

REIMBURSEMENT, LICENSE AND MAINTENANCE AGREEMENT

THIS REIMBURSEMENT, LICENSE AND MAINTENANCE AGREEMENT (the "**Agreement**") is made and entered into by and between DP RTA STEAD, LLC, a Delaware limited liability company ("**Developer**"), and the CITY OF RENO, a municipality incorporated under the laws of the State of Nevada (the "**City**"), with reference to the following recitals:

A. Developer is developing one or more industrial buildings in the south westerly corner of the Reno-Stead Airport, a general aviation airport located within the City's municipal boundary (such development, the "**Project**").

B. In connection with the Project, the City and Developer have coordinated, together with Union Pacific Railroad Company ("**UPRR**"), on the design of an extension of Moya Boulevard that would allow for a public crossing of existing UPRR rail facilities near the southern boundary of the Project.

C. The City and Developer previously entered into a Final Engineering Reimbursement Agreement dated April 27, 2022 for the proposed public crossing on Moya Boulevard.

D. The City and UPRR will enter into a Public Highway At-Grade Crossing Agreement (the "**UPRR Crossing Agreement**") concurrently herewith, pursuant to which the City is obligated to pay approximately \$841,449.00 to UPRR for the UPRR Agreement and for UPRR's work associated with the UPRR Agreement, as well as additional annual fees for signal maintenance and surface maintenance.

E. The City and Developer now wish to clarify their respective rights and responsibilities with respect to the construction and maintenance of the aforementioned rail crossing, all on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Developer hereby agree as follows:

1. DEFINITIONS; INTERPRETATION.

1.1 **Definitions.** The terms used in this Agreement shall generally be given their natural, commonly accepted definitions unless otherwise specified. Capitalized terms used herein shall be defined as set forth below, and shall incorporate the concepts set forth in each definition.

"**Business Day**" means any day other than a Saturday, Sunday, or day that is a legal holiday under the laws of the State of Nevada or is a day on which banking institutions located in the State of Nevada are authorized or required by law or other governmental action to close.

"**Improvements**" means all right-of-way improvements and rail improvements approved by the City and UPRR of any kind whatsoever, including, without limitation, grading, road base, curb and gutter, paving, drainage improvements of any type whatsoever, rail track,

signage, and rail crossing traffic control facilities, together with all repairs and replacements thereof and modifications thereto.

“License Area” means the portion of the Moya Boulevard right-of-way at the intersection of the UPRR rail line near the southern boundary of the Project, as generally depicted in **Exhibit A** attached hereto.

“Scope of the License” means the construction, installation, use and enjoyment, repair, replacement, and maintenance of Improvements; and such access as may be necessary to enjoy the foregoing rights.

1.2 **References.** All references to Exhibits or Schedules refer to Exhibits or Schedules, as applicable, attached to this Agreement and all such Exhibits and Schedules are incorporated herein by reference. The words "herein," "hereof," "hereinafter" and words of similar import refer to this Agreement as a whole and not to any particular Section hereof.

1.3 **Other Usages.** When the context and construction so require, all words used in the singular herein shall be deemed to have been used in the plural and the masculine shall include the feminine and the neuter and vice versa. The use in this Agreement of the term "including" and related terms such as "include" shall in all cases mean "without limitation."

1.4 **Headings.** The various headings of this Agreement are included for convenience only and shall not affect the meaning or interpretation of this Agreement or any provision hereof.

1.5 **Joint Product of Parties.** This Agreement is the result of arms-length negotiations between the City, Developer, and their respective attorneys. Accordingly, no party shall be deemed to be the author of this Agreement, nor shall this Agreement be construed against any party.

1.6 **Calculation of Time Periods.** Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included at, unless such last day is not a Business Day, in which event the period shall run until the end of the next day which is a Business Day. Unless otherwise expressly provided herein, the last day of any period of time described herein shall be deemed to end at 5:00 p.m., Nevada time.

