the City desires to enter into this Agreement; and

**WHEREAS**, on the \_\_\_\_ day of \_\_\_\_\_, 2018, the City Council of the City of Lewisville, Texas, authorized this Agreement pursuant to the Statute; and

**WHEREAS**, pursuant to a Commercial Contract of Sale by and between the City, as seller, and Developer, as buyer, dated effective as of June 25, 2018 (the "**Purchase Agreement**"), Developer is under contract to purchase from the City that certain property, described in Attachment "A", attached hereto and made a part hereof, located in the City of Lewisville, Texas (the "**Property**"), which is currently undeveloped; and

**WHEREAS**, the Property is located within Tax Increment Reinvestment Zone Number 1; and

**WHEREAS**, Developer wishes to develop, on the Property, a multifamily residential development, a concept plan of which is as shown on Attachment "B", attached hereto and made a part hereof; and

**WHEREAS**, the City desires to provide, pursuant to the Statute, incentives to Developer to develop the Project (hereinafter defined), as shown in Attachment “B”; and

**WHEREAS**, Developer agrees to develop the Project in a manner consistent with the concept plan as described in Attachment “B”; and

**WHEREAS**, the Parties desire to enter into this Agreement pursuant to the Statute; and

**WHEREAS**, the City finds that entering into this Agreement for construction of the Project would promote local economic development by providing new housing and providing jobs related to the construction activities in developing the Project, and stimulate business and commercial activity within the municipality by enabling residents to live in the immediate area of Old Town Lewisville, a focus of business and commercial activity and development in the City, and would directly establish a public purpose; and

**WHEREAS**, the City has determined that the said Agreement contains sufficient controls to ensure that the above-mentioned public purposes are carried out in all transactions involving the use of public funds and resources.

**NOW, THEREFORE**, in consideration of the foregoing, and on the terms and conditions hereinafter set forth, the parties do mutually agree as follows:

## **ARTICLE I TERM**

1.1 This Agreement shall be effective on the date marked on this Agreement (“**Effective Date**”) and shall continue until the Substantial Completion, as hereinafter defined, of the Project as shown in Attachment “B”, unless sooner terminated as provided for herein (“**Term**”). This Agreement terminates automatically on the last day of the eighteenth (18<sup>th</sup>) month following the Effective Date if construction has not commenced on the Project.

## **ARTICLE II DEFINITIONS**

2.1 Wherever used in this Agreement, the following terms shall have the meanings ascribed to them:

“**Agreement**” shall have the meaning set forth in the introductory paragraph of this Agreement.

“City” shall have the meaning set forth in the introductory paragraph of this Agreement.

“Developer” shall have the meaning set forth in the introductory paragraph of this Agreement.

“Effective Date” shall mean the date established in Article I of this Agreement.

“Force Majeure” shall mean any contingency or cause beyond the reasonable control of Developer, including without limitation, acts of God or the public enemy, war, riot, terrorism, civil commotion, insurrection, governmental or de facto governmental action including, but not limited to, government actions pertaining to the determination of flood zones or FEMA actions (unless caused by acts or omissions of Developer), fire, explosion or flood, and strikes.

“Project” shall mean a multifamily residential development, other structures (including a garage) and amenities, and landscaping, all as shown conceptually on the concept plan shown in Attachment “B.”

“Property” shall have the meaning set forth in the recitals of this Agreement.

“Public Improvements” shall mean any water, sanitary sewer, storm sewer, public access lanes or streets, public sidewalks or trails, street parking, lighting, benches, landscaping and other similar infrastructure on Leonard Street between East College Street and East Walters Street and on East College Street between Railroad Street and North Mill Street. All other public improvements related to the Project which are required by the City code shall be constructed and dedicated as required by the City code.

“Substantial Completion” shall occur upon the issuance of all certificates of occupancy for the Project.

“Term” shall have the meaning set forth in Article I of this Agreement.

### **ARTICLE III GENERAL PROVISIONS**

3.1 Commencement of Project. As soon as practical after the conveyance of the Property from the City to Developer, Developer shall commence with the construction of the Project substantially in accordance with Attachment “B”. Attachment “B” may be amended only by mutual written consent of the Parties, and such amendment shall be attached to and incorporated into this Agreement.

3.2 Minimum Investment. Developer's total investment (including equity and debt financing) in the Project shall be a minimum of forty-five million dollars (\$45,000,000.00) upon final completion of the Project. Developer agrees to make documentation available to the City to support the minimum investment, upon request.

