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March 22, 2016

Mr. Timothy H. McKay,
Executive Vice President of Growth and Regional Development
Dallas Area Rapid Transit
1401 Pacific Avenue
Dallas, TX 75202

Re: Proposed Downtown Dallas DART Rail Expansion

Dear Mr. McKay:

Our Firm represents First Presbyterian Church of Dallas, Texas (“First Presbyterian” or the “Church”), regarding DART’s proposed downtown Dallas rail expansion. We appreciate the votes of both the Dallas City Council and the DART Board of Directors approving Alternative B4, the Lamar/Young/Jackson Street Alignment (“the Jackson Alignment”) as the Locally Preferred Alternative (“LPA”) for the second Dallas Central Business District light rail alignment (“D2”). This route will benefit the southeast part of downtown Dallas without harming this historic Church that has anchored and served this community for 160 years. These votes designating the Jackson Alignment as the LPA are the correct path forward to building the future of downtown Dallas while preserving this increasingly vibrant neighborhood and First Presbyterian’s history and ongoing ministry.

Despite the designation of the Jackson Alignment as the LPA, some continue to press for the Alternative B4 Lamar/Young Alignment (“the Young Alignment”). This alignment would significantly and adversely affect First Presbyterian and other residents and property owners in the Farmers Market area of downtown Dallas. We believe the selection of the Young Alignment for D2 would create significant issues for any DART rail expansion including, without limitation, under Section 4(f) of the Department of Transportation Act, under the Texas Religious Freedom Restoration Act, and under other relevant state and federal laws.

First Presbyterian has been in downtown Dallas since 1856 and at its current location on Harwood Street between Young and Wood Streets for over a century. The Church’s significance to the area is historical, architectural, and spiritual, serving both a congregation of some 1,400 people and local communities with Church outreach programs including The Stewpot, which has served the homeless since 1975. The Stewpot is located in the Otis Elevator Company Building, directly across Young Street from the Church. The Dallas Historic Landmark Survey of 1975 designated the Church as a “first priority” landmark because of its “significan[ce] on a national scale.” In 1981, Dallas City Ordinance No. 17172 designated the Church Sanctuary and the Sudie George Chapel as part of Historic District/16,

which includes preservation criteria steps to be followed before any public improvements. In addition, in 1990, the Dallas City Council designated the area that includes the Church and its Sudie George Chapel as Harwood Historic District/48. Also, in January 2009, the area was added to the Downtown Dallas Historic District, a historic district listed on the National Register of Historic Places. The Church Sanctuary (completed in 1913), the Sudie George Chapel (completed in 1948), the Otis Elevator Building (completed in 1922), and 508 Park Avenue (completed in 1929) are each eligible for inclusion on the National Register, and the Church Sanctuary, the Chapel, and several other Church buildings were and remain specifically identified as resources contributing to the area's designation as a historic district.

Federal and state laws offer protections to and safeguards for historic sites, including Section 4(f) of the Department of Transportation Act, which provides that any U.S. Department of Transportation approval (including any Federal Transit Administration (FTA) capital investment grant) to support a project using a historic site can be given only if:

- (1) There is *no prudent and feasible alternative* to using that land; and
- (2) The project includes *all possible planning to minimize the resulting harm* to the historic site.

49 U.S.C. § 303(c). Of the various routes under consideration, the Young Alignment fails to minimize the harm to historic properties protected under Section 4(f).

Under the FTA's implementing regulations for Section 4(f), when *no prudent and feasible alternative exists* that completely avoids the use of historic sites, the federal agency may approve only the alternative that causes the *least overall harm* in light of the statute's preservation purpose. 23 C.F.R. § 774.3(c). The FTA determines the least overall harm by balancing such factors as the ability to mitigate adverse impacts; the relative severity of the unmitigated harm to protected activities, attributes, or features that qualify the property for protection; the relative significance of each property; and substantial differences in costs among the alternatives. *Id.*

Furthermore, this analysis is not restricted only to those properties or portions of a property that are permanently incorporated into a transportation project or temporarily occupied. The FTA also considers "constructive use" where the project's proximity impacts are so severe that the protected activities, features, or attributes that qualify a property for protection are substantially impaired. *See id.* § 774.15(a). For example, the FTA has determined that a constructive use occurs when the proximity of a proposed project substantially impairs esthetic features or attributes of a property where such features or attributes are considered important contributing elements to the value of the property. *Id.* § 774.15(e)(2).