2. **REIMBURSEMENT OF CITY'S COSTS.** Developer hereby agrees to deposit with the City of Reno **Eight Hundred Forty-One Thousand Four Hundred Forty Nine Dollars (\$841,449)** to reimburse the City for any and all Costs, Staff Fees, Consultant Fees and UPRR costs incurred by the City as a result of its execution of the UPRR Crossing Agreement described herein. Costs include but are not limited to publication fees, recording fees, and any other actual out-of-pocket costs incurred by the City with regard to the UPRR Crossing Agreement. Developer shall reimburse the City for time spent by the City Administrator, City Planning staff and City Public Works staff for inspection and review associated with the UPRR Crossing Agreement. Developer shall also reimburse the City for all actual out-of-pocket costs incurred by the City in connection with the UPRR Crossing Agreement, including but not limited to legal, engineering and planning review and advice from persons or entities not employed by the City at the rate or amount actually billed to the City for such review and advice ("Consultant Fees"). UPRR Costs include the costs incurred by UPRR or its consultants for services and/or work associated with the UPRR Crossing Agreement. Developer agrees to deposit additional monies with the City of Reno should insufficient funds remain to pay costs pursuant to the UPRR Crossing Agreement, including but not limited to annual fees for signal maintenance and surface maintenance that may be assessed by UPRR against the City. Upon receipt of a billing statement from UPRR and/or its consultant pursuant to the UPRR Crossing Agreement, the City shall pay the billing statement from the amount Developer has deposited with the City within a timely manner and shall provide a copy of such billing statement to Developer within ten (10) business days of receipt.

3. **HOLD HARMLESS.** Developer shall save and hold City harmless and free from any suit or cause of action, claim or demand, which may be brought or made against the City or Developer or its successor in interest or its purchaser by any third party arising from the executing of the UPRR Crossing Agreement or any and all other conditions of this Agreement. Developer shall continue to be liable to City for the performance of all terms and conditions of this Agreement regardless of Developer's failure to continue work under this Agreement or assignment of its rights to do such work and regardless of the status of Developer's interest in the real property or any portion thereof made the subject of the UPRR Crossing Agreement, unless the UPRR Crossing Agreement is terminated and all costs and fees incurred by the City have been reimbursed. In the event the City is required to institute legal action to compel performance of this Agreement, or to defend any suit or claim, or liability resulting from or arising out of this Agreement, Developer shall pay to City all reasonable attorney's fees, costs of suit, and all other expenses of litigation incurred by City in connection therewith.

4. **GRANT OF LICENSE.** The City hereby grants to Developer, to the extent of the Scope of the License, a non-exclusive, irrevocable license over and across the License Area.

5. **IMPROVEMENTS.**

5.1 **Right to Undertake Action for Improvements.** Developer, directly or through its duly licensed contractors and agents, may undertake the construction, installation, repair, replacement, modification, and/or maintenance of any particular permitted Improvement upon the License Area from time to time, subject to the obligations of the Contractor set forth in the UPRR Agreement, as that term is defined in the UPRR Crossing Agreement. Developer shall undertake

all obligations of the Contractor as set forth in the UPRR Crossing Agreement. Except in case of emergency or routine maintenance, Developer shall provide the City with not less than thirty (30) days prior written notice before commencing construction, installation, repair, replacement, modification, and/or maintenance of the relevant Improvement. All such activities will be conducted in a reasonably expeditious and diligent manner so as to minimize to the extent possible any interruption of or interference with the public's ordinary use of Moya Boulevard. Notwithstanding any review of information, issuance of required permits, or consent to any activities by the City, Developer shall be solely responsible for, and the City shall not be responsible nor liable for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with construction, installation, repair, replacement, modification, and/or maintenance of the Improvements. Developer shall be solely responsible for all costs and expenses associated with the plans, specifications, drawings, permits, financial assurances, materials, equipment, and labor associated with the applicable construction, installation, repair, replacement, modification, and/or maintenance on the Improvements.

5.2 **Maintenance; Duty to Repair.** Developer shall be solely responsible for the maintenance and repair (including any necessary replacements) of the Improvements, and Developer, directly or through its duly licensed contractors and agents, shall maintain the Improvements in good order and repair.

5.3 **Compliance with Laws.** Developer shall fully comply with (and shall cause all persons acting through or on behalf of Developer to fully comply with) all laws, City ordinances, rules, regulations, and City permitting requirements in the exercise of its rights hereunder or otherwise applicable to the License Area and the construction, installation, maintenance, repair, use and/or replacement of the any Improvement thereon.

5.4 **Insurance.** Developer shall maintain and carry commercial general liability insurance, on an occurrence form, adequate to protect the interest of the parties to this Agreement, which shall name the City as an additional insured, and which shall be the primary liability insurance for all claims or liabilities arising from, or incidental to, this Agreement and all activities of Developer upon or in relation to the License Area and the Improvements. General liability risks and key exposures to be covered shall include, but not be limited to, bodily injury, personal injury, death, broad form property damage, blanket contractual liability, and completed products and operations. The limits of each policy shall, initially, not be less than those limits set forth in Exhibit C to Contractor's Right of Entry Agreement, as set forth in the UPRR Agreement.

5.5 **Public Use.** Developer acknowledges and agrees that Moya Boulevard, including the License Area and any Improvements thereon, may be used by the City as a public right-of-way for no additional consideration to Developer. Nothing herein shall be deemed to limit or waive Developer's rights against any third-party who damages or otherwise impairs the use of the License Area or the Improvements thereon.

4. **DEFAULT.** Developer or the City, respectively, shall be in default hereunder in the event such party fails to perform or comply with any obligation or agreement of such party contained herein and such default shall continue for a period of thirty (30) days following notice from the non-defaulting party; provided, however, that if such default is not of the type that could

reasonably be cured within such thirty (30) day period, the defaulting party shall have such additional time as may be necessary to complete such cure, provided the defaulting party initiates its curative efforts within said thirty (30) day period and thereafter diligently pursues and completes such cure no later than sixty (60) days following the notice from the non-defaulting party. Upon an event of default hereunder, each non-defaulting party shall be entitled to exercise all rights and remedies available to such party at law or in equity, all of which shall be cumulative, but shall not be entitled to recover any circumstantial, punitive, lost profits or any form of speculative damages, all of which are hereby waived expressly and knowingly by Developer and the City, respectively, nor be entitled to rescind or otherwise terminate this Agreement.

6. **MISCELLANEOUS PROVISIONS.**

6.1 **Successors and Assigns.** All provisions of this Agreement shall be binding upon the respective successors and assigns of Developer and the City. The City hereby acknowledges and agrees that, in the event Developer or its affiliates form an owners' association with respect to the Project, Developer may assign its rights and obligations hereunder to such owners' association, and upon said assignment and delivery of written notice thereof to the City, Developer shall be released from its rights and obligations hereunder.

6.2 **Modification and Waiver.** No claim of waiver, modification, consent or acquiescence with respect to any provision of this Agreement shall be made against any party hereto except on the basis of a written instrument executed by or on behalf of such party.

6.3 **Severability.** Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be valid under applicable law, but, if any provision of this Agreement shall be invalid or prohibited thereunder, such provision shall be ineffective to the extent of such prohibition without invalidating the remainder of such provision or the remaining provisions of this Agreement.

6.4 **No Partnership.** The provisions of this Agreement do not create any partnership, joint venture, or other legal entity between the parties hereto.

6.5 **Governing Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Nevada, without giving effect to the choice of law principles of said State.

6.6 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed an original; such counterparts shall together constitute but one agreement.

6.7 **Entire Agreement.** This Agreement contains the entire agreement between the parties relating to the transactions contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged herein.

6.8 **Additional Actions and Documents.** The parties agree to take such additional actions and execute such additional documents as may be necessary or proper to carry out the

transactions contemplated by this Agreement.

6.9 **Enforcement; Breach Shall Not Permit Termination.** Each party bound hereby shall have the right (but not the duty) to enforce its rights hereunder against the other parties hereto. No breach of this Agreement shall entitle any party to cancel, rescind or otherwise terminate this Agreement, but such limitation shall not affect in any manner any other rights or remedies which may be available to such party at law or in equity.

6.10 **Notices.** All notices and demands of any kind which any party hereto may be required or desire to serve upon any other party under the terms of this Agreement shall be in writing and shall be served upon such other party (a) by personal service upon such other party, whereupon service shall be deemed complete, (b) by telecopy or email, followed by a hard copy mailed the same day, whereupon service shall be deemed completed on the day telecopy or email, as applicable, was sent, (c) by Federal Express or other recognized overnight delivery service, whereupon service shall be deemed complete the next business day, or (d) by mailing a copy thereof by certified or registered mail, postage prepaid, with return receipt requested, whereupon service shall be deemed complete on the day actual delivery is made, as shown by the addressee's registry or certification receipt or at the expiration of the third day after the date of mailing, whichever first occurs. The address to which notices to a recipient party shall be sent shall be the address last provided by the recipient party or, if no such address exists, to the address of such recipient party at its portion of the Servient Property or at the Dominant Property, as applicable, or, if no such address exists, to the last known address of such recipient party.

Any party hereto may from time to time, by notice in writing served upon the others as aforesaid, designate a different address to which or a different person to whose attention all such notices or demands are thereafter to be addressed.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, this Agreement shall be effective on the date executed by the last party to sign it (as indicated by the date associated with that party's signature below).

THE CITY:

THE CITY OF RENO,
a municipal corporation organized
under the laws of State of Nevada

By: _____
Name: _____
Its: _____

Date: _____, 2023

APPLICANT:

DP RTA STEAD, LLC,
a Delaware limited liability company

By: _____
Name: _____
Its: _____

Date: _____, 2023

EXHIBIT A
DEPICTION OF LICENSE AREA AND IMPROVEMENTS

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