

**INTERLOCAL AGREEMENT between the
NORTH CENTRAL TEXAS COUNCIL OF GOVERNMENTS, the
REGIONAL TRANSPORTATION COUNCIL, and
DALLAS AREA RAPID TRANSIT concerning the
COTTON BELT REGIONAL TRAIL**

This Interlocal Agreement concerning the Cotton Belt Regional Trail (the “Agreement”) is entered into between the North Central Texas Council of Governments (“NCTCOG”), the Regional Transportation Council (“RTC”), and Dallas Area Rapid Transit (“DART”), collectively referred to as “the Parties” or individually as a “Party.”

WHEREAS, NCTCOG is a political subdivision organized under Chapter 391 of the Texas Local Government Code and designated as the Metropolitan Planning Organization (“MPO”) for the Dallas-Fort Worth Metropolitan Area in accordance with federal law; and

WHEREAS, the RTC, comprised primarily of local elected officials, is the regional transportation policy body associated with NCTCOG and has been and continues to be a forum for cooperative decisions on transportation; and

WHEREAS, DART is a regional transportation authority created, organized, and existing pursuant to Chapter 452 of the Texas Transportation Code; and

WHEREAS, the Parties are authorized to enter into this Agreement pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code (the “Act”); and

WHEREAS, the Cotton Belt Regional Trail (“Trail”) will run parallel to DART’s Silver Line (“Silver Line”), a 26-mile commuter rail line, and will extend from the DART Plano Shiloh Station on the east to the future DFW Through Station on the west, as depicted in Exhibit A, attached hereto and incorporated by reference; and

WHEREAS, on January 7, 2019, DART awarded its contract for the design and construction of the Silver Line (“Silver Line Contract”) to Archer Western Herzog, 4.0, Joint Venture (“AWH”); however, the original Silver Line Contract did not include the design or construction of Trail; and

WHEREAS, on December 12, 2020, and September 27, 2021, DART and AWH entered into Supplemental Agreements #08 and #20, respectively, which expand the scope of the Silver Line Contract to include the design of the Trail; and

WHEREAS the Trail has now been designed pursuant to the Silver Line Contract (as supplemented); and

WHEREAS, RTC has currently programmed \$87,034,395 for construction of the Trail, and the Parties anticipate that RTC will program additional necessary funding after the execution of this Agreement; and

WHEREAS, the Trail will be funded and constructed in three separate phases in coordination with the Town of Addison, the City of Carrollton, the City of Coppell, the City of Dallas, the City of Grapevine, the City of Plano, the City of Richardson, and Dallas County (“Local Governments”); and

WHEREAS, the Parties desire to set forth their respective responsibilities with respect to the construction and funding of the Trail.

NOW, THEREFORE, in consideration of the covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, NCTCOG, RTC, and DART agree as follows.

I. SCOPE OF CONSTRUCTION & GENERAL OBLIGATIONS OF THE PARTIES

1.1 The final released-for-construction Silver Line plans (“Silver Line RFC Plans”) shall be considered the existing condition (*i.e.*, baseline condition) from which the Trail will be constructed. Construction of the Trail shall consist of all work above and beyond the improvements made by AWH pursuant to the Silver Line RFC Plans.

1.2 NCTCOG/RTC shall:

- a. Diligently seek federal, state, and local funding for the Trail and make such funding available for agreed-upon Trail construction costs.
- b. With respect to federal funds programmed for the Trail, promptly request a transfer of funds from the Federal Highway Administration to the Federal Transit Administration and coordinate with DART, as needed, to facilitate DART’s receipt of such federal funds for agreed-upon Trail construction costs.
- c. Coordinate the collection of local match funds from partnering agencies, including any funds that Local Governments may choose to contribute, and transfer such funds to DART to apply to agreed-upon Trail construction costs.
- d. For Trail projects located outside of DART’s right of way (“ROW”), coordinate with Local Governments to acquire all easements, crossings, or other necessary rights or permissions for construction of the Trail.
- e. Coordinate with the Texas Department of Transportation, the North Texas Tollway Authority, Local Governments, and other stakeholders to facilitate construction of the Trail to completion.

1.3 DART shall:

- a. Make a good faith effort to minimize modifications to the Silver Line RFC Plans that would materially and adversely affect the design or cost of the Trail and notify NCTCOG of any such modifications.
- b. Make a good faith effort to construct the Silver Line in a manner that will accommodate future Trail construction as much as possible – for example, installing new or relocated equipment or facilities (such as rail signals) in locations that will not conflict with

anticipated future Trail expansion; provided, however, DART is not obligated to relocate existing railway equipment or facilities to accommodate future Trail expansion if such relocation is not necessitated by the construction of the Silver Line.

- c. Coordinate with the Texas Department of Transportation, the North Texas Tollway Authority, and tenant railroads with rights on the Cotton Belt rail line regarding any railway crossings necessitated by the Trail.
- 1.4 Cost Share. DART shall contribute to the costs for Phase 1 Projects (as further discussed in Section 2.3 below); however, in no event shall DART be obligated under this Agreement to pay more than **\$5,338,344**. DART may, in the future, elect to contribute more than \$5,338,344 for Trail construction costs, subject to prior approval by its Board of Directors. RTC has currently programmed \$87,034,395 for Trail construction costs. NCTCOG shall be responsible for all other costs for construction of the Trail through grant awards and other funding sources, subject to approval by RTC.

II. PHASE 1: The following provisions shall govern Phase 1 Projects only.

- 2.1 Phase 1 of the Trail shall consist of the projects ("Phase 1 Projects") set out in Exhibit B, attached hereto and incorporated herein. The Parties may, by mutual agreement, modify Exhibit B without amending this Agreement. Phase 1 Projects shall be:
 - a. Constructed by DART/AWH pursuant to the Silver Line Contract; and
 - b. Completed prior to Silver Line revenue service.
- 2.2 Negotiations with AWH. DART shall include NCTCOG in negotiations with AWH regarding pricing, construction, and any other matters directly related to Phase 1 Projects; however, DART shall lead and control all such negotiations.
- 2.3 Cost Share Procedures. Within fourteen (14) calendar days of receiving written notification from DART of the total costs for a Phase 1 Project, NCTCOG shall notify DART of the amount of such costs that NCTCOG proposes to fund. The Parties shall work collaboratively to expeditiously resolve any dispute with respect to the share of costs between the Parties and any third parties for Phase 1 Projects.
- 2.4 Notice to Proceed ("NTP"). After the Parties have determined the cost share for a Phase 1 Project and NCTCOG has reviewed and approved the 100% design plans for such project, NCTCOG shall issue a written NTP to DART, authorizing DART to begin construction on the project.
- 2.5 Change Orders. The Parties shall work cooperatively regarding all potential changes to the scope of work and/or costs of a Phase 1 Project. The Parties acknowledge that, in the event of a change order under this section, time will be of the essence to reach a mutual agreement regarding funding and to obtain action by DART's Board of Directors and RTC, as

necessary, to avoid delay in implementation of the project. The Parties shall endeavor to minimize any increased costs resulting from a change order.

- a. DART shall obtain NCTCOG's consent before approving any change order.
- b. For changes requested by NCTCOG, NCTCOG shall be solely responsible for all resulting increased costs unless the Parties otherwise agree in writing before the modified work commences.
- c. For changes requested by DART, a Local Government, or another third party, DART may, but shall not be obligated under this Agreement to, pay any resulting increased costs.

2.6 Monthly Progress Reports. DART shall provide monthly progress reports to NCTCOG tracking the progress of construction of Phase 1 Projects by jurisdiction. Change requests from either Party will be included in DART's monthly progress reports.

2.7 Utility Relocation. The budget for Phase 1 Projects includes an estimated cost to relocate utilities in conflict with construction of the Trail (including design costs for the utility relocations), which shall be paid for by funds secured by NCTCOG. If the actual costs for relocating utilities are *less* than the estimated costs in the budget for Phase 1 Projects, the Parties shall mutually determine whether to apply the unused funds to other Phase 1 Project expenses or reallocate the unused funds to Phase 2 Projects. If the actual utility relocation costs *exceed* the estimated costs, then NCTCOG shall fund the overage subject to RTC approval; provided, however, DART shall promptly notify NCTCOG of the increased utility relocation costs, keep NCTCOG informed with respect to DART's negotiations with AWH related to increased utility relocation costs, and otherwise work collaboratively with NCTCOG to minimize such costs.

2.8 As-builts. Upon completion of Phase 1 Projects, DART shall provide as-built Trail plans to NCTCOG and Local Governments.

2.9 Capital Project Support Costs. RTC funding allocated to DART at the time of this Agreement includes funding to DART for costs incurred by DART for managing construction of the Trail and providing project oversight (hereinafter referred to as "Capital Project Support Costs") of Phase 1 Projects. DART's Capital Project Support Costs shall be ten percent (10%) of the total cost to construct Phase 1 Projects (including costs related to utilities).

III. PHASE 2: The following provisions shall govern Phase 2 Projects only.

3.1 Phase 2A and 2B of the Trail shall consist of the projects (collectively "Phase 2 Projects") set out in Exhibit C, attached hereto and incorporated herein. Phase 2 Projects shall be constructed:

- a. By DART pursuant to one or more new construction contracts (not the Silver Line Contract); and

- b. In parallel with construction of the Silver Line, to the extent DART determines parallel construction is feasible and cost efficient.
- 3.2 Modifications to Exhibit C. The Parties may, by mutual agreement, modify Exhibit C without amending this Agreement. Any modification to Exhibit C shall be in writing and signed by DART's Chief Development Officer and NCTCOG's Senior Program Manager for Sustainable Development or their respective designees.
- 3.3 Solicitations for Engineering Services During Construction ("ESDC"). DART shall lead the procurement process for ESDC for Phase 2 Projects; however, the Parties shall mutually agree upon the funding, scope, price, authorized contingency amount, and selection of contractors to provide ESDC for Phase 2 Projects. The Parties shall jointly develop solicitations in accordance with DART's standard procurement process.
- 3.4 Completion. The Parties shall jointly develop a construction schedule for Phase 2 Projects that provides for completion of as many Phase 2 Projects before the Silver Line begins revenue service as possible, taking into consideration procurement requirements, receipt of funding, material and labor availability, and other relevant factors. DART shall apply its best efforts to ensure construction of Phase 2 Projects in accordance with the jointly-developed construction schedule; provided, however, if DART is unable to construct Phase 2 Projects within the timeframes provided in the construction schedule due to factors beyond DART's control (such as a shortage in funding, unavailability of labor or materials, or delay in permits or other necessary permissions), DART shall promptly notify NCTCOG of the delay and the Parties shall work cooperatively to make necessary adjustments to the construction schedule.
- 3.5 Change Orders. The Parties shall work cooperatively regarding all potential changes to the scope of work and/or costs for Phase 2 Projects. The Parties acknowledge that, in the event of a change order under this section, time will be of the essence to reach a mutual agreement regarding funding and to obtain action by DART's Board of Directors and RTC, as necessary, to avoid implementation of the project. DART shall obtain NCTCOG's consent before approving any change order. The Parties shall endeavor to minimize any increased costs resulting from a change order.
- 3.6 Monthly Progress Reports. DART shall provide monthly progress reports to NCTCOG tracking the progress of construction of Phase 2 Projects by jurisdiction. Change requests from either Party will be included in DART's monthly progress reports.
- 3.7 Funding. DART shall work cooperatively with NCTCOG to secure the necessary funding for Phase 2 Projects. DART is not obligated under this Agreement to pay any costs for Phase 2 Projects. DART shall not incur any costs in connection with Phase 2 Projects unless and until: (a) NCTCOG and DART have agreed (in writing and signed by DART's Chief Development Officer and NCTCOG's Senior Program Manager for Sustainable

Development or their respective designees) concerning whether NCTCOG will allocate funding to reimburse DART for such costs (upon NCTCOG's receipt of cost documentation) or such costs will be assumed by DART; and (b) necessary approvals have been obtained from the Parties' respective governing boards.

- 3.8 As-Builts. Upon completion of Phase 2 Projects, DART shall require that the contractor performing the construction provides as-built plans to NCTCOG, Local Governments (as applicable), and DART.
- 3.9 Capital Project Support Costs. RTC funding allocated to DART shall include funding to DART for Capital Project Support Costs for Phase 2 Projects. DART's Capital Project Support Costs shall be ten percent (10%) of the total cost to construct Phase 2 Projects (including costs related to utilities).

IV. PHASE 3: The following provisions shall govern Phase 3 Projects only.

- 4.1. Phase 3 of the Trail shall consist of the projects ("Phase 3 Projects") that:
 - a. May be constructed after revenue service of the Silver Line commences; and
 - b. Shall be constructed by a contractor approved by DART to work in DART's ROW.
- 4.2. DART Contribution. DART may decline to construct any or all Phase 3 Projects; however, DART shall nonetheless continue to work collaboratively with NCTCOG and Local Governments to achieve completion of the Trail (subject to Section 5.2, Early Termination), and shall retain authority over all aspects of construction of Phase 3 Projects located on DART's ROW. DART is not obligated under this Agreement to pay any of the costs for Phase 3 Projects but may choose to assume some portion of such costs in a subsequent written agreement between the Parties and subject to approval by DART's Board of Directors.
- 4.3. NCTCOG Contribution. NCTCOG shall apply its best efforts to ensure, to the extent it has the authority and opportunity to do so, that any party constructing Phase 3 Projects will:
 - a. Obtain DART's approval with respect to the location and design of the Phase 3 Projects (including Projects constructed outside of DART's ROW) prior to any construction;
 - b. Provide as-builts of Phase 3 Projects to DART;
 - c. Coordinate with DART to ensure construction activities do not disrupt or interfere with Silver Line operations;
 - d. Adhere to DART's safety and insurance requirements; and
 - e. Pay or reimburse DART for costs related to construction of Phase 3 Projects (for example, flagging costs).

NCTCOG's obligations under this section shall survive the expiration or termination of this Agreement.

- 4.4. Continued Cooperation. The Parties shall work cooperatively together, with the input of Local Governments, to determine the funding, scope, pricing, procurement, location, design, and construction of Phase 3 Projects. The Parties may amend this Agreement or enter into a subsequent written agreement detailing an agreed-upon method for developing Phase 3 Projects and further defining each Party's roles and responsibilities with respect to Phase 3 Projects.

V. TERM

- 5.1. The term of this Agreement shall begin on the date last signed by the Parties ("Effective Date") and expire when construction of the Trail is complete, unless terminated earlier as provided below.
- 5.2. Early Termination. Either Party shall have the right to terminate this Agreement, at any time and for any reason, by giving the other Party sixty (60) calendar days advance written notice of termination. DART shall not have any continuing obligation to construct Trail projects that have not yet been designed and fully funded at the time termination of this Agreement becomes effective. Any Trail project (not designed or fully funded at the time of termination) located on DART's ROW may only be constructed by a contractor approved by DART.

VI. MISCELLANEOUS

- 6.1. The Parties shall comply with all applicable federal, state, and local laws, regulations, and guidance effective at the time of contracting.
- 6.2. The provisions of this Agreement shall be binding upon and inure to the benefit of the Parties only and there shall be no third-party beneficiaries to this Agreement
- 6.3. As of the Effective Date, this instrument constitutes the entire agreement of the Parties with respect to the matters contemplated herein. The Parties may only modify or supplement the rights and obligations set out in this Agreement with a written amendment or other written instrument signed by the signatories to this Agreement or DART's Chief Development Officer and NCTCOG's Senior Program Manager for Sustainable Development or their respective designees.
- 6.4. It is mutually understood and agreed that this Agreement is intended by the Parties to establish only an independent contractual relationship and is not intended to create a partnership or joint venture between any or all Parties.
- 6.5. No Party is an agent of the other Party, and each Party is responsible for its own acts, forbearances, negligence and deeds, and for those of its agents or employees in conjunction

with each Party's performance under this Agreement. No Party shall be deemed hereunder to have waived any governmental immunity or any other defenses available to such Party under Texas law or otherwise.

