

LICENSE AGREEMENT

THIS LICENSE AGREEMENT ("License") is entered into this 24th day of August, 2020, by and between and the **WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY** ("**WMATA**" or "**Licensors**") with offices at 600 5th Street, NW, Washington, DC and the **MONTGOMERY COUNTY, MARYLAND**, by and through its Department of Transportation ("**Licensee**") with offices at 100 Edison Park Drive, 4th Floor, Gaithersburg, Maryland 20878.

WITNESSETH:

WHEREAS, Licensee is constructing new Montgomery County Government offices on a parcel located next to the Wheaton Metrorail Station ("Project"); and

WHEREAS, Licensee desires to lease two hundred and thirty (230) parking spaces for Licensee's fleet vehicles; and

WHEREAS, Licensors desires to lease two hundred and thirty (230) non-reserved parking spaces ("Parking Spaces") at WMATA's Wheaton Metrorail Station Parking Garage ("Garage") to Licensee; and

NOW, THEREFORE, in consideration of the agreements, terms, covenants, and conditions hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Description of the Licensed Premises.** The Parking Spaces are in the Garage located at the intersection of Viers Mill Road and Reedie Drive in Silver Spring, Maryland ("the Licensed Premises") all as shown on **Exhibit A** attached hereto and made a part hereof.
2. **Term.** This License shall commence thirty (30) days from the date of this License ("Effective Date") and shall remain in full force and effect for a period of five (5) years (the "Initial Term") unless renewed pursuant to Section 3 below or terminated earlier as provided by this License.
3. **Renewal Option.** Provided that (i) Licensee is not in default in the observance or performance of the covenants, conditions, obligations or responsibilities contained herein, and (ii) WMATA does not need the Parking Spaces for its Metro riders, Licensee shall have the right to extend the Initial Term of the License, upon the same terms and conditions described herein, for five (5) additional periods of one (1) year each. Licensee shall notify WMATA in writing of its desire to extend the Initial Term (or any renewal Term) of this License at least ninety (90) days prior to the expiration date of the Term, as it may be extended.
4. **WMATA's Option to Terminate.** WMATA from time to time performs utilization assessments of its parking facilities, including the Garage. Should WMATA determine that it needs the Parking Spaces for its Metro riders, WMATA shall have the right to (i) terminate this License upon thirty (30) days' prior written Notice to Licensee, or (ii) decline

to extend the Initial Term (or any renewal Term) of the License as described in Section 3 herein.

5. **Licensee's Option to Terminate** Montgomery County shall have the right to terminate this license upon thirty (30) days' prior written Notice to WMATA.
5. **Parking Spaces Rent.** The Monthly Parking Spaces Rent ("PSR") shall be payable on or before the first day of each month, in advance, at the rate of Thirty Thousand and Five Hundred and Ninety Dollars (\$30,590.00) during the Term and any extension thereof. The PSR is based on the following formula: 230 Parking Spaces X \$133.00 per Parking Space per month. The number of parking spaces may be adjusted on an annual basis. Licensee must provide 30 days' written notice to WMATA for parking space adjustments.
6. **Rent Increase.** Licensee acknowledges that parking rates at WMATA parking garages are established from time to time by the WMATA Board of Directors. In the event the WMATA Board of Directors increases the daily weekday (Monday through Friday) parking rate for the Garage, Licensee shall have ninety (90) days in which to (i) agree in writing to the increased daily parking rate, or (ii) terminate the License. Licensee's failure to make an election shall be considered its agreement to the increased rate.
7. **Access Cards.** WMATA will provide Licensee with two hundred and thirty (230) Garage-specific access cards ("Access Cards") allowing drivers ("Drivers") to enter and exit the Garage. Licensee shall pay WMATA a one-time fee of One Thousand, One Hundred and Fifty Dollars (\$1,150.00) for the Access Cards simultaneously with the execution of this License Agreement. Thereafter, Licensee shall pay a fee of Five Dollars (\$5.00) in advance for each replacement Access Card.
8. **Rent Payment.** PSR and Access Card fees shall be paid to WMATA by electronic funds transfer as described more fully on Exhibit B. WMATA is under no obligation to supply monthly invoices to Licensee.
9. **Conditions of Use of the Parking Garage.** Licensee has the non-exclusive right to use the Parking Spaces upon the following conditions:
 - a. Licensee shall notify Drivers that parking is prohibited in the parking spaces marked "Reserved" between the hours of 2:00 A.M. and 10:00 A.M. Monday through Friday.
 - b. Licensee shall require Drivers to comply with all applicable laws and WMATA rules and regulations relevant to the Garage and associated WMATA facilities.
 - c. Licensee shall require the WMATA parking permit provided by WMATA to be prominently displayed in the front window of each Driver's parked vehicle at all times.
10. **Indemnification.** The parties agree to hold harmless one another from any loss, personal injury, death and any other damage (including incidental and consequential) that may be done or suffered by reason of the first party.
11. **Insurance.** WMATA and Licensee is self-insured. Any indemnification given by Licensee hereunder is subject to, limited by, and contingent upon the appropriation and availability of funds, as well as the notice requirements and damage limitations stated in the Local

Government Tort Claims Act, Md. Code Ann., Cts. & Jud. Proc. Sec. 5-301, et seq., and Md. Code Ann., Cts. & Jud. Proc. Sec. 5-5A-02 (together the "County Indemnification Statutes"), all as amended from time to time.

12. **Assignment.** Licensee shall not assign this License or sublicense the Licensed Premises without the prior written consent of WMATA.
13. **Surrender of Possession.** Licensee shall, at the expiration or earlier termination of this License, surrender the Licensed Premises in a clean condition that is free of all Licensee's fixtures and equipment and restore the Leased Premises to its condition as of the date of this License.
14. **Governing Law; Venue.** The laws of the jurisdiction in which the Licensed Premises are located govern the validity, interpretation, construction, and performance of this License, except that the parties acknowledge that WMATA is bound by the WMATA Compact, Public Law 89-774, 80 Stat. 1324, as same may be amended (hereinafter "WMATA Compact") and that to the extent of any conflict between the laws of such jurisdiction and the WMATA Compact, the WMATA Compact shall govern WMATA. Jurisdiction for the resolution of any disputes arising out of this License shall lie in the United States District Court in the jurisdiction in which the Licensed Premises are located except that no provision of this License shall constitute a waiver of WMATA's immunity under the WMATA Compact.
15. **Amendments.** No amendments or alterations of any of the terms of this License shall be binding upon WMATA or Licensee unless the same shall be in writing and duly executed by both parties hereto.
16. **Interest in Property.** Nothing in this License shall be interpreted to create anything other than a license and shall specifically not create any right, title or interest in property nor shall it create an easement.
17. **Notices.** Notices given in connection with this License shall be in writing and shall be sent by (a) hand delivery; or (b) a nationally recognized overnight courier service for next business day delivery. Notices and other communications shall be deemed to have been given on the earlier of actual receipt or, in the case of overnight courier, on the first business day after delivery to such courier. Either party may change the Notice address with written notification to the other.

If to WMATA: Director
 Office of Real Estate and Parking
 Washington Metropolitan Area Transit Authority
 600 Fifth Street, NW
 Washington, DC 20001

With copy to: General Counsel
 Office of General Counsel
 Washington Metropolitan Area Transit Authority
 600 Fifth Street, NW
 Washington, DC 20001

If to Licensee: Montgomery County Department of Transportation

100 Edison Park Drive, 4th Floor
Gaithersburg, Maryland 20850

Attn: Jeremy Souders
Telephone: 240-777-8706 (o)
Email: jeremy.souders@montgomerycountymd.gov

With a Copy to: Office of the County Attorney
101 Monroe Street, 3rd Floor
Rockville, Maryland 20852

18. **Default/Termination.**

- a. Licensee shall be deemed to be in default of this License if it shall fail to observe or perform any of the provisions, covenants, conditions, or agreements contained herein and such failure shall continue for a period of twenty (20) days after written Notice is received from WMATA. If an event of default shall have occurred and be continuing, WMATA, at its option, may at once, or at any time thereafter, terminate this License by written Notice to Licensee, whereupon this License shall end and all rights of Licensee hereunder, but not Licensee's liabilities, shall expire and terminate. Upon such termination by WMATA, and without in any way limiting the remedies available to WMATA at law, in equity or under the terms of this License, Licensee shall at once remove all persons and effects from the Licensed Premises. WMATA may enter into or repossess the Licensed Premises either by force, by summary proceeding or otherwise. WMATA shall have no liability by reason of any such reentry, repossession or removal.
- b. If Licensee shall be deemed to be in default of this License, WMATA, without being under any obligation to do so and without thereby waiving such default, may remedy such default at the expense of Licensee, immediately and without Notice in case of emergency, or in any other case, if Licensee shall fail to remedy such default within the time set forth in this License. In the event WMATA exercises such right, Licensee shall pay to WMATA immediately upon demand all of WMATA's actual cost of performing the same.
- c. No failure by WMATA to insist upon the strict performance of any of the terms of this License or to exercise any right or remedy consequent upon a breach thereof, shall constitute a waiver of any such breach or of any of the terms of this License. No waiver of any default of this Licensee shall be implied from any omission by WMATA to take any action on account of such default if such default persists or is repeated. One or more waivers by WMATA shall not be construed as a waiver of a subsequent breach of the same term or condition.

19. **Limitations on Damages.** Notwithstanding anything to the contrary herein, WMATA shall not be liable for any direct, indirect, incidental, special, consequential or exemplary damages of Drivers, Licensee or Licensee's employees, customers, contractors or agents.

20. **Officials Not To Benefit.**

- a. No member (i.e., Representative or Senator) of, or delegate to Congress, or any similar official, or resident commissioner, or any member of such person's family, shall be admitted to any share or part of this License, or to any benefit that may arise therefrom; but this provision shall not apply if this License is made with a

corporation or other entity with which such official or family member has only a de minimis (in WMATA's sole opinion) contractual or ownership interest. Licensee shall forthwith deliver written Notice to WMATA of any breach of the foregoing warranty representation and License and shall make reasonable inquiries from time to time to determine whether any such breach has occurred.

- b. No member of or delegate to Congress shall be admitted to any share or part of this License, or to any benefit that may arise therefrom and no member, officer, or employee of the public body or of a local public body during his tenure or one year thereafter shall have any interest, direct or indirect, in this License or the proceeds thereof.
21. **Covenant Against Contingent Fees.** The parties warrant that no person or selling agency has been employed or retained to solicit or secure this License upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the parties for the purpose of securing business or an attorney rendering professional legal service consistent with applicable canons of ethics.
22. **Federal Transit Administration and Federal Interest.**
- a. Licensee acknowledges that WMATA is the recipient of Federal grants through the Federal Transit Administration ("FTA"), which funded, in part, the Licensed Premises. Licensee further acknowledges that pursuant to FTA grant requirements, WMATA must demonstrate and retain satisfactory continuing control over the use of the Licensed Premises. Licensee agrees that it will not exercise any right permitted under this License in a manner which compromises or otherwise diminishes WMATA's obligation to retain satisfactory continuing control over the use of the Licensed Premises.
 - b. Licensee acknowledges the Federal interest in the Licensed Premises and agrees that it will take no action which compromises or otherwise diminishes such interest.
 - c. Licensee acknowledges that WMATA must comply with all applicable Federal statutes, regulations, orders, certification and assurances, or other Federal law (collectively referred to as "Federal Laws"), including, but not limited to, those set forth in the current Master Agreement governing transit projects supported with Federal assistance awarded through the FTA. Licensee agrees that it will take no action seeking compliance with non-Federal Laws to the extent such laws conflict with applicable Federal Laws.
23. **Gratuities.** In connection with this License, or any amendments or modifications thereto, the giving of, or offering to give, gratuities (in the form of entertainment, gifts or otherwise) by Licensee or any agent, representative, or other person deemed to be acting on behalf of Licensee, or any contractor, subcontractor or supplier furnishing material to or performing work under this License, to any director, officer or employee of WMATA, or to any director officer, employee of any of WMATA's agents, consultants or representatives, with an intent to secure an agreement or favorable treatment or the making of any determinations with respect to performance under this License is expressly forbidden. The terms of this Section shall be broadly construed and strictly enforced against the offending person in the event of violation.

24. **Non-Liability of WMATA.** WMATA shall have no liability, including financial liability, for the actions or negligence of Licensee, its employees, customers, contractors or agents or Drivers as a result of Licensee's use of the Licensed Premises.
25. **Damage to Licensed Premises.** Licensee shall be responsible for, and must make good, at its own expense, all damage to the Licensed Premises caused by its acts, those of its employees, contractors, subcontractors, consultants or agents acting on behalf of Licensee, or those of Drivers in carrying out the activities permitted under this License.
26. **Entire Agreement.** This License contains the entire agreement between the parties and may not be amended, altered or otherwise changed except by a subsequent writing signed by the parties to this License. The invalidation of any one of the terms or provisions of this License by judgment or court order shall in no way affect any of the other terms of this License which shall remain in full force and effect. WMATA and Licensee agree to execute any additional documents necessary to further implement the purpose and intent of this License.
27. **Heading, Captions, Etc.** The Section headings, subheadings and captions of this License are for convenience and reference only and in no way define, limit or describe the scope or intent of this Agreement nor in any way affect this Agreement.
28. **Waiver.** No consent or waiver, expressed or implied, by any party to this License to or for any breach of any covenant, condition or duty of the other respective party to this License shall be construed as a consent or waiver to or for any other breach of the same or any other covenant, condition or duty.
29. **Consents.** Except as herein otherwise provided, whenever the consent or approval of either party is required under this License, such consent or approval shall be in writing, signed by an officer or agent duly authorized by the party granting such consent or giving such approval.
30. **Relationship of Parties.** This License does not create the relationship of principal and agent or of mortgagee and mortgagor or of partnership or of joint venture or of any association or agency between WMATA and Licensee, the sole relationship between these parties being that of licensor and licensee.
31. **Effects of Covenants.** All of the covenants, conditions and obligations contained in this License shall be binding upon the permitted heirs, executors, administrators, successors or assigns of the respective parties to the same extent as if each such permitted heir, executor, administrator, successor or assign were in each case named as a party to this License.
32. **Rights and Remedies.** The rights and remedies of the parties in this License are distinct, separate and cumulative rights and remedies and not one of them, whether or not exercised, shall be deemed to be in exclusion of any of the others at law or in equity.
33. **Sovereign Immunity.** No provisions of this License nor any action taken by the parties pursuant to the License, nor any document or documents that arise out of this License, shall constitute or be construed as a waiver of either the sovereign immunity or governmental immunity of the parties hereto, including such immunity of the parties' elected and appointed officials, officers and employees.

34. **No Rights in Third Parties.** The parties agree that no provision of this License shall create in the public, or in any person or entity other than the parties, any right as a third-party beneficiary hereunder.
35. **Authority.** Each individual signing on behalf of a party to this License states that he or she is the duly authorized representative of the signing party and that his or her signature on this License has been duly authorized by, and creates the binding and enforceable obligation of, the party on whose behalf the representative is signing.
36. **Counterparts.** The parties hereto agree that this License may be executed in one or more identical counterparts, each of which shall be deemed to be an original thereof and shall be enforceable against each of the parties hereto.
37. **Use of WMATA Compact.** At no time shall Licensee, by virtue of this License, assert, or attempt to assert, for any reason, the WMATA Compact.

SIGNATURES ON THE FOLLOWING PAGE

IN WITNESS WHEREOF, WMATA, and Licensee have caused this License to be executed by their respective officials, thereunto duly authorized to bind the respective entities.

WITNESS:

**WMATA: WASHINGTON METROPOLITAN
AREA TRANSIT AUTHORITY**

Name: JOHN D. THOMAS

Anabela Talaia
~~Contracting Officer~~
Program Manager

Approved as to form and legal sufficiency:

Kermit Welch
Chief Counsel

WITNESS:

**LICENSEE:
MONTGOMERY COUNTY DEPARTMENT
OF TRANSPORTATION**

Julie L. White

Name: Julie L. White

Jerome Fletcher

Name: Jerome Fletcher
Title: Assistant Chief Administrative Officer

Approved as to form and legal sufficiency:

Neal Anker

Neal Anker
Associate County Attorney

Recommended:

Cynthia Brenneman

Cynthia Brenneman
Director of the Office of Real Estate