

**SIGNALIZATION AGREEMENT
BOULDER DRIVE & IRON HORSE BOULEVARD
TEXRAIL IRON HORSE STATION**

**THE STATE OF TEXAS §
 §
COUNTY OF TARRANT §**

THIS SIGNALIZATION AGREEMENT ("Agreement") by and among **FORT WORTH TRANSPORTATION AUTHORITY**, a Texas regional transportation authority, doing business as Trinity Metro ("Trinity Metro"), the **CITY OF NORTH RICHLAND HILLS** (the "City"), a Texas home-rule municipal corporation, and **NRH IRON HORSE, LLC**, a Delaware limited liability company (the "Developer"), is executed on the date of the last party's execution as indicated below (the "Execution Date") to be effective as of the Effective Date (as defined below). In this Agreement, Trinity Metro, the City, and the Developer are collectively referred to as the "parties," and each, individually, as a "party."

RECITALS

WHEREAS, Trinity Metro has constructed and is operating a 27-mile commuter rail line known as TEXRail (the "TEXRail Project") that extends from downtown Fort Worth, Texas, through the City to DFW International Airport; and

WHEREAS, the TEXRail Project includes a railway station, parking area, and related improvements and amenities known as the "Iron Horse Station," which have been constructed in the City near the intersection of Iron Horse Boulevard and Boulder Drive, both of which streets are located in the City and are operated, maintained, policed, and regulated by the City; and

WHEREAS, the parties have agreed that for the safety of vehicular, bicycle, and pedestrian traffic, including traffic entering and exiting the Iron Horse Station, a traffic signal should be installed at the intersection of Iron Horse Drive and Boulder Drive, as shown on Exhibit A, which is attached to and hereby made a part of this Agreement (said traffic signal being called the "Signal" in this Agreement); and

WHEREAS, the Developer has contracted to purchase real property (the "Developer Property") in the vicinity of the Iron Horse Station that will benefit from the installation and operation of the Signal; and

WHEREAS, the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code, authorizes local governmental entities to contract with one another to perform governmental functions and services under the terms thereof, and Trinity Metro and the City have determined that mutual benefits and advantages can be obtained by formalizing their agreement as to the installation and subsequent operation and maintenance of the Signal;

AGREEMENT

NOW, THEREFORE, in consideration of these premises and the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, Trinity Metro, the City, and the Developer agree as follows:

ARTICLE 1. SIGNALIZATION

1.1. Signal Plans. Within 120 days after the Effective Date of this Agreement, Trinity Metro will provide to the Developer and the City for their review and approval construction plans and specifications for the Signal ("Preliminary Plans") that will be in form, substance, and completeness, suitable for use as final construction plans and specifications for the Signal if no revisions are required by the City or the Developer. The Preliminary Plans shall be designed and prepared by an engineering firm (the "Design Firm"), and pursuant to a design contract (the "Design Contract"), approved in advance by the Developer, such approval not to be unreasonably withheld, conditioned, or delayed (the "Developer's Approval"); thereafter, any material revision to the Design Contract will also be subject to the Developer's Approval. The Preliminary Plans shall include complete specifications for the materials and methods required for the construction and operation of the Signal in accordance with the City's requirements, including, as applicable, specifications for all lamps, LEDs, ballasts, conduit, interconnect cables, poles, bases, mounting brackets, cables and guys, fastenings, connections, power supply, detection equipment, battery backup, controller, and all other materials, equipment, and improvements and all other hardware and software necessary for the construction, testing, and operation of the Signal in accordance with the City's requirements. The design should include a recommended timing plan for the intersection. The City and the Developer shall each within seven days after its receipt of Preliminary Plans (or any revision thereto), submit to Trinity Metro either (a) its approval of the Preliminary Plans or (b) its requirements for revisions thereto. If revisions to the Preliminary Plans are submitted by the

City or the Developer, respectively, within seven days after receipt, Trinity Metro will confer with the City and/or the Developer, as applicable, regarding such revisions and will thereafter promptly issue revised Preliminary Plans agreed upon by Trinity Metro and the City and/or the Developer, as applicable. If no revisions to the Preliminary Plans are submitted by the City or the Developer within the applicable seven-day period, the Preliminary Plans shall be deemed approved by the City and the Developer as of the seventh day after receipt by the City and the Developer, as applicable. Final construction plans and specifications for the Signal approved by the City and the Developer, as modified by change orders, if any, will be referred to in this Agreement as the "Plans."

1.2. Payment for the Plans. When it issues Preliminary Plans to the Developer, Trinity Metro shall also submit to the Developer for its approval the Design Firm's then-current estimate of the actual cost to design and prepare the Plans pursuant to the Design Contract (such estimate being the "Estimated Plan Cost"). Thereafter, Trinity Metro will promptly notify the Developer of any change to the Estimated Plan Cost it receives from the Design Firm. A final Estimated Plan Cost from the Design Firm will be issued to the Developer for approval with Trinity Metro's issuance of the Plans. The Estimated Plan Cost approved by the Developer will be called the "Final Plan Cost." After completion of the Plans, Trinity Metro shall submit one or more invoices to the Developer for reimbursement of 40% of Trinity Metro's cost of the Plans pursuant to the Design Contract, together with reasonable supporting documentation of the invoiced costs. Within 30 days after its receipt of Trinity Metro's invoice for the cost of the Plans, the Developer will pay the invoiced amount as reimbursement of the Developer's 40% share of the cost of the Plans (subject to the Developer's right to withhold any disputed amounts until such dispute is resolved; however, Trinity Metro may, at its option, suspend the Signalization Work [as defined below] if undisputed amounts included in any invoice remain unpaid in full after 30 days); Trinity Metro will be responsible for paying the remaining 60% of the cost of the Plans. The Estimated Plan Cost, the Final Plan Cost, and Trinity Metro's invoice will not include Trinity Metro's overhead costs relating to the Preliminary Plans or the Plans, and the Developer will not pay any such costs. All records relating to the cost of the Plans shall be maintained by Trinity Metro for four years after its receipt of final payment from the Developer, and Trinity Metro will make such records available to the Developer and its accountants for review and accounting upon reasonable notice.

ARTICLE 2. SIGNALIZATION WORK

2.1. Construction of the Signal. Trinity Metro will construct the Signal in accordance with the Plans, such construction being called the "Signalization Work." At its option, Trinity Metro may employ its TEXRail Project construction contractor or other qualified contractor to perform some or all Signalization Work. In the event any person or any entity other than Trinity Metro or its employees performs the construction of all or part of the Signalization Work, Trinity Metro shall remain liable for the work as if Trinity Metro had performed the construction. The City may oversee and/or review the Signalization Work, but it may not require any revision or adjustment of the approved Plans without the prior written agreement of Trinity Metro and the Developer, unless such revision or adjustment is, in the City's sole, but reasonable, discretion, required for health or safety reasons or compliance with applicable city codes or other laws, rules or regulations. Any such modification to the Plans, subject to Developer's Approval of such change order, shall be documented in a change order executed by all of the parties. Any change order initiated by or on behalf of Trinity Metro or the City modifying the Plans that is reasonably anticipated to materially increase the cost of the Plans pursuant to the Design Contract or to materially increase the cost of the Signalization Work, subject to Developer's Approval of such change order, shall be documented in a change order executed by all of the parties. A two-year Maintenance Bond will be provided to the City on City-approved forms to cover any defects in workmanship for the first two years of operation.

2.2. Payment for Signalization Work. All costs incurred to perform the Signalization Work, including, but not limited to, costs of all materials, equipment, hardware, software, licenses, labor, machinery, vehicles, insurance, permits, project management, premiums for the Maintenance Bond, and any other costs whatsoever required to construct, install, test, and adjust the Signal and perform any other Signalization Work (collectively, "Construction Costs") shall be allocated between Trinity Metro and the Developer, with Trinity Metro bearing 60% of the Construction Costs and the Developer bearing 40% of the Construction Costs. During and/or after completion of the Signalization Work, Trinity Metro shall submit one or more invoices to the Developer for reimbursement of the Developer's share of the Signalization Work incurred through the date of any such invoice, together with reasonable supporting documentation of the invoiced costs. Trinity Metro will not submit invoices more frequently than monthly. Within 30 days after

its receipt of an invoice from Trinity Metro, the Developer will pay the invoiced amount (subject to the Developer's right to withhold any disputed amounts until such dispute is resolved; however, Trinity Metro may, at its option, suspend the Signalization Work if undisputed amounts included in any invoice remain unpaid in full after 30 days). All records relating to the cost of the Signalization Work shall be maintained by Trinity Metro for four years after its receipt of final payment from the Developer, and Trinity Metro shall make such records available to the Developer and its accountants for review and accounting upon reasonable notice.

2.3. Tests and Inspection of Signalization Work. Trinity Metro will permit the City to make suitable inspections and tests to confirm that the Signalization Work complies with the Plans and to program the Signal to integrate with the City's traffic-signal system. The City shall promptly advise Trinity Metro in writing if in the City's judgment the Signalization Work fails to comply with the Plans, and the City will specify the details of any such purported failure. Trinity Metro and the City will confer regarding the purported failure, and, if applicable, Trinity Metro will promptly take all steps necessary (if any) to cause the Signalization Work to comply with the Plans.

2.4. Completing the Signalization Work. Trinity Metro will complete the Signalization Work to the degree required to permit the City to test and accept, in writing, the Signal's operation by or before 210 days after Trinity Metro's issuance of the Final Plans. The Signalization Work shall not be considered complete until accepted by the City in writing.

ARTICLE 3. TESTING, OPERATION, MAINTENANCE, REPAIR, AND REPLACEMENT OF THE SIGNAL

Upon completion of the Signalization Work, the Signal will become the property of the City. The City will install all software required for testing and operation of the Signal and will make adjustments to the Signal resulting from such tests. The City will test, adjust, operate, and maintain the Signal at its sole expense and at no cost to Trinity Metro or the Developer. After completion of the Signalization Work, neither Trinity Metro nor the Developer shall have any responsibility for (a) testing, adjusting, operating, or maintaining the Signal in good working order and repair, (b) the proper operation of the Signal, including coordination with other traffic signals along Iron Horse Parkway, or (c) police enforcement required for securing compliance with the Signal. If the Signal requires repair or replacement, the City, at its sole expense, will promptly

undertake such repair or replacement necessary to ensure the proper operation of the Signal, and if the Signal should be non-operational for any time, the City, at its sole expense, promptly will take all customary and legal measures required to ensure the safety of vehicular, bicycle, and pedestrian traffic at the intersection served by the Signal. The City's obligations under this article will survive the termination of this Agreement.

ARTICLE 4. INDEMNIFICATION

4.1. Indemnifications.

(a) By the Developer. The Developer agrees to indemnify, hold harmless, and defend Trinity Metro and the City and their respective agents, directors, employees, contractors, and consultants against any and all damages, including, claims for personal injury or damages to property and all court costs, attorneys' fees, and all expenses, for which such indemnitees may be liable due to the negligent or intentional acts or omissions of the Developer, its agents, employees, or contractors in the acquisition, development, and operation of the Developer Property and the exercise of Developer's approval of the design of the Signal or the preparation of the Plans for the Signal and other rights under this Agreement.

(b) By Trinity Metro. To the extent not prohibited by applicable law, Trinity Metro agrees to indemnify and hold harmless the City and the Developer and their respective agents, directors, employees, contractors, and consultants against any and all damages, including, claims for personal injury or for damages to property, and all court costs, reasonable attorneys' fees that are necessary and just and awarded by a court of competent jurisdiction, and all reasonable expenses, for which such indemnitees may be liable due to the negligent or intentional acts or omissions of Trinity, its agents, employees, or contractors in the design of the Signal, the preparation of the Plans for the Signal, and the performance of the Signalization Work. Notwithstanding any of the foregoing, Trinity Metro shall not be required to create a sinking fund to satisfy any obligation of the Trinity Metro under this Agreement.

(c) By the City. To the extent permitted by applicable law, the City agrees to indemnify and hold harmless Trinity Metro and the Developer and their respective agents, directors, employees, contractors, and consultants against any and all damages, including, claims for personal injury or for damages to property, and all court costs, reasonable attorneys' fees that are necessary and just and awarded by a court of competent jurisdiction, and all reasonable expenses,

for which such indemnitees may be liable due to the negligent or intentional acts or omissions of the City, its agents, employees, or contractors in connection with the testing, adjustment, operation, maintenance, repair, or replacement of the Signal. Notwithstanding any of the foregoing, City shall not be required to create a sinking fund to satisfy any obligation of the City under this Agreement.

(d) No Waivers. Nothing in this Agreement shall be construed as a waiver of any rights which may be asserted by a party, including the defense of governmental immunity.

(e) Survival. Each party's obligations under this Article 4 will survive the termination of this Agreement.

ARTICLE 5. MISCELLANEOUS PROVISIONS

5.1. Electric Power. The City shall arrange for the installation of an electric meter to provide all electrical power required for Signal operations, including that required during construction and testing of the Signal. The meter pedestal base and conduit shall be provided by the Developer and Trinity Metro as part of the Signal design and installation and approved by Oncor.

5.2. Relationship of the Parties; No Joint Enterprise. Nothing in this Agreement is intended to create, nor shall be deemed or construed by the parties or by any third party as creating, (a) the relationship of principal and agent, partnership or joint venture between the Developer, the City, and Trinity Metro (or any two of them) or (b) a joint enterprise between the Developer, the City, Trinity Metro (or any two of them), and/or any other party. Without limiting the foregoing, the purposes for which the Developer, the City, and Trinity Metro have entered into this Agreement are separate and distinct, and there are no pecuniary interests, common purposes and/or equal rights of control among the parties hereto.

5.3. Notices. In each instance under this Agreement in which one party is required or permitted to give notice to another, such notice shall be deemed given (a) when delivered in hand, (b) one business day after being deposited with a reputable overnight air courier service, or (c) three business days after being mailed by United States mail, registered or certified mail, return receipt requested, postage prepaid, and, in all events, addressed as follows:

TRINITY METRO

Trinity Metro
Attention: President/CEO
801 Cherry Street, Suite 850
Fort Worth, Texas 76102

THE CITY

City of North Richland Hills
Attention: Mark
Hindman4301 City Point
Drive
North Richland Hills, TX
76180

With copy to City Attorney
at same address
(of which shall not
constitute notice)

THE DEVELOPER

NRH IRON HORSE, LLC
c/o The Spanos Corporation
Attn: Dimitri Economou
and Josh Basler
14900 Landmark
Boulevard, Suite 400
Dallas, Texas 75254

A party hereto may from time to time change its address for notification purposes by giving the other parties written notice of the new address and the date upon which it will become effective.

5.4. Successors and Assigns. This Agreement shall bind, and shall be for the sole and exclusive benefit of, the respective parties and their legal successors and permitted assigns. No party shall assign, sublet, or transfer its obligations or interests under or in this Agreement without the prior written consent of the other parties, unless otherwise provided by law.

5.5. Severability. If any provision of this Agreement, or the application thereof to any person or circumstance, is rendered or declared illegal or otherwise shall be invalid or unenforceable, the remainder of the Agreement and the application of such provision to other persons or circumstances shall not be affected thereby, but shall be enforced to the greatest extent permitted by applicable law.

5.6. Written Amendments. No amendment to this Agreement shall be of any effect unless in writing and executed by all of the parties.

5.7. Limitations. All covenants and obligations of the parties under this Agreement shall be deemed to be valid covenants and obligations of said entities, and no officer, director, employee, or consultant of a party shall have personal liability hereunder.

5.8. Force Majeure. In no event shall a party be responsible or liable for any failure or delay in the performance of its obligations hereunder (other than the payment of money) arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation: strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, pandemic or epidemic, natural catastrophes or acts of God, future order of or delay caused by any government, court or regulatory body claiming jurisdiction, including, without limitation delays

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in processing or release of necessary permits (including delays that may result in issuance of any permits or certificates of occupancy to Developer if the City were to make the Signal a requirement for such issuance), acts or omissions of another party to this Agreement or any persons or entities not parties to this Agreement, and interruptions, loss, or malfunctions of utilities, communications, or computer services. A party that is delayed due to the circumstances or events described in this section will use all reasonable efforts to resume the performance of its obligations under this Agreement as soon as reasonably possible.

5.9. Sole Benefit. This Agreement is entered into for the sole benefit of the parties and their respective successors and permitted assigns. Nothing in this Agreement or in any approval subsequently provided by either party hereto shall be construed as giving any benefits, rights, remedies, or claims to any other person, firm, corporation or other entity, including, without limitation, the public in general.

5.10. Authorization. Each party to this Agreement represents to the others that it is fully authorized to enter into this Agreement and to perform its obligations hereunder, and that no waiver, consent, approval, or authorization from any third party is required to be obtained or made in connection with the execution, delivery, or performance of this Agreement. Each signatory on behalf of each party is fully authorized to bind that party to the terms of this Agreement.

5.11. Venue. The provisions of this Agreement shall be construed in accordance with the laws and court decisions of the State of Texas, and exclusive venue for any legal actions arising hereunder shall be in Tarrant County, Texas.

5.12. Interpretation. No provision of this Agreement shall be construed against or interpreted to the disadvantage of any party by any court, other governmental or judicial authority, or arbitrator by reason of such party having or being deemed to have drafted, prepared, structured, or dictated such provision.

5.13. Waiver. No delay or omission by a party to exercise any right or power hereunder shall impair such right or power or be construed as a waiver thereof. A waiver by a party of any of the covenants, conditions, or agreements to be performed by any other party or any breach thereof shall not be construed to be a waiver of any succeeding breach thereof or of any other covenant, condition, or agreement herein contained.

5.14. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof. There are no representations, understandings, or agreements relative hereto which are not fully expressed in this Agreement.

5.15. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts shall constitute one single agreement between the parties.

5.16. Headings. The article and section headings used in this Agreement are for reference and convenience only, and shall not enter into the interpretation hereof.

5.17. Effective Date. The "Effective Date of this Agreement" shall be the date upon which the Developer, either itself or through an affiliated entity, closes on the purchase of and acquires title to the Developer Property (the "Closing"), provided that if the Closing does not occur within 180 days following the Execution Date, this Agreement will terminate and be of no force or effect.

IN WITNESS WHEREOF, the Developer, the City and Trinity Metro have executed this Agreement on the respective dates shown below, to be effective on the last date listed below.

The Developer

NRH IRON HORSE, LLC, a Delaware limited liability company

By: The Spanos Corporation, a California
Corporation, its Manager

By: 
Steven L. Cohen
Executive Vice President

Date: _____, 2020

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of San Joaquin)

On October 8, 2020 before me, Sonia Lopez, Notary Public
(insert name and title of the officer)

personally appeared Steven L. Cohen,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature  (Seal)



The City

CITY OF NORTH RICHLAND HILLS,
a Texas home-rule municipal corporation

Mark Hindman, City Manager

Date: _____, 2020

ATTEST:

Alicia Richardson, City Secretary

APPROVED AS TO FORM AND LEGALITY:

Maleshia B. McGinnis, City Attorney

Trinity Metro

FORT WORTH TRANSPORTATION AUTHORITY,
a Texas regional transportation authority

Robert Baulsir, President and CEO

Date: _____, 2020

NOTES:

- REFER TO THE BAIL VOLUME TO DUG OUT FOR PARK & RIDE CANALS.
- SEEKS TO THE BAIL VOLUME TO DUG PRO-1000 FOR PARK & RIDE CANALS.
- PLANTING 10,000 IN NORTH YARDING LOT ARE FORMED AS MONUMENTIC CURB EACH SIDE.

INTERSECTION
TO BE SIGNALIZED

Iron Horse Blvd

Bookee

ISSUED FOR CONSTRUCTION

TEX RAIL
NORTH RICHLAND HILLS STATIONS
IRON HORSE STATION
SITE LAYOUT PLAN

FORT WORTH TRANSPORTATION AUTHORITY

URBAN ENGINEERS
INCORPORATED IN TEXAS

TYPE REGISTRATION NO. 9910

STATE OF TEXAS
CERTIFICATE OF REGISTRATION
NO. 9910

REV DATE DESCRIPTION

BY ECD GML JAP

DATE MAY 18 2016

PROJECT NAME

SCALE

DATE

DRAWN BY

CHECKED BY

DESIGNED BY

IN CHARGE

PROJECT NO.

SHEET NO.

TOTAL SHEETS

DATE

REVISIONS