Despite conclusory arguments to the contrary by some, the Young Alignment would profoundly affect the operation and character of the Church and its ministries. As the Church owns property and buildings on both the north and south sides of Young Street between Harwood Street and St. Paul Street, the Young Alignment would divide the Church's campus (much like Dallas leaders now recognize Central Expressway and Woodall Rogers Freeway have done to downtown). As DART acknowledges, the Young Alignment would require the demolition of the Church's substantial multi-story parking garage and the classrooms and visiting youth dormitory spaces located below, a structure now of an age requiring historical review. The Church's parking garage is the only parking for its congregation of 1,400 people (other than very limited surface parking, which the Young Alignment would also take in substantial portion). The Church is landlocked on the north side of Young Street, and there is no space to construct a similar parking structure on Church property. The Young Alignment would also destroy the Church's Chapel Garden, including some or all of the Church's columbarium. The Young Alignment would place rail lines and a substantially widened Young Street for automotive traffic in close proximity to the Sudie George Chapel and the Otis Elevator Building, rendering the former unusable and harming the latter. Based on some drawings, it would appear that a physical taking of the Sudie George Chapel could be necessary if the Young Alignment is constructed. As a result, the Church has serious and legitimate concerns that the construction of the Young Alignment would, as a practical matter, destroy or prohibit the use of Church properties including the Sanctuary and the Sudie George Chapel. The Young Alignment would thus constitute both direct and constructive use of historic sites on and around Church properties. And those uses would, individually and in the aggregate, significantly harm both the attributes of those properties and the activities that occur there.

These harms have been inventoried repeatedly, including partially in the March 2010 Downtown Dallas Transit Study, Alternatives Analysis and Draft Environmental Impact Statement, even as that report significantly understates the scope of the historical damage. For example, the D2 Noise and Vibration Technical Report, dated May 1, 2014, makes no mention of the Sudie George Chapel, which as noted above is a separate historic building completed in 1948. In addition, the Young Alignment adversely impacts the historic Scottish Rite Cathedral, Otis Elevator Company Building, Warner Brothers Film Building at 508 Park Avenue, and the Masonic Temple. Weighed against this, the Jackson Alignment satisfies the Section 4(f) statutory mandate to minimize harm to historic sites and better serves the goals and requirements of the National Historic Preservation Act and National Environmental Policy Act. As the Dallas City Council and the DART Board of Directors indicated in their respective resolutions on the subject, the Jackson Alignment should be and is the Locally Preferred Alternative for D2.

Additionally, the Young Alignment is not a viable route because it would violate the protections provided for First Presbyterian's free exercise of religion under Texas law. The

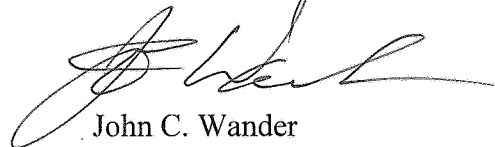
Texas Religious Freedom Restoration Act prohibits government agencies from substantially burdening the free exercise of religion unless the burden furthers a compelling government interest and is *the least restrictive means* of furthering that interest. Tex. Civ. Prac. & Rem. Code § 110.003. The Young Alignment would substantially burden First Presbyterian's free exercise of religion by destroying its parking garage providing access to the Church and destroying the classrooms and dormitory spaces contained in the basement underneath the parking garage. That route would also destroy half of the Church's limited surface parking and the Church's Chapel Garden and, as noted above, would jeopardize the Church's columbarium and historic Sudie George Chapel. Because First Presbyterian is located in a dense, urban area, there are no alternatives for it to build comparable facilities, including any that would maintain current proximity to the downtown Dallas homeless community, a vital Church mission. Thus, the destruction of the foregoing Church facilities would make it impossible for First Presbyterian to maintain its congregation of 1,400 and to continue the scope of its daily ministries to the local communities, including the homeless, which the Church has nurtured over the past 160 years. That burden cannot be justified under the Texas Religious Freedom Restoration Act. The Church-harming Young Alignment route plainly is not the least restrictive means of furthering the government's interest.

Furthermore, the likely impact on the Church's columbarium would present additional obstacles to the Young Alignment. Texas law protects dedicated cemetery land, including columbaria, and precludes a "railroad, street, road, alley, . . . or other public utility or thoroughfare" from being "placed through, over, or across a part of a dedicated cemetery without the consent of: (1) the directors of the cemetery organization that owns or operates the cemetery; or (2) at least two-thirds of the owners of plots in the cemetery." Tex. Health & Safety Code § 711.035(d). Moreover, "[d]edicated cemetery property shall be used exclusively for cemetery purposes until [its] dedication is removed by court order or until the maintenance of the cemetery is enjoined or abated as a nuisance . . ." *Id.* § 711.035(f).

For these and other reasons, the Jackson Alignment is the best path forward for Dallas, and First Presbyterian is very grateful to the Dallas City Council and the DART Board of Directors for their correct and reasoned endorsement of that alignment. First Presbyterian looks forward to working with DART, FTA, and the City on this matter and urges DART and FTA to "stay the course" with the locally preferred Jackson Alignment during preparation of a draft environmental impact statement. The Jackson Alignment

balances common interests in building Dallas's future, maintaining communities, and preserving the Church's history and its free exercise of religion.

Very truly yours,

A handwritten signature in black ink, appearing to read "John C. Wander", written over a horizontal line.

John C. Wander

c: Scott Carlson, General Counsel, DART
DART Board of Directors
Mr. Robert Patrick, Region VI Administrator, Federal Transit Administration
Dallas City Council
First Presbyterian Church of Dallas
Alberto P. Cardenas, Jr.
Michael B. Wigmore