- 6.6. The laws of the State of Texas shall govern this Agreement. Venue for any action concerning this Agreement shall exclusively be in a state district court of Dallas County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.
- 6.7. No Party may assign its rights and obligations or either under this Agreement, in whole or in part, without first obtaining the prior written consent of the other Party, which consent may be withheld for any reason. No assignee or successor may further assign, in whole or in part, its rights and obligations without prior written consent of each Party to this Agreement at the time of further assignment.
- 6.8. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same agreement.
- 6.9. Any notice required or permitted to be given by any Party to another shall be in writing and shall be deemed to have been duly given when sent by certified mail, return receipt requested, in a postage paid envelope addressed to a Party at the Party's address as set out below:

Dallas Area Rapid Transit
1401 Pacific Avenue
Dallas, Texas 75202
Attention: Chief Development Officer

Copy to: DART Office of General
Counsel
P.O. Box 660163
Dallas, Texas 75266-7231

Regional Transportation Council
North Central Texas Council of
Governments
616 Six Flags Drive
Arlington, Texas 76011
Attention: Michael Morris, P.E.

The above contact information may be modified in writing by a Party on behalf of that Party without requiring an amendment to this Agreement.

- 6.10. In the event any one or more of the provisions contained in this Agreement are 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 nearly as possible the original intent of the Parties.
- 6.11. The Parties acknowledge that, prior to the Effective Date of this Agreement, DART has entered into various interlocal agreements with Local Governments that address or relate to the Trail. This Agreement does not amend, supplement, modify, delete, or otherwise alter the rights and obligations set out in such other interlocal agreements.

DALLAS AREA RAPID TRANSIT

DocuSigned by:

Nadine Lee

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Nadine S. Lee
President & Chief Executive Officer

Date: 5/23/2023

REGIONAL TRANSPORTATION COUNCIL

DocuSigned by:

Michael Morris

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Michael Morris, P.E.
Director of Transportation

Date: 5/23/2023

NORTH CENTRAL TEXAS COUNCIL OF GOVERNMENTS

DocuSigned by:

Mike Eastland

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Mike Eastland
Executive Director

Date: 5/23/2023

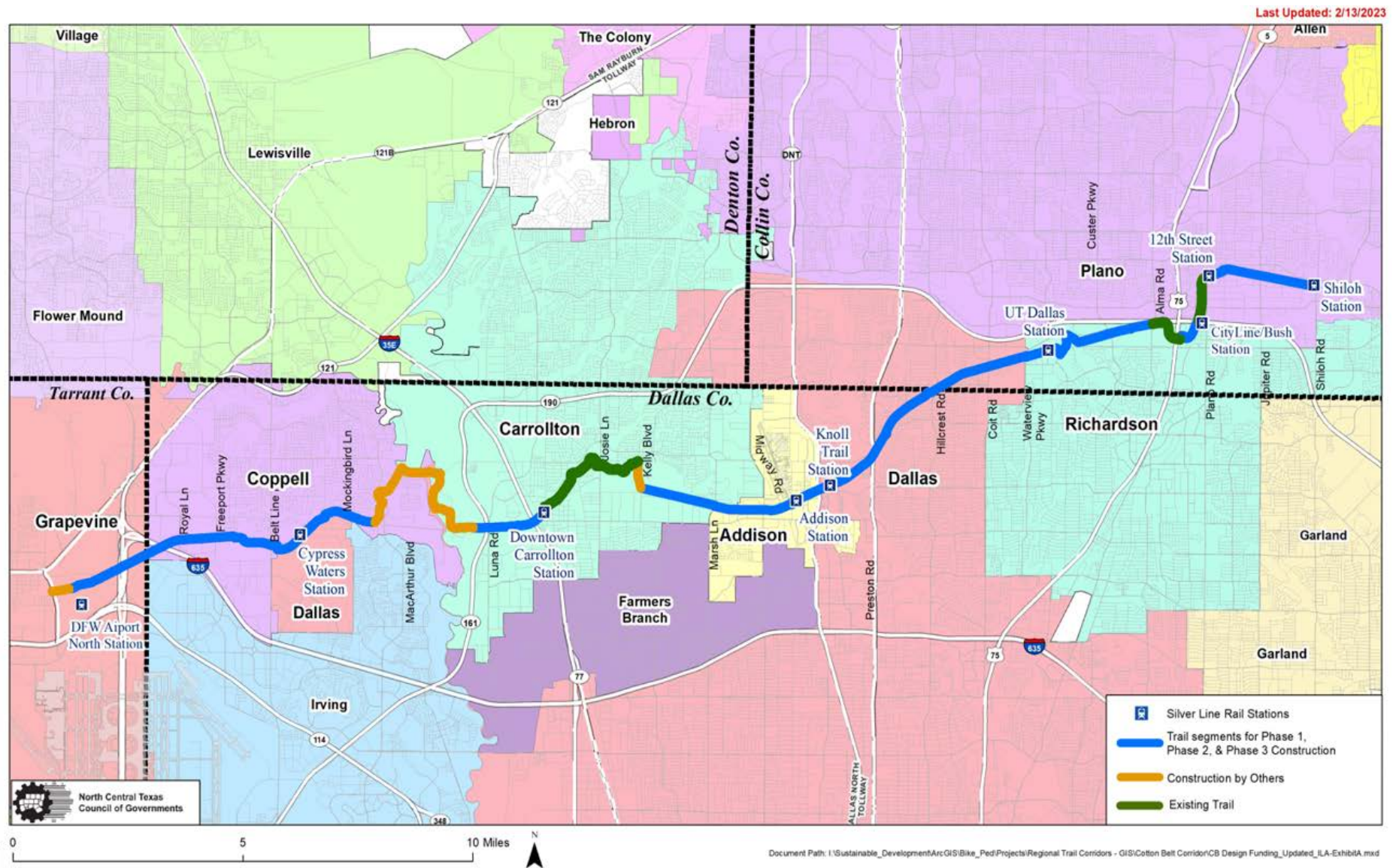
EXHIBIT A**Cotton Belt Regional Veloweb Trail: DFW Airport to Plano**

Exhibit B

Cotton Belt Regional Trail – Phase 1 Projects

Phase 1 Trail Bridges and Trail Segments

1. Dallas North Tollway
2. White Rock Creek
3. Preston Green Park
4. Hillcrest Rd
5. Connecting Trail between Preston Green Park and Hillcrest Rd

Phase 1 Trail / Roadway Intersection Crossing

Additional at-grade rail/roadway intersection improvements will be constructed where the Silver Line Rail and Cotton Belt Trail cross at the same location. This situation occurs at approximately thirty (30) locations.

These Trail related improvements may include one or more of the following in various locations: median modifications, curb cuts, ADA ramps, trail width in lieu of sidewalk width at rail crossings, changing 6-foot pedestrian crossing arms with 12-foot arms, installation of 12-foot trail crossing of rail tracks, culvert extensions, street improvements to make the trail crossing of the street ADA compliant, and retaining walls.

Exhibit C

Cotton Belt Regional Trail – Phase 2 Projects

Phase 2 Trail Bridges

6. Addison: Midway Rd
7. Dallas: McKamy
8. Richardson: Custer Rd
9. Richardson: Spring Creek (or alternative trail alignment in lieu of bridge)
10. Plano: Jupiter Rd

Phase 2 Trail Sections*

1. Addison: Redding Trail (east of Surveyor Blvd) to Dallas North Tollway
2. Dallas: Dallas North Tollway to Campbell Rd
3. Dallas: Hillcrest Rd to Waterview Dr
4. Richardson: Waterview Dr. to Alma Rd
5. Richardson: Spring Creek Trail east of US75 to city limits at President George Bush Turnpike
6. Plano: City limits at PGBT to Sanders Trail in Plano north of President George Bush Turnpike west bound frontage road
7. Plano: K Ave to Shiloh Rd

*May include Trail segments located outside of DART right-of-way as proposed in the USDOT RAISE grant and TxDOT Statewide Call for Project applications.