

www.elsevier.com/locate/jmb

**FIRST AMENDED AND RESTATED  
EMPLOYMENT AGREEMENT**

**WITNESSETH:**

ninety (90) days prior to the expiration of the then current term. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Board of Directors of DCTA to terminate the services of Suarez as President at any time, with or without cause, subject to the terms of the Agreement.

- B. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Suarez to resign at any time from the position of President of DCTA with ninety (90) days prior written notice thereof, unless waived by the Board of Directors. Suarez acknowledges that he is an "at will" employee and may be terminated at any time subject to the terms and conditions of this Agreement.

### **Section 3. Salary and Compensation**

- A. Effective September 14, 2018, DCTA agrees to pay Suarez for the services rendered pursuant to this Employment Agreement an annual base salary of Two Hundred Fifty Thousand Dollars (\$250,000.00) payable in installments on the fifteenth (15<sup>th</sup>) day or nearest work day and on the last work day of every month, at the same time as other employees of DCTA are paid. The base salary is subject to all applicable local, state or federal taxes, including, but not limited to, withholding taxes such as FICA or similar charges including, if applicable, any required employee contributions to any type of retirement plan or accident, life and health plan then in effect for the benefit of DCTA employees, or as otherwise authorized by Suarez. DCTA agrees to annually review the base salary as set forth in Section 5 below.
- B. DCTA agrees to provide Suarez a car allowance of Seven Hundred Fifty Dollars (\$750.00) per month, which allowance shall be annually adjusted on each anniversary date of this Agreement (September 14 of each calendar year) by the Consumer Price Index (CPI) for the Dallas/ Fort Worth area.
- C. DCTA also agrees to pay all applicable toll fees incurred by Suarez in the performance of his duties for DCTA. Such amount shall not exceed Two Thousand Five Hundred Dollars (\$2,500.00) per year.
- D. In lieu of providing Suarez with the use of a cellular telephone DCTA agrees to provide Suarez a cellular telephone allowance of One Hundred Fifty Dollars (\$150.00) per month, which allowance shall be annually adjusted on each anniversary date of this Agreement (October 1 of each calendar year) by the Consumer Price Index (CPI) for the Dallas/ Fort Worth area.

### **Section 4. Termination; Severance Pay**

- A. **Termination without Cause.** DCTA may terminate this Agreement prior to the expiration of the term at any time, without cause, upon thirty (30) days prior written notice to Suarez. In the event of termination by DCTA without cause, Suarez shall be entitled to receive expenses for severance in a lump sum payment equal to nine (9) months of base salary as



the sole and exclusive termination remedy. DCTA agrees to pay Suarez COBRA payments for a period of six (6) months from the date of termination without cause. However, should Suarez become eligible for medical benefits from a subsequent employer during the six (6) months, DCTA will no longer be required to pay Suarez's COBRA payments pursuant to this Section 4(A).

B. **Termination for Cause.** DCTA may terminate Suarez at any time, for cause, as set forth herein. In the event of termination for cause Suarez shall be entitled to all compensation earned through the date of termination. Suarez shall not be entitled to severance pay or other compensation. For the purposes of this Agreement, "cause" shall mean and include, but is not limited to, any of the following:

- (a) Breach of any term or condition of this Agreement;
- (b) Disloyal conduct reasonably calculated to cause harm to the DCTA;
- (c) Dishonest or illegal conduct;
- (d) Knowing or negligent violation of any rule or law which causes harm to DCTA, including damage to the reputation of DCTA;
- (e) Knowing or negligent violation of any DCTA policy, standard or procedure;
- (f) Fraud upon any person or entity with which the Authority does business;
- (g) Conviction, including probation or deferred adjudication, deferred disposition of a felony or crime involving moral turpitude;
- (h) Gross misconduct;
- (i) Falsification of any records kept or maintained for the benefit of DCTA;
- (j) An order by any court of competent jurisdiction restraining, preventing, or otherwise impairing Suarez's ability to perform the duties and responsibilities under this Agreement; or
- (k) Any act of incompetence, official misconduct, or intoxication on or off duty caused by the consumption of an alcoholic beverage or controlled substance.

C. **Resignation.** Suarez may voluntarily resign from the position of President of DCTA at any time during the term of this Agreement by providing DCTA ninety (90) days prior written notice thereof, unless the Board of Directors waives such notice. In the event of voluntary resignation Suarez shall not be paid any severance Pay. DCTA may at its option,

terminate this Agreement sooner than the effective date of such voluntary resignation provided DCTA pays Suarez ninety (90) days of base salary.

- D. **Termination Due to Disability.** If at any time during this Agreement Suarez becomes disabled or is unable for any reason to substantially perform his duties hereunder and has not breached any provisions of this Agreement, the compensation provided herein shall continue to be paid to Suarez as provided, but only for one (1) month period during which Suarez shall be so disabled. DCTA may, at its sole option, continue payment of compensation until Suarez returns to work, or for such period other period as DCTA elects, or terminate this Agreement.
- E. **Termination due to Death.** If Suarez dies prior to termination of this Agreement or prior to the expiration of the then current term of this Agreement, any compensation or accrued benefits that may be due and owing to Suarez as of the date of death shall be paid to executors, administrators, heirs, personal representatives, and assigns.

#### **Section 5. Performance Evaluation and Merit Consideration**

DCTA shall conduct an annual performance review of Suarez in the month of August of each calendar year during the term of this Agreement; and provide Suarez with an annual written evaluation on or about August 31 of each calendar year during the term of this Agreement. The base salary of Suarez may be adjusted after each annual performance review.

#### **Section 6. Expenses**

Suarez shall be reimbursed in accordance with DCTA policies for expenses incurred in the conduct of DCTA business, including but not limited to the hosting of business meetings.

#### **Section 7. Vacation, Sick Leave and other Benefits**

In addition to the benefits provided in this Agreement, all provisions of DCTA relating to health care, sick leave, retirement, holidays and other fringe benefits and working conditions as they now exist or may be amended, shall also apply to Suarez as the President, as such would apply to other employees of DCTA, insofar as those provisions, rules and regulations are not inconsistent with this Agreement, except that Suarez is entitled to thirty (30) days of paid vacation. Accrued sick leave shall be in accordance with DCTA policies. Vacation days may not be accumulated and must be used during the twelve month period earned based on the anniversary date of employment hereunder (September 14 of each calendar year). Upon termination Suarez is entitled to compensation for accrued vacation days and sick leave in accordance with the then current DCTA policies.

#### **Section 8. Professional Development**

- A. DCTA hereby agrees to budget for and to pay the travel and subsistence expenses of Suarez for professional and official travel, meetings and occasions adequate to continue the



professional development of Suarez and to adequately pursue necessary official and other functions for DCTA.

- B. DCTA also agrees, subject to DCTA budget approval, to pay for the travel and subsistence expenses of Suarez for short courses, institutions, and seminars that are necessary for his professional development and for the good of DCTA.
- C. DCTA agrees, subject to DCTA budget approval, to pay professional dues and subscription fees for Suarez necessary for continuation and full participation, including the holding of office responsibility in national, regional, state and local associations and organizations necessary and desirable for his continued professional participation, growth, and advancement deemed appropriate by DCTA Board.

#### **Section 9. Other Terms and Conditions**

- A. **Full-Time Employment.** Suarez shall devote his full time (except for reasonable vacation time and absence for any sickness or disability) to the performance of the duties and responsibilities as set forth herein. Suarez agrees to remain in the exclusive employ of DCTA, and neither to accept other employment nor to become employed by any other employer. The term "employed" shall not be construed to include occasional teaching, writing, civic, charitable, and professional or trade activities, with approval of the Board of Directors provided such activities do not interfere with the performance of Suarez's duties under this Agreement. However, Suarez shall be permitted to serve in an advisory capacity on boards and commissions as long as his service does not interfere with his duties under this Agreement or are in conflict with DCTA policy.
- B. **Non-Solicitation of DCTA Employees.** For a period of one (1) year following termination of Suarez's employment, Suarez shall not, directly or indirectly, solicit, encourage, induce or attempt to induce any DCTA employee to terminate such person's employment with DCTA.

#### **Section 10. Notices**

Any notice required or permitted to be delivered hereunder shall be deemed received when sent by United States mail, postage prepaid, certified mail, return receipt requested, addressed to DCTA or Suarez as the case may be at the address set forth below the signature of the Party.

#### **Section 11. Entire Agreement**

This Agreement constitutes the sole and only agreement of the Parties and supersedes any prior understandings or written or oral agreements between the Parties respecting this subject matter.

#### **Section 12. Successor and Assigns**

This Agreement shall be binding on and inure to the benefit of the Parties to it and their respective heirs, executors, administrators, legal representatives, successors, and assigns.

**Section 13. Governing Law**

This Agreement is governed by the laws of the State of Texas; and venue for any action concerning this Agreement shall be in the State District Court of Denton County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

**Section 14. Amendment**

This Agreement may be amended by the mutual written agreement of the Parties.


**Section 15. Legal Construction**

In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

*[Signature Page to Follow]*

EXECUTED this 30 day of July, 2020.

**DENTON COUNTY TRANSPORTATION  
AUTHORITY BOARD OF DIRECTORS**

By:   
Dianne Costa, Chair  
DCTA  
1955 Lakeway Drive, Suite 260  
Lewisville, Texas 75057

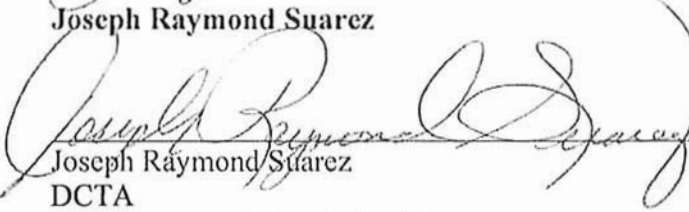
Attest:

By:   
Sam Burke, Secretary

Approved as to Form:

By:   
Joseph J. Gorfida, Jr., General Counsel

EXECUTED this 7<sup>th</sup> day of July, 2020.

**Joseph Raymond Suarez**  
  
Joseph Raymond Suarez  
DCTA  
1955 Lakeway Drive, Suite 260  
Lewisville, Texas 75057