3.3 Substantial Completion. The Project shall reach Substantial Completion by December 31, 2022. In the event of Force Majeure or if, in the reasonable opinion of the City Manager, Developer has made substantial progress toward completion of the Project, the City Manager may extend the Term of the Agreement at the City's sole discretion.

#### **ARTICLE IV THE PUBLIC IMPROVEMENTS AND DART RIGHT-OF-WAY**

##### 4.1 Public Improvements.

4.1.1 The City shall construct the Public Improvements on Leonard Street between East College Street and East Walters Street.

a. The Public Improvements on Leonard Street between East College Street and East Walters Street shall be substantially completed to coincide with the first certificate of occupancy issued for any portion of the Project.

b. Twenty-five percent (25%) of the costs of the Public Improvements on Leonard Street between East College Street and East Walters Street, not to exceed \$125,000, shall be credited against the Garage Grant upon substantial completion of the Public Improvements on Leonard Street between East College Street and East Walters Street and when such Public Improvements are open for public access; provided that Developer receives written notice of such credit and all necessary supporting documentation from the City.

c. Undergrounding the existing overhead utilities on Leonard Street between East College Street and East Walters Street, if desired by Developer, will be at the sole cost of Developer without City participation or reimbursement. Developer shall inform the City of the decision to place the utilities underground prior to the start of design for the street improvements.

4.1.2 At its sole discretion, the City may construct, at the City's cost and expense,

all Public Improvements on Leonard Street between East Walters Street and East Main Street.

4.1.3 At its sole discretion, the City may construct, at the City's cost and expense, all Public Improvements on East College Street between Railroad Street and North Mill Street.

4.2 Utilities and public drive.

4.2.1 The City shall bring water, sanitary and storm sewer to the boundary line of the Property and shall construct the improvements depicted on Attachment "D" attached hereto, including, without limitation, the public drive depicted on Attachment "D" as Item 7. City shall commence the construction of these improvements as soon as possible and cooperate with the Developer to complete the improvements to meet the needs of the Project. The preliminary utility layouts are attached hereto as Attachment "D".

4.2.2 The City shall construct the storm drain pipes as shown on Attachment "D". The Developer's portion of the cost of the storm drain pipes, currently estimated at \$25,000, shall be credited against the Garage Grant upon substantial completion of such storm drain pipe and when such storm drain pipe is available for use; provided that Developer receives written notice of such credit and all necessary supporting documentation from the City.

4.3 DART right-of-way. The City shall cooperate with Developer to confirm that the DART right-of-way can be utilized by Developer subject to a license agreement approved by DART. A preliminary approval letter is attached to this Agreement as Attachment "C".

**ARTICLE V  
ECONOMIC DEVELOPMENT INCENTIVES**

5.1 Fee Grant. Subject to the satisfaction of the terms and conditions of this Agreement, the City agrees to provide to Developer an economic development grant in an amount equal to the water and sanitary sewer impact fees for the Project paid by the Developer to the City ("**Fee Grant**").

5.1.1 The water and sanitary sewer impact fees for the Project shall be paid to the City by Developer at the time of issuance of building permit, as required by City ordinance.

5.1.2 Within thirty (30) days of commencement of construction, Developer shall request payment of the Fee Grant in a letter addressed to the Director of Economic Development with supporting documents showing the amounts paid for water and sanitary sewer impact fees related to the Project. Any amount owed to Developer as allowed under the Fee Grant shall be paid within thirty (30) days after the City receives written notice requesting payment and all necessary supporting documentation from Developer.

5.2 Waiver of Fees. The City shall also waive all development fees, except for water and sanitary sewer impact fees, including, without limitation, review fees, plat fees, permit fees, building fees and park development fees which are directly related to the construction of the Project. Notwithstanding any fee waiver, Developer must still obtain all permits required by City ordinance for the Project.

5.3 Garage Grant. Subject to the satisfaction of the terms and conditions of this Agreement, the City agrees to provide Developer an economic development grant in the amount of \$500,000 (the "**Garage Grant**") for the construction of a parking garage (the "**Garage**"), as shown on Attachment "B", substantially in accordance with specifications approved by the City; provided, however, that the amount of the Garage Grant (i.e., \$500,000) shall be reduced by (a) the Developer's portion (i.e., 25%) of the costs for the Public Improvements on Leonard Street between East College Street and East Walters Street, as provided in section 4.1.1.b.; and (b) the Developer's portion of the cost of the storm drain pipes, as provided in section 4.2.2.

5.3.1 Upon the commencement of the construction of the Project, the City shall pay to Developer the amount of \$250,000.

5.3.2 Upon completion of the Garage, as evidenced by a certificate of occupancy for the Garage, the City shall pay to Developer the amount of money remaining in the Garage Grant after the above-referenced credits (see sections 4.1.1.b and 4.2.2). For illustration purposes, assume that twenty-five percent (25%) of the costs of the Public Improvements on Leonard Street between East College Street and East Walters Street is \$125,000 and the Developer's portion of the cost of the storm drain pipes is \$25,000, the City would apply a credit deduction of \$150,000 to the remaining \$250,000 of the Garage Grant. Thus, upon completion of the Garage, the City would pay the Developer the remaining \$100,000 of the Garage Grant.

5.4 The City shall not be obligated to pay any commercial bank, lender or similar institution for any loan or credit agreement made by the Developer. None of the City's obligations with respect to the incentives under this Agreement shall be pledged or otherwise encumbered in favor of any commercial lender and/or similar financial institution.

## **ARTICLE VI TERMINATION**

6.1 This Agreement may be terminated upon any one of the following:

6.1.1 by written agreement of the Parties;

6.1.2 expiration of the Term;

6.1.3 by either party in the event the other party breaches any of the terms or conditions of this Agreement and such breach is not cured within thirty (30) days after written notice thereof;

6.1.4 By City, if Developer files a petition in bankruptcy or a petition in bankruptcy is filed against Developer and is not dismissed within ninety (90) days of such filing; and

6.1.5 By City, if any taxes, assessments or payments owed to the City or the State of Texas by Developer shall become delinquent and not cured within sixty (60) days after written notice thereof (provided, however, that Developer retains the right to timely and properly protest and contest any such taxes or assessments).

6.2 In the event the Agreement is terminated by the City pursuant to Section 6.1.3, 6.1.4, or 6.1.5, the Developer shall immediately refund to the City an amount equal to the portion of the grants paid to the Developer and any fees waived by the City under Article V at the time of termination.

## **ARTICLE VII MISCELLANEOUS**

7.1 The terms and conditions of this Agreement are binding upon the successors and assigns of all parties hereto. This Agreement cannot be assigned by Developer, unless written permission is first granted by the City, which consent shall not be unreasonably withheld, so long as Developer's assignee agrees to be bound by all terms and conditions of this Agreement.

7.2 It is understood and agreed between the Parties that Developer, in performing its obligations hereunder, is acting independently, and the City assumes no responsibility or liabilities in connection therewith to third parties.

7.3 Developer further agrees that the City, its agents and employees, shall have reasonable rights of access to the Project to ensure that the construction of the Project is in accordance with all applicable agreements with the City, including this Agreement, and all applicable state and local laws and regulations, as well as the continuing right, subject to Developer's reasonable security requirements, to ensure that the Project is thereafter maintained, operated, and occupied in accordance with all applicable agreements with the City, provided that with respect to matters concerning this Agreement (i) the City must give Developer reasonable prior telephone or written notice of any such inspection, and (ii) a representative of Developer shall have the right to accompany the agent or employee of the City who is conducting such inspection.

7.4 The City represents and warrants that the Project does not include any property that is owned by a member of the City Council having responsibility for the approval of this Agreement.

7.5 Notices required to be given to any party to this Agreement shall be given personally or by certified mail, return receipt requested, postage prepaid, addressed to the party at its address as set forth below, and, if given by mail, shall be deemed delivered three (3) days after the date deposited in the United States' mail:

For CITY by notice to:

City of Lewisville  
Attn: Director of Economic Development  
151 W. Church Street  
PO Box 299002  
Lewisville, Texas 75029

For DEVELOPER by notice to:

Trinsic Acquisition Company LLC  
Attn: Adam Brown  
8325 Douglas Avenue, Suite 950  
Dallas, Texas 75225

Any party may change the address to which notices are to be sent by giving the other parties written notice in the manner provided in this paragraph.

7.6 This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which in the aggregate shall constitute one agreement.

7.7 If any provision contained in this Agreement is held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

7.8 Whenever the context requires, all words herein shall be deemed to include the male, female, and neuter gender, singular words shall include the plural, and vice versa.

7.9 This Agreement was authorized by action of the City Council, authorizing the City Manager or his designee to execute the Agreement on behalf of the City.

7.10 No claim or right arising out of a breach of this Agreement can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved.

7.11 This Agreement may be modified or rescinded only by a writing signed by both of the Parties or their duly authorized agents.

7.12 Venue for any litigation arising from this Agreement shall lie in Denton County, Texas.

**7.13 DEVELOPER AGREES TO DEFEND, INDEMNIFY AND HOLD CITY, ITS OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY DEVELOPER'S BREACH OF THIS AGREEMENT OR BY ANY NEGLIGENT OR STRICTLY LIABLE ACT OR OMISSION OF DEVELOPER, ITS OFFICERS, AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THIS AGREEMENT. THE**

**PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.**

7.14 Nothing contained in this Agreement shall constitute a waiver of the City's governmental immunity.

7.15 This Agreement shall be considered drafted equally by both the City and Developer.

SIGNATURE PAGE(S) FOLLOW

DATED this the \_\_\_\_ day of \_\_\_\_\_, 2018.

**CITY OF LEWISVILLE, TEXAS**

\_\_\_\_\_  
Donna Barron, City Manager

**ATTEST:**

\_\_\_\_\_  
Julie Worster, City Secretary

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Lizbeth Plaster, City Attorney

**DEVELOPER:**      **Trinsic Acquisition Company, LLC:**  
a Delaware Limited Liability Company  
By:

  
\_\_\_\_\_  
Adam Brown, Vice President

Attachment "A"  
Description of the Property



Attachment "B"  
Concept Plan



Attachment "C"  
DART Preliminary Approval Letter



Dallas Area Rapid Transit  
P.O. Box 660163  
Dallas, TX 75266-0163  
214/749-3278

July 26, 2018

Ms. Donna Barron  
City Manager  
City of Lewisville  
PO. Box 299002  
Lewisville, Texas 75029-9002

Re: Proposed Improvements within DART's Right-of-Way (ROW)

Dear Ms. Barron:

Thank you for proposing a partnership that brings public and private together for the benefit of all our stakeholders.

The purpose of this letter is to document support for your request dated July 18, 2018 (attached). DART understands that the City would like to utilize DART ROW that is adjacent to the property currently owned by the City of Lewisville to make improvements that could include landscaping, park benches, bike racks, lighting, public art, public parking, sidewalks and underground utilities. Improvements will be subject to submittal of and approval of engineering plans. As discussed, the simplest means of conveyance is through a License Agreement. DART's standard License Agreement is attached for your reference.

Should DART require the property for future use (although no plans currently exist), the City (or party other than DART) will be responsible for relocation at their expense, including compliance with applicable regulations and city codes. For instance, utilization of DART's property for a fire lane may create severe challenges in the future if DART needed to use its property. Also as discussed, public parking could not be fee based without a cost sharing agreement with DART.

Since the City of Lewisville is not a DART Service Area City, we also need to address compensation for use of the property, but as we discussed, we can figure that out in the near future.

We are excited with the possibilities of this partnership and look forward to finalizing the remaining details as the project progresses, and we are also committed to working with you and your staff to see this new development become a reality

If you have any further questions, please contact me at (214)749-2926, or in my absence please contact Mr. Matt Lannon at (214) 749-2917.

Sincerely,

A handwritten signature in blue ink, appearing to read "Timothy H. McKay", is written over a faint blue line.

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

Attachments: City of Lewisville July 18, 2018 letter  
DART Standard License Agreement



LEWISVILLE

Plan. Progress. Prosperity.

Economic Development & Planning

July 18, 2018

Mr. Timothy H. McKay  
Executive Vice President  
Dallas Area Rapid Transit  
1401 Pacific Avenue  
Dallas, TX 75202

Dear Mr. McKay:

Thank you for your time to discuss the proposed project in Lewisville on July 17, 2018. As a follow up to our phone conference, the City of Lewisville is requesting a letter of confirmation from DART, in advance of proceeding with a License Agreement, to allow certain improvements within the DART Right-of-Way (ROW).

The attached map and exhibit show the property that is currently owned by the City of Lewisville adjacent to the DART ROW. The property is under contract with a private developer for a 300-unit multi-family project. The City would like to utilize the DART ROW for the below purposes which will be more specifically defined during the design process. These improvements may include:

- Hardscaping, to include sidewalk/trails
- Landscaping, to include trees, shrubs and ground cover
- Public parking lot
- Public fire lane
- Public underground utilities that may include connection to water, sanitary sewer or drainage facilities
- Park benches, bike racks and lighting
- Public art

The above list is not representative of current plans; however, as this is a significant area, we wanted to cover all bases for planning purposes. The actual improvements will be determined during design and will be attached to the License Agreement for your review.

Thank you for assistance with this matter. If you have any questions regarding the proposed usage, please contact me at (972) 219-3750.

Regards,

Nika Reinecke, AICP

Director of Economic Development

CC: Donna Barron, City Manager  
John Polster, ITS

LEONARD ST.

LEASING

4-STORY BUILDING

5-STORY BUILDING

GARDEN COURT  
75'

1-STORY COVERED PATIO

2-STORY COVERED PATIO

POOL COURT  
100'

4 3/4-STORY GARAGE

5-STORY BUILDING

WALTER ST.

DOG PARK

OPEN GREEN SPACE

GRAVITY RETAIN

ELEV

ELEV

TRASH

UP

DN

49

49

50

50

49

49

50

**LICENSE AGREEMENT**

THIS Agreement ("License"), is made by and between DALLAS AREA RAPID TRANSIT ("Licensor"), a regional transportation authority, created, organized and existing pursuant to Chapter 452, Texas Transportation Code, as amended (the "Act") and «Licensee» ("Licensee"), a «State\_of\_Incorporation» corporation acting herein by and through its duly authorized official, whose mailing address is «Licensee\_Address».

Pursuant to an agreement between Licensor and (**select appropriate**) Dallas, Garland and Northeastern Railroad Company or Kansas City Southern Railway or Ft. Worth & Western Railroad, (hereinafter the "Railroad"), freight railroad operations exist on Licensor's corridor.

1. **Purpose.** Licensor hereby grants a license (the "License") to Licensee for the purposes of constructing, installing, maintaining and operating «Number» «Description» (the "Permitted Improvement") crossing the «Name\_of\_Railroad» at Mile Post «Milepost», (**Latitude:** \_\_\_\_\_, **Longitude:** \_\_\_\_\_) in «City», «County» County, Texas, more particularly described as shown in Exhibits "A-1" and "A-2", dated \_\_\_\_\_, \_\_, \_\_\_\_, attached hereto and incorporated herein for all pertinent purposes, (the "Property").

The Property shall be used by Licensee solely for the purpose of operating and maintaining the Permitted Improvement (the "Permitted Use"). Licensee's right to enter upon and use the Property shall be limited solely to the Permitted Use and the Permitted Improvement.

2. **Term.** This License shall begin on the 1<sup>st</sup> day of «Rent\_Start\_Month», 2014 (the "Term") and continue thereafter until terminated by either party as provided herein.

3. **Consideration.**

3.01. The consideration for the granting of this License shall be (a) payment by Licensee to Licensor the sum of **ONE THOUSAND AND NO/100 (\$1,000.00) DOLLARS** per annum, payable annually in advance (the "License Fee"), and (b) the performance by Licensee of each of the obligations undertaken by Licensee in this License, PROVIDED, HOWEVER, that the "License Fee" shall be adjusted annually as follows:

- a) The adjustment and change in the License Fee shall be determined according to the cost of living changes in the Consumer Price Index for All Urban Consumers – (CPI-U), Dallas-Fort Worth, TX., "All Items", as published by the Bureau of Labor Statistics, U.S. Department of Labor (the "CPI Index").
- b) The CPI Index figure for the month of «CPI\_Month» 2014 is hereby fixed and established as the Base Index Figure in the computation of adjustment of rentals herein provided. At the commencement of each annual period as provided herein, the CPI Index for the month of «Rent\_Comparison\_Month» (approx. three months previous to CPI Month) (**select one**) of such year (**or**) the previous year shall be ascertained and noted and the rent for the next annual period shall be adjusted by increasing or decreasing the License Fee, percentage-wise as the CPI Index for the month of «CPI\_Month» has increased or decreased as compared with the Base Index Figure as herein fixed, PROVIDED HOWEVER, that under no circumstances shall the License Fee ever be less than \$1,000.00 per year.
- c) If any time during the term hereof the U.S. Bureau of Labor Statistics shall discontinue the

issuance of the CPI Index, the parties shall use any other standard nationally recognized cost-of-living index for the Dallas-Fort Worth area then issued and available, which is published by the U.S. Government.

- d) Acceptance of any License Fee by Licensor after written notice of termination or expiration of this License shall not waive, reinstate, continue or extend the terms of this License.

3.02. Any payment not received by Licensor **by the 10th day after it is due**, shall bear a late charge of \$25.00 to help offset the administrative cost involved in handling such late payment.

3.03. For any payment not received by Licensor **by the 15th day after it is due**, such payment shall bear interest at the rate of 18% per annum from the date it was due until it is paid, in addition to the late charge.

4. **Non Exclusive License.** This License is non-exclusive and is subject to (a) any existing utility, drainage or communication facility located in, on, under, or upon the Property owned by Licensor, any Railroad, utility, or communication company, public or private; (b) all vested rights presently owned by any Railroad, utility or communication company, located within the boundaries of the Property; and (c) any existing lease, license or other interest in the Property granted by Licensor to any individual, corporation or other entity, public or private.

5. **Design, Construction, Operation and Maintenance.** Licensor's use of the Property and adjoining property may include the use of electrically powered equipment. Notwithstanding Licensor's inclusion within its system of measures designed to reduce stray current which may cause corrosion, **Licensee is hereby warned that such measures may not prevent electrical current being present in proximity to the Permitted Improvement and that such presence could produce corrosive effects to the Permitted Improvement. Licensee waives any claim and releases Licensor with regard to any claim arising from such corrosion.**

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

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

5.03. Licensee agrees to design, construct and maintain the Permitted Improvement 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.

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

5.05. **Licensor makes no warranty regarding subsurface installations on the Property.**

**Licensee shall conduct its own inspection of same and will not rely on the absence or presence of markers.**

**5.06. Licensee shall provide to Licensor final construction drawings (“as-builts”) that are signed and sealed by a Texas Professional Engineer within sixty (“60”) days of completion of the project or a \$100.00 fee per month will be assessed until they are received.**

**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. Licensor’s Standard Contract and Insurance.** No work on the Property shall be commenced by Licensee or any contractor for Licensee until such Licensee or contractor shall have executed Licensor’s 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 Licensor. A company-issued photo identification of Licensee's employees, contractors or agents shall be required to work on the Property.

**7.01** Licensee shall procure and maintain at its sole cost and expense, Commercial General Liability Insurance with a per occurrence limit of liability of no less than \$2,000,000 naming DART as an additional insured for ongoing and completed operations without any qualifications or restrictions. DART must be given thirty (30) days prior written notice of any proposed cancellation or modification. The policy shall be endorsed waiving the issuing insurance company’s rights of recovery against DART whether by way of subrogation or otherwise.

**8. Duty of Care in Construction.** Licensee or its contractor shall use reasonable care during the construction period and thereafter, to avoid damaging any existing buildings, equipment and vegetation on or about the Property and any adjacent property owned by or under the control of Licensor. If the Licensee or its contractor causes damage to the Property or any adjacent property, the Licensee and/or its contractor shall immediately replace or repair the damage at no cost or expense to Licensor. If Licensee or its contractor fails or refuses to make or effect any such repair or replacement, Licensor shall have the right, but not the obligation, to make or effect any such repair or replacement at the sole cost and expense of Licensee, which cost and expense Licensee agrees to pay to Licensor upon demand.

**9. Environmental Protection.**

**9.01.** Licensee shall not use or permit the use of the Property for any purpose that may be in violation of any local, state or federal laws pertaining to health or the environment, including but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), the Resource Conservation and Recovery Act ("RCRA"), the Clean Water Act ("CWA") and the Clean Air Act ("CAA").

**9.02.** Licensee warrants that the Permitted Use of the Property will not result in the disposal or other release of any hazardous substance or solid waste on or to the Property, and that it will take all steps necessary to ensure that no such hazardous substance or solid waste will ever be discharged onto the Property by Licensee or its Contractors.

**9.03.** The terms "hazardous substance" and "release" shall have the meanings specified in CERCLA and the terms "solid waste" and "disposal" (or "disposed") shall have the meanings specified in the RCRA; PROVIDED, HOWEVER, that in the event either CERCLA or RCRA is amended so as to broaden the meaning of any term defined thereby, such broader meaning shall apply subsequent to the

effective date of such amendment; and PROVIDED FURTHER, that to the extent that the laws of the State of Texas establish a meaning for "hazardous substance", "release", "solid waste", or "disposal", which is broader than that specified in either CERCLA or RCRA, such broader meaning shall apply.

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

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

**11. Maintenance of Completed Improvements.** The Permitted Improvement shall be maintained by the Licensee in such a manner as to keep the Property in a good and safe condition with respect to Licensee's use. In the event the Licensee fails to maintain the Property as required, upon discovery, Licensor shall notify Licensee of such occurrence in writing. In the event Licensee shall not have remedied the failure within ten (10) days from the date of such notice, Licensor shall have the right, but not the obligation to remedy such failure at the sole cost and expense of Licensee. In the event Licensor exercises its right to remedy Licensee's failure, Licensee agrees to immediately pay to Licensor all costs incurred by Licensor upon demand.

