



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input checked="" type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		December 10, 2012		
Department:		City Manager		
Department Head		Frank F. Turner		
Agenda Coordinator (include phone #): Sherry Jackson - Ext.7122				
CAPTION				
A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an Interlocal Agreement requesting North Central Texas Council of Governments (NCTCOG) to pursue development of the Cotton Belt Passenger Rail Project utilizing the Public and Private Facilities and Infrastructure Act; authorizing its execution by the City Manager or his authorized designee; and providing an effective date.				
FINANCIAL SUMMARY				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	2012-13	Prior Year (CIP Only)	Current Year	Future Years
				TOTALS
Budget		0	0	0
Encumbered/Expended Amount		0	0	0
This Item		0	0	0
BALANCE		0	0	0
FUND(S): N/A				
COMMENTS: This item has no fiscal impact. STRATEGIC PLAN GOAL: Entering into an Interlocal Agreement for development of the Cotton Belt Passenger Rail Project relates to the City's Goals of Financially Strong City with Service Excellence and Partnering for Community Benefit.				
SUMMARY OF ITEM				
Resolution approving the terms and conditions of an Interlocal Agreement requesting NCTCOG to pursue development of the Cotton Belt Passenger Rail Project.				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	
Interlocal Cooperative Agreement - NCTCOG				

A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an Interlocal Agreement requesting North Central Texas Council of Governments (NCTCOG) to pursue development of the Cotton Belt Passenger Rail Project utilizing the Public and Private Facilities and Infrastructure Act; authorizing its execution by the City Manager or his authorized designee; and providing and effective date.

WHEREAS, the North Central Texas Council of Governments (NCTCOG) is a Regional Planning Commission operating under Local Government Code Chapter 391; and

WHEREAS, NCTCOG has been approached by a private-sector developer which has formally communicated interest in developing the Cotton Belt Passenger Rail Project; and

WHEREAS, Subchapter A of Chapter 2267 of the Texas Government Code, known as the Public and Private Facilities and Infrastructure Act, hereinafter referred to as the "Act", authorizes public-private partnerships by eligible governmental entities in the State of Texas, including Regional Planning Commissions, and establishes the framework and processes required to enter into such arrangements; and

WHEREAS, the Act enables a Responsible Governmental Entity to receive solicited or unsolicited proposals, encourages competition by requiring posting of and acceptance of competing proposals for a qualifying project, calls for collaboration with affected jurisdictions in which all or part of a project is located, and may permit an award for a project development agreement; and

WHEREAS, in order for NCTCOG to qualify as the Responsible Governmental Entity and assist the region in advancing development of the Cotton Belt Passenger Rail Project, agreements with member governments along the corridor statutorily authorized to develop passenger rail projects are necessary; and

WHEREAS, the City of Plano supports innovative approaches to infrastructure delivery and desires to contract NCTCOG to procure a public-private partnership to develop the Cotton Belt Passenger Rail Project, in whole or in part, on its behalf with certain limitations; and

WHEREAS, this innovative public-private partnership approach to develop the Cotton Belt Passenger Rail Project, if proven successful, could provide a model for development of future high-priority passenger rail corridