Approval of Transitional Operations Agreement Between DART and Kansas City Southern Railway Company (KCS) for Construction of the Silver Line Regional Rail Project

Committee-of-the-Whole
June 8, 2021

Bonnie Murphy
Vice President, Commuter Rail & Railroad Mgmt.
Today’s Consideration

- Approval of a resolution authorizing the Interim President & Chief Executive Officer or his designee to execute a Transitional Operations Agreement between DART and KCS for the Silver Line Regional Rail Project, substantially in the form of Exhibit 1 to the resolution, and authorize payment in an amount not to exceed $7,392,480 for siding replacement, and up to $1,080,000 for recrew fees for detoured trains, for a total amount not to exceed $8,472,480
Silver Line Regional Rail Project

Limit of KCS Operation
• DART has negotiated a Transitional Operations Agreement (TOA) with KCS. This will enable DART to complete the design and progress construction and integrated testing of the Silver Line in the KCS operated section of the project from Renner Junction to Shiloh Rd.

• TOA will be coterminous with current Trackage Rights Agreement (TRA)

• An amendment to existing TRA will be required for final operations for joint Silver Line service and KCS freight operations. The final TRA amendment will be submitted for approval at a later date
• The TOA will include agreements for Design, Construction, Testing, Operations, Operational Control & Maintenance, Liability Insurance, and other General Provisions. The TOA includes two elements of cost described as follows:
  – DART will pay KCS $7,392,480 for impacts to an existing siding track to be eliminated due to Silver Line construction. KCS will design and construct replacement track capacity at their existing Wylie Intermodal Facility
  – KCS has agreed to detour trains around the proposed Silver Line project construction between Renner Junction and Shiloh Rd. DART will pay KCS actual recrew fee of up to $1,500 per train for detoured trains routing through Zacha Junction that run into hours of service issues due to the additional time required for the detour, for a total maximum cost of $1,080,000 for the duration of construction activities
Background Continued

- DART will enter into a future agreement to compensate KCS for other operating costs associated with providing two added “pusher” locomotives and associated train crew for every train to operate over the Custer Pkwy. and Jupiter Rd. grade-separated crossings. DART understands this will also include fuel costs to operate the added pusher units. DART will incorporate this commitment to KCS into an Agreement to be finalized while construction of the Silver Line is in progress and executed prior to KCS beginning operation.
Letter of Agreement

Exhibit 1

May 4, 2021

DART-KCS-0001
10.4.1

Via Email: mwalezak@keystonehre.com and U.S. Postal Mail

Mr. Mike Walezak
V.P. Network Planning & Treasurer
Kansas City Southern Railway Company
Cathedrals Square
427 West 12th Street
Kansas City, MO 64105

Project: Cotton Belt Regional Rail Design-Build – Contract No. C-2033278-01

Subject: Letter of Agreement: KCS Trackage Rights Agreement - Infrastructure and Operations
Deal Points

Dear Mr. Walezak:

This letter is provided pursuant to the discussions held with KCS representatives relative to the operations and capacity needs for KCS after completion of DART’s proposed Silver Line Regional Commuter Rail project. As you know, DART is moving forward with the design and construction required to implement regional passenger rail service from Plano to DFWIA. After completion, this project will require KCS to operate in a joint use freight and passenger environment along the KCS Alliance Subdivision from White Rock Junction, MP 593.1 to east of Shiloh Road at approximate MP 587.3. The following is a summary of the infrastructure and operational requirements discussed and agreed to with KCS representatives Steve Reishu, AVP Construction & Engineering, and Steve Simmons, Director of Interline Operations:

1. KCS will route all trains around Silver Line construction via the KCS Dallas Sub-White Rock Sub through Zadka Junction. Exhibit A is enclosed for reference. This will enhance safety, reduce risk for all parties, and will eliminate the need for railroad flagging for Silver Line related construction along the Cotton Belt corridor (KCS Alliance Sub) for the duration of the detour. DART agrees to pay KCS receiver fee of $1,500 per train for those trains running through Zadka Ict that run into hours of service issues due to the additional time required for the detour. DART and KCS have estimated approximately 4 trains per week that will incur a receiving fee. DART agrees to pay for all documented receivers due to the detour for the Silver Line construction. This rate is described and included in the Transitional Operations Agreement between DART and KCS.

2. Replacement of existing siding between Municipal Avenue and Shiloh Road with a storage capacity of approximately 8,500 track feet. This siding is to be removed to accommodate Silver Line double track construction. DART agrees to pay KCS a not to exceed amount of $7,392,480.38 for proposal improvements to your Wyly Intermodal Terminal per the layout and cost estimate illustrated in the enclosed Exhibit C developed and provided by KCS dated April 1, 2020. KCS will be solely responsible for all design and construction required to implement proposed capacity improvements.

3. KCS identified clearances at the proposed Silver Line passenger stations to be an issue with KCS High and Wide (H&W) load policy. Exhibit D.1 through D.7 is enclosed for reference. KCS agreed to route all H&W loads via Zadka Ict to mitigate this clearance issue at no additional cost to DART. KCS requested that DART construct all passenger station platforms in accordance with Federal DOT and AREMA standards. DART will construct all station platforms to be clear of AAR Plate C clearance envelope. DART’s Design-Build contractor will submit applicable plans to KCS for review and approval to confirm the stated clearances are provided.

4. Approach Grades at Custer Pkwy and Jupiter Road. Reference is made to your letter to Gene Gmez, dated February 2, 2021 (Exhibit B enclosed). DART accepts KCS’ proposal and costs associated with providing two additional “pusher” locomotives and associated train crew for every train to operate over the Custer Pkwy and Jupiter Rd grade separated crossings. DART understands this will also include fuel costs to operate the added pusher units. DART will incorporate this commitment to KCS into an Agreement to be finalized while construction of the Silver Line is in progress and executed prior to KCS beginning operation over the grade separated crossings.

DART looks forward to working with KCS to finalize the details related to the Transitional Operations Agreement as well as amending the Trackage Rights Agreement for final operations once Silver Line is in revenue service operations.

In accordance with the above listed deal points, DART respectfully requests that KCS complete your review of the draft Transitional Operations Agreement. We also request that KCS provide design reviews and associated rights of entry to allow construction activities to begin as soon as reasonably possible.

If you have any questions regarding the deal points described and/or the Silver Line project, please contact David Ehrlicher, Interim Vice President, Capital Design & Construction, at (214) 749-2910 or email to dehrlicher@dart.org.

Sincerely,

/s/ J. Todd Pesko
Reviewed and approved, but not signed due to COVID-19 Coronavirus Pandemic

J. Todd Pesko
Interim Executive Vice President
Growth/Regional Development

Enclosures

c/ Gene Gmez, DART, General Counsel
David Ehrlicher, DART, Interim Vice President, Capital Design & Construction
Tom Ledeaux, Silver Line Program Director
Darwin Dawson, Silver Line Program Manager
William Keyes, Contracting Officer Representative – Design-Build Contract
Contract File: C-2033270-01
Rail Program Development File Room
Recommendation

- Approval of a resolution authorizing the Interim President & Chief Executive Officer or his designee to execute a Transitional Operations Agreement between DART and KCS for the Silver Line Regional Rail Project, substantially in the form of Exhibit 1 to the resolution, and authorize payment in an amount not to exceed $7,392,480 for siding replacement, and up to $1,080,000 for recrew fees for detoured trains, for a total amount not to exceed $8,472,480