

INTERLOCAL AGREEMENT
BETWEEN
CITY OF COPPELL AND DALLAS AREA RAPID TRANSIT
FOR THE COTTON BELT CORRIDOR REGIONAL RAIL PROJECT

THIS AGREEMENT ("Agreement") is made and entered into by and between DALLAS AREA RAPID TRANSIT ("DART"), a regional transportation authority organized and existing pursuant to Chapter 452, Texas Transportation Code, and CITY OF COPPELL (the "CITY"), a Texas home rule municipal corporation and shall be effective on the date signed by the last of the parties to sign (the "Effective Date").

RECITALS

WHEREAS, regional passenger rail service substantially benefits regional mobility and improves air quality initiatives; and

WHEREAS, development of the Dallas Area Rapid Transit (DART) Cotton Belt Corridor Regional Rail Project (Cotton Belt Project or Project) will provide connectivity from Terminal B at Dallas/Fort Worth International Airport (DFW Airport) to Shiloh Road in Plano, Texas and will travel through the City of Coppel; and

WHEREAS, Coppel has strongly supported transit-oriented development (TOD) and regional mobility initiatives and projects; and

WHEREAS, the Coppel City Council adopted Resolution No. 2017-0613.2 to support the Cotton Belt realignment throughout Coppel, deviating from the existing freight corridor east of South Coppel Road and heading south in the City of Dallas and Cypress Waters before rejoining the freight corridor just west of Moore Road; and

WHEREAS, the DART Board approved this alignment deviation (referred to as the Cypress Waters alignment), the proposed rail station in Cypress Waters, and the grade separation at South Belt Line Road and Sanders Loop as part of the DART Service Plan Amendment.; and

WHEREAS, the City of Coppel supports the mitigation improvements identified in the Draft Environmental Impact Statement (DEIS) for locations within the corporate limits of Coppel, to include seven (7) quiet zones at Coppel Road, Southwestern Boulevard, East Belt Line Road, Moore Road, Mockingbird Lane, South MacArthur Boulevard and Fairway Drive; grade separation over S. Belt Line Road and Sander Loop; and traffic signal timing/phasing improvements at MacArthur Blvd and E. Belt Line Rd intersection; and

WHEREAS, the City of Coppel is not a DART service area city, but desires to be a project partner for the Cotton Belt project to assist in the construction of the corridor, particularly the Cypress Waters alignment and through the proposed Cypress Waters station; and

WHEREAS, the Cypress Waters alignment benefits the City of Coppell by diverting passenger rail traffic away from many residential properties adjacent to the existing freight corridor, providing a convenient access point to ride the Cotton Belt corridor, provide an opportunity to realize TOD adjacent to the proposed rail station, and provide opportunities to tie the rail station to Old Town.

NOW, THEREFORE, in consideration of the premises and mutual promises and covenants contained herein to be performed by the parties, DART and CITY agree as follows:

ARTICLE 1 DART'S RESPONSIBILITIES

- 1.01 DART shall develop the Cotton Belt Corridor Regional Rail Project in congruence with the DART Service Plan.
- 1.02 Single Point of Contact. DART shall designate by Notice and provide to the CITY the name and contact information for the single point of contact for communication and other interface regarding all aspects of the Cotton Belt Corridor Regional Rail Project.
- 1.03 Identification of Property Required. DART shall provide to the CITY plans and requirements sufficient to allow for the survey and appraisal activities identified in Section 2.01 to be completed.

ARTICLE 2 CITY'S OBLIGATIONS

- 2.01 CITY shall convey or cause to be conveyed to DART real property at no cost to DART as described in Exhibit A and shall be for the sole purpose of facilitating the Cypress Waters alignment and the Cypress Waters rail station. Should the Cypress Waters alignment or the Cypress Waters station fail to be included in the Project, any conveyance of land shall immediately revert back to the CITY. The conveyance of land shall be limited to the acreage, with DART's sole discretion, that is necessary for the Cypress Waters rail line right-of-way and the proposed rail station in Cypress Waters. The City shall be responsible for costs associated with the survey and appraisal of said property. The value of the property, as determined by the appraisal, shall constitute the entirety of CITY'S financial contribution and responsibility for the Cotton Belt rail construction.
- 2.02 Single Point of Contact. CITY shall designate by Notice and provide to DART the name and contact information for the single point of contact for communication and other interface regarding all aspects of the Cotton Belt Corridor Regional Rail Project.
- 2.03 Expedited Reviews. As may be practical, CITY shall provide a good faith effort to expedite reviews and approvals of all DART submittals and applications that are in any way, directly or indirectly, related to the Cotton Belt Corridor Regional Rail Project.

- 2.04 Waiver of Fees. CITY agrees to waive all fees and charges, if any, for permits, applications, platting, zoning, construction, or any other CITY services that are in any way, directly or indirectly, related to the Cotton Belt Corridor Regional Rail Project.
- 2.05 Real Estate Acquisition. CITY agrees to fully cooperate and will support DART with the acquisition of any easements, rights of way, property rights or real estate required for the Cotton Belt Corridor Regional Rail Project within the corporate limits.

ARTICLE 3 DART OBLIGATION

- 3.01 In exchange for the conveyance of land in accordance with Chapter 452, Texas Transportation Code and as provided herein as outlined in Section 2.01, DART shall provide the following:
- Design and construct seven (7) quiet zones at Coppel Road, Southwestern Boulevard, East Belt Line Road, Moore Road, Mockingbird Lane, South MacArthur Boulevard, and Fairway Drive along the Cotton Belt corridor; and
 - Design and construct grade separation for the Cotton Belt alignment over South Belt Line Road and Sanders Loop; and
 - Design and construct traffic signal timing/phasing improvements at MacArthur Boulevard and East Belt Line Road intersection.

ARTICLE 4 TERMINATION

- 4.01 If either party believes the other party is in default of this Agreement, the non-defaulting party shall provide written notice to the other party specifying the basis for such default and allowing the defaulting Party thirty (30) days from receipt of the notice to cure such default. In the event the default is not cured within such period, the non-defaulting party shall notify the defaulting party of termination of this Agreement.
- 4.02 Should a court of competent jurisdiction determine the CITY's or DART's immunity from suit is waived in any manner other than as provided in Subchapter I of Chapter 271, TEXAS LOCAL GOVERNMENT CODE, as amended, the CITY and DART hereby acknowledge and agree that in a suit against either party for breach of this Agreement:
- (a) The total amount of money awarded is limited to actual damages in an amount not to exceed the balance due and owed by either party under this Agreement;
 - (b) The recovery of damages against either party may not include consequential damages or exemplary damages;
 - (c) Neither party may recover attorney's fees; and
 - (d) Neither party is entitled to specific performance or injunctive relief against the other party.

ARTICLE 5
GENERAL TERMS

- 5.01 All recitals are hereby incorporated into this Agreement as if fully set forth herein.
- 5.02 Notice. Notices by or to either party provided under this Agreement shall be in writing and delivered by certified mail return receipt requested, or customarily used hand or overnight delivery with proof of delivery to the addresses shown below.

If to DART: Gary C. Thomas,
President/Executive
Director

Mailing Address: P.O. Box 660163
Dallas, Texas 75266-7213

Physical Address: 1401 Pacific Avenue
Dallas, Texas 75202

If to CITY: Mike Land, City Manager

Mailing Address: 255 E. Parkway Blvd
Coppell, TX 75019

COPY TO: Robert E. Hager, City Attorney
Nichols, Jackson, Dillard, Hager
& Smith, LLC
500 N. Akard, Suite 1800
Dallas, Texas 75201

The above contact information may be modified in writing by a party on behalf of that party by notice given in accordance with this section.

- 5.03 Audits by DART and the CITY. DART and the CITY reserves the right to perform audits of records related to this Agreement. Audits may encompass an examination of all financial transactions, all accounts and reports, as well as an evaluation of compliance with the terms and conditions of this Agreement.
- 5.04 Contractual Relationship. It is understood and agreed that the relationship described in this Agreement between the parties is contractual in nature and is not to be construed to create a partnership of joint venture or agency relationship between the parties. No party shall be liable for any debts incurred by the other party in the conduct of such other party's business or functions.
- 5.05 Subcontracting. Nothing in this agreement shall prevent DART from using a contractor or agent to perform the duties and responsibilities contemplated by this Agreement. If DART contracts with another entity or individual to perform any or all of its obligations under this Agreement, DART shall enter into written contractual agreements requiring such entity or individual to comply with the applicable provisions of this Agreement.
- 5.06 Compliance with Regulations. During the performance of this Agreement, each party, for itself, its assignees, and successors agrees to comply with all applicable local, state, and federal regulations.

- 5.07 No Third-Party Beneficiaries. Nothing in this Agreement shall be construed as creating any liability in favor of any third party against DART or the CITY. Additionally, this Agreement shall not be construed as relieving any third party from any liability to DART or CITY.
- 5.08 Assignment. Neither party shall assign this Agreement in whole or in part without first obtaining written consent from the other party, which may be withheld for any reason.
- 5.09 Responsibility. CITY and DART agree that each shall be responsible for the acts or omissions of its officials, officers, employees or agents as provided by Texas law, in the performance of this Agreement.
- 5.10 Immunity Retained. Nothing contained in this Agreement shall be construed as constituting a waiver of the CITY's or DART's governmental immunity from suit or liability, which is expressly reserved to the extent allowed by law.
- 5.11 Captions. The captions, headings, and arrangements used in this Agreement are for convenience only and shall not in any way affect, limit, amplify, or modify its terms and provisions.
- 5.12 Governing Law and Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of Texas. The Parties agree venue shall lie in Dallas County, Texas.
- 5.13 Number and Gender. Whenever used herein, unless the context otherwise provides, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all other genders.
- 5.14 Severability and Legal Construction. In the event any one or more of the provisions contained in this Agreement shall be for any reason held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision(s) hereof, and this Agreement shall be revised so as to cure such invalid, illegal, or unenforceable provision(s) to carry out as near as possible the original intent of the Parties.
- 5.15 Merger and Amendment. This instrument constitutes the entire agreement of the parties with respect to the matters contemplated herein and supersedes any prior dealings between the parties on this subject matter. This Agreement may be modified or amended only in writing, signed by both Parties.
- 5.16 Nondiscrimination. In its performance of this Agreement, DART and the CITY each warrant that it shall not discriminate against any person on account of race, color, religion, national origin, sex, age, disability, genetic information, veteran status, sexual orientation, gender identity or any other characteristic protected by law.

- 5.17 No Waiver. Neither of the parties shall be deemed, by any act or omission, to have waived any of its rights or remedies hereunder unless such waiver is in writing and signed by the waiving party, and then only to the extent specifically set forth in such writing. A waiver with reference to one event shall not be construed as continuing or as a bar to or waiver of any right or remedy as to a subsequent event.
- 5.18 Authorization to Act. By their signatures below, the representatives of the CITY and DART state that they are authorized to enter into this Agreement. The CITY and DART will each provide documentation that this Agreement has been authorized by its respective governing body.

EXECUTED this 14th day of August, 2018 by authority of Coppell City Council.

CITY OF COPPELL

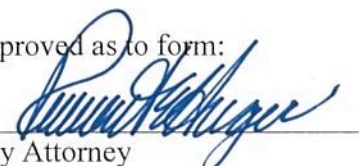
BY: 

Mike Land, City Manager

Attest:


City Secretary

Approved as to form:


City Attorney

EXECUTED this 6TH day of SEPTEMBER, 2018 by authority of DART Board of Directors Resolution No. 180068, adopted on AUGUST 14, 2018;

DALLAS AREA RAPID TRANSIT

BY: 

Gary C. Thomas
President/Executive Director

EXHIBIT A: Cypress Waters