**12. Future Use by Licensor.**

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

12.02. In the event that Licensor shall, at any time subsequent to the date of this License, at its sole discretion, determine that the relocation of the Permitted Improvement shall be necessary or convenient for Licensor 's use of the Property, Licensee shall, at its sole cost and expense relocate said Permitted Improvement so as not to interfere with Licensor 's or Licensor 's assigns use of the Property. In this regard, Licensor may, but is not obligated to, designate other property for the relocation of the Permitted Improvement. Licensor shall give a minimum of thirty (30) days written notice of any required relocation. Licensee shall promptly commence to make the required changes thereafter and shall diligently complete the relocation as required within a reasonable period.

**13. Relocation Benefits.** The parties hereto agree that the construction of the Permitted Improvement on the Property shall be subsequent to the acquisition of the Property by Licensor and that Licensee does hereby waive any and all claim that it may have under the Act, or otherwise, regarding the payment of any and all relocation benefits and that all costs associated with any relocation of such Improvements shall be borne by Licensee.

**14. Duration of License.** This License shall terminate and be of no further force and effect (a) in the event Licensee shall discontinue or abandon the use of the Permitted Improvement; (b) in the event Licensee shall relocate the Permitted Improvement from the Property; (c) upon termination in accordance with paragraph 19 of this License, whichever event first occurs.

**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 and by railroad regulations, policies and operating procedures established by the Railroad, or other applicable railroad regulating bodies, and Licensee agrees to indemnify and hold Licensor harmless from any failure to so abide and all actions resulting therefrom.

16. **Indemnification.** Licensee shall at all times protect, indemnify, defend and hold Licensor and the Railroad harmless against and from any and all loss, cost, damage or expense, including attorney's fees and including, without limitation, claims of negligence, arising out of this License (including by example and not limitation, Licensee's acts or failure to act hereunder), Licensee's use in any way of the Property, or arising from any accident or other occurrence on or about the Property, resulting in personal injury, death, or property damage, except to the extent fault is judicially determined against Licensor.

17. **Termination of License.** At such time as this License may be terminated or canceled for any reason whatsoever, Licensee, upon request by Licensor, 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, and shall restore the Property to a condition satisfactory to Licensor, at Licensee's sole expense.

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 Licensor which Licensor is under no obligation to grant.

19. **Methods of Termination.** This License may be terminated in either of the following ways:

19.01. By written agreement of both parties; or

19.02. By either party giving the other party thirty (30) days written notice.

20. **Miscellaneous.**

20.01. Notice. When notice is permitted or required by this License, it shall be in writing and shall be deemed delivered when delivered in person or when placed, postage prepaid, in the U.S. Mail, Certified, Return Receipt Requested, and addressed to the parties at the following addresses:

LICENSOR:	Dallas Area Rapid Transit	OR	
	1401 Pacific Avenue		P. O. Box 660163
	Dallas, Texas 75202-7210		Dallas, Texas 75266-7210
	ATTN: Railroad Management		

LICENSEE:	«Licensee»
	«Licensee_Address»
	«Licensee_Address»

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

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

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

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

20.05. Number and Gender. Words of any gender used in this License shall be held and construed to include any other gender; and words in the singular shall include the plural and vice versa, unless the text clearly requires otherwise.

20.06. No Joint Enterprise. The parties do not intend that this License be construed as finding that the parties have formed a joint enterprise. The purposes for which each party has entered into this License are separate and distinct. It is not the intent of any of the parties that a joint enterprise relationship is being entered into and the parties hereto specifically disclaim such relationship. This License does not constitute a joint enterprise, as there are no common pecuniary interests, no common purpose and no equal right of control among the parties hereto.

20.07. Counterparts. The parties may execute this Agreement in multiple originals and when taken together, those originals constitute a whole.

IN WITNESS WHEREOF, the parties have executed this License on the date last signed.

LICENSOR:

DALLAS AREA RAPID TRANSIT

BY: \_\_\_\_\_

BONNIE MURPHY

Vice President

Commuter Rail and Railroad Management

Date: \_\_\_\_\_

LICENSEE:

CITY OF \_\_\_\_\_

BY: \_\_\_\_\_

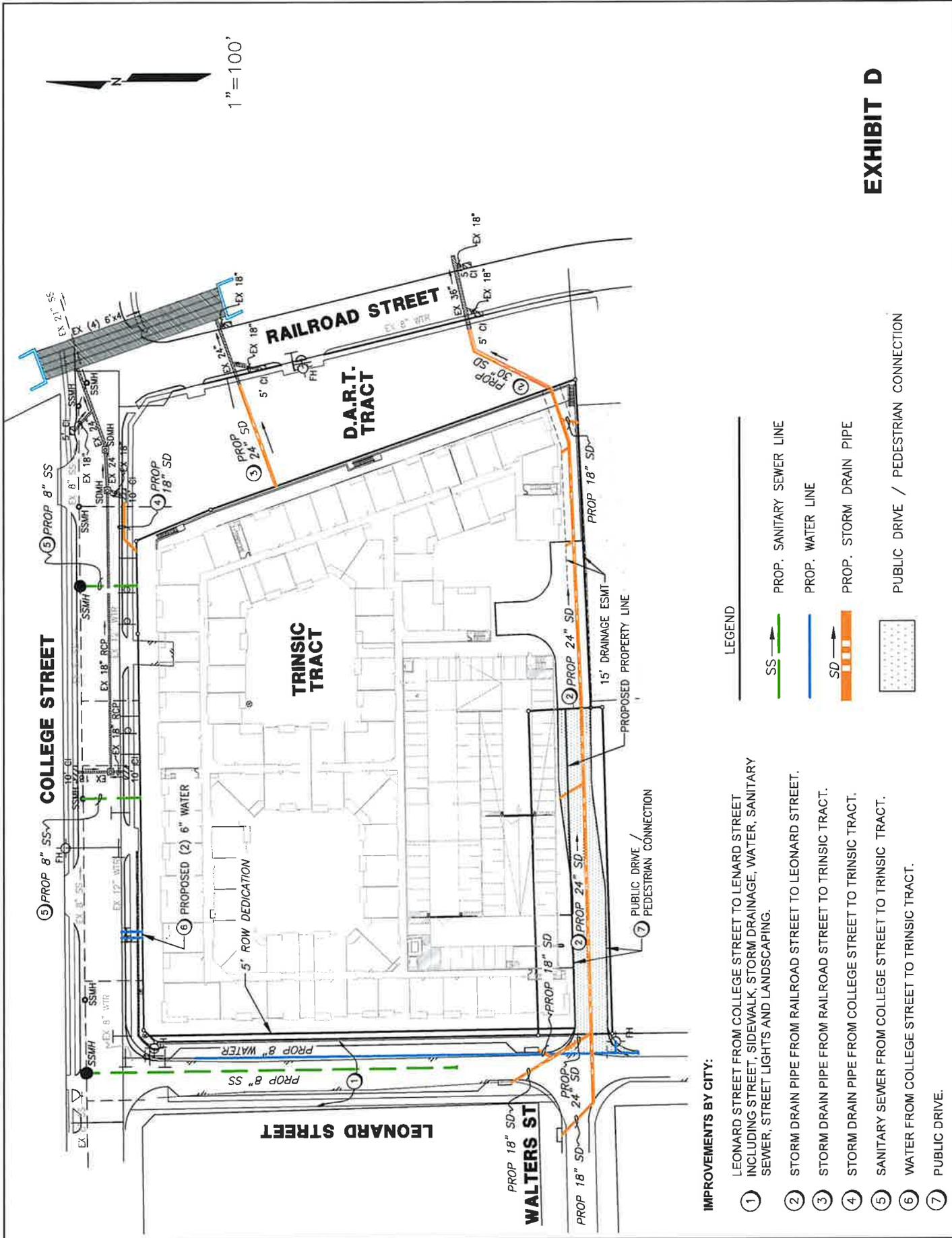
Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Attachment "D"  
Utility Layout

*[attached]*



**IMPROVEMENTS BY CITY:**

- ① LEONARD STREET FROM COLLEGE STREET TO LENARD STREET INCLUDING SIDEWALK, STORM DRAINAGE, WATER, SANITARY SEWER, STREET LIGHTS AND LANDSCAPING.
- ② STORM DRAIN PIPE FROM RAILROAD STREET TO LEONARD STREET.
- ③ STORM DRAIN PIPE FROM RAILROAD STREET TO TRINSCIC TRACT.
- ④ STORM DRAIN PIPE FROM COLLEGE STREET TO TRINSCIC TRACT.
- ⑤ SANITARY SEWER FROM COLLEGE STREET TO TRINSCIC TRACT.
- ⑥ WATER FROM COLLEGE STREET TO TRINSCIC TRACT.
- ⑦ PUBLIC DRIVE.

**LEGEND**

- SS → PROP. SANITARY SEWER LINE
- PROP. WATER LINE
- SD → PROP. STORM DRAIN PIPE
- ▨ PUBLIC DRIVE / PEDESTRIAN CONNECTION

**EXHIBIT D**

1" = 100'

