

CONSTRUCTION AGREEMENT AND CONTRACTOR'S RIGHT OF ENTRY

THIS AGREEMENT ("Agreement") is made by and between TRINITY RAILWAY EXPRESS ("TRE"), and _____, hereinafter called "Contractor", whose mailing address is _____.

WHEREAS, Trinity Railway Express is the assumed name under which commuter rail operations are being conducted by DALLAS AREA RAPID TRANSIT ("DART") and the FORT WORTH TRANSPORTATION AUTHORITY (the "FWTA"), both regional transportation authorities created pursuant to Chapter 452, Texas Transportation Code, as amended (the "Act"); and

WHEREAS, pursuant to agreements between TRE and BNSF Railway Company, Union Pacific Railroad Company, National Railroad Passenger Corporation ("Amtrak"), Fort Worth & Western Railroad Company, and Dallas, Garland and Northeastern Railroad Company, (individually or collectively herein the "Railroad") freight railroad and/or passenger operations exist on the railroad corridor between Dallas and Fort Worth, Texas, now owned by DART and the FWTA; NOW THEREFORE,

1. For the period not to extend beyond _____, 2018, TRE hereby permits Contractor to enter upon the TRE property ("Property") on a tract of right of way located at _____ at Mile Post _____, (**Latitude:** _____, **Longitude:** _____) _____ County, Texas, as may be necessary in connection with installation of (fill in work) to be performed on the Property by Contractor under an agreement between Contractor and _____, (the "Contract"), and for no other purpose. Contractor understands that this Contract and all work to be performed thereunder is subject to the terms and conditions contained in License Agreement No. R0_____, dated the ____ day of _____, 20____, issued by TRE to _____, which is incorporated herein by reference.
2. Contractor shall:
 - (a) Perform that portion of the work on the Property in accordance with plans and specifications approved by TRE, in such manner and at such times as shall not endanger or interfere with TRE's or Railroad's operations nor with any improvements located on, above or below the Property. Contractor shall submit to TRE, for approval, all construction details, falsework and other incidentals not detailed in plans, insofar as they affect TRE and Railroad. Contractor shall be responsible for any damages to the Property caused by Contractor's use or entry thereon (including without limitation, to improvements on, above or below the surface), and shall repair, restore or replace (at TRE's discretion), damaged improvements on the Property.
 - (b) Maintain, at Contractor's expense, TRE's contractor ("Herzog Transit Services, Inc."), flagger(s) who are representatives of the Railroad, qualified on the Railroad's operating and safety rules to protect the TRE's and Railroad's interests while upon the Property. Contractor will not perform any work within 25 feet of any TRE track (also referred to as "the foul zone") or perform any work in which an event could cause equipment, people or materials to enter into the foul zone unless flagger(s) are present.
 - (c) Ensure, at Contractor's expense, that all personnel working under Contractor's control engaged in any activity that requires flagger(s), as described above, have within the last 365 days from the date the work is to be performed, attended a creditable Roadway Worker Protection course and have successfully passed all required examinations associated with

that course and will provide proof of course completion upon request from TRE or Herzog Transit Services, Inc. TRE shall determine whether or not the above mentioned Roadway Worker Protection course is creditable.

- (d) (A) Notify TRE contractor, Herzog Transit Services, Inc. in writing at least fifteen (15) days in advance to arrange for flagging, (B) notify Herzog Transit Services, Inc. in writing at least seven (7) working days before commencing work on the Property and (C) notify TRE and Herzog Transit Services, Inc. in writing within five (5) working days after such work is completed.
 - (e) Keep all equipment, tools and materials stored at least twenty-five (25) feet from the center line of any railroad track. Explosives or other highly inflammable substances or any hazardous materials shall not be stored on the Property without the prior approval of TRE or Herzog Transit Services, Inc.
 - (f) Remove all of Contractor's tools, equipment and materials and all debris created by Contractor from the Property promptly upon completion of work, restoring the Property to the same state and condition as when Contractor entered thereon.
 - (g) Reimburse TRE for all costs and expenses incurred by TRE in connection with said work, including without limitation the expense of furnishing such inspectors, watchmen and flagmen as TRE deem necessary, the installation and removal of falsework beneath tracks, and restoration of the Property to the same condition as when Contractor entered thereon, or to a condition satisfactory to TRE.
 - (h) Remove any lien against the Property arising from entry or performance of work hereunder by Contractor or an agent or subcontractor of Contractor.
3. **Contractor agrees to release, defend and indemnify Dallas Area Rapid Transit and the Fort Worth Transportation Authority and their contractors/agents, to include Herzog Transit Services, Inc., Herzog Technologies, Inc., Amtrak, and Railroad from and against all loss, damage, claims, costs, expenses, including attorney's fees, and liability for bodily injury to or death of any persons and loss of or damage to any property and loss of use thereof arising out of or in any way connected with Contractors entry on the Property or activity thereon, including entry or activity by Contractor's employees, subcontractors, agents or invitees. In the event any part of the provisions of this section are determined by any statutory enactment or judicial decision to be void or unenforceable, then this section shall not fail in its entirety but will be enforceable to the extent permitted by law. For the purposes of this section, the term "Railroad" shall include any other railroad company using the Property with TRE's consent and any affiliate, subsidiary or lessor of TRE.**
4. Prior to entry on or start of work or occupancy of the Property, Contractor agrees to procure and maintain at its sole cost and expense, the following types and amounts of insurance with form of coverage and insurers satisfactory to TRE:

The policies providing Commercial General Liability and Automobile Liability shall be endorsed to name DART, The Fort Worth Transportation Authority, Herzog Transit Services Inc., Herzog Technologies Inc., Amtrak and their directors, officers, representatives, agents and employees as additional insureds as respects ongoing and completed operations performed by or on behalf of the contractor.

All the policies shall be endorsed with a waiver of subrogation in favor of the entities listed above, The National Railroad Passenger Corporation (Amtrak), and Railroad.

TRE must have 30 days notice of cancellation or modification

Contractor agrees to furnish DART Certificates of Insurance and copies of required endorsements (or, as and when DART may direct, copies of the actual insurance policies) as evidence of the coverages outlined in (a) through (d), below. Approval will be expedited if all required coverages and required endorsements are provided along with the Certificates.

(a) Commercial General Liability With Contractual Liability Endorsement.

-Per occurrence limit of at least \$5,000,000.

-Contractual Liability – Railroads Endorsement

-Primary and Non- Contributory Endorsement

-Cross liability or separation of insureds endorsement reading as follows
“Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies: a) As if each Named Insured were the only Named Insured; and b) Separately to each insured against whom claim is made or “suit” is brought.”

(b) Commercial Automobile Liability Policy

-Combined single limit of at least \$2,000,000 per occurrence

-Coverage for Owned, Hired and Non-Owned Vehicles

-Endorsement deleting all exclusions for work performed near a railroad

(c) Workers' Compensation Insurance

-Providing Statutory Benefits under the Workers' 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.

-Employer's Liability Insurance with limits of liability of not less than \$1,000,000 each accident, \$1,000,000 each employee for disease and \$1,000,000 policy limit for disease.

(d) Railroad Protective Liability

-Railroad Protective Liability in an amount not less than \$5,000,000 per occurrence, \$10,000,000 aggregate listing National Railroad Passenger Corporation (Amtrak), Herzog Transit Services and Railroad as named insureds.

5. Payment Bond

-Guaranteeing the payment of flagging and other services provided by TRE's flagging contractor (Herzog Transit Services, Inc.) in the amount of \$10,000.00. Payment bond requirement may be waived by agreeing in writing to pre-pay for all flagging and other services provided by Herzog Transit Services, Inc.

-Contractor agrees to furnish TRE documentation of the Payment Bond or documentation requesting the requirement be waived as described above.

6. The permission herein given shall not be assigned by Contractor without the prior written consent of TRE, except in the case of subcontractors of Contractor who shall be deemed agents of Contractor and subject to the terms of this Agreement.
7. No vehicular crossing over TRE's track shall be installed or used by Contractor without prior written permission of TRE.
8. No work shall be done between the hours of 6:00 p.m. and 6:00 a.m., nor on Saturdays, Sundays or legal holidays without prior written permission of TRE.
9. **At the request of TRE, Herzog Transit Services, Inc. or the Railroad, Contractor shall remove from the Property any employee of Contractor or any subcontractor who fails to conform to the instructions of representatives of TRE, Herzog Transit Services, Inc. or Railroad in connection with entry or work on the Property, and any right of Contractor to enter upon the Property shall be suspended until such request of TRE, Herzog Transit Services, Inc. or Railroad is met. Contractor shall indemnify, defend and hold TRE, Herzog Transit Services, Inc. and Railroad harmless against any claim arising from the removal of any such employee from the Property.**
10. Company-issued photo identification is required of all contractors and subcontractors working on the Property.
11. Notification of TRE for purposes of Paragraph 2 (b), 2 (c) and 2 (d), shall be:

Herzog Transit Services, Inc.
Mr. Sran Sriyaranya
Transportation Supervisor
(972) 743-5652 (cell)

Notification of TRE for all other purposes, shall be:

Trinity Railway Express
c/o Dallas Area Rapid Transit
Attn: Lori Perkins
(214) 749-3030 (office)

12. The parties may execute this Agreement in multiple originals and when taken together, those originals constitute a whole that shall be effective on the date last signed.

TRINITY RAILWAY EXPRESS
BY: DALLAS AREA RAPID TRANSIT

By _____
Bonnie Murphy
Vice President, Commuter Rail
& Railroad Management

Date Signed _____

(CONTRACTOR)

By _____

Printed Name: _____

Title: _____

Date Signed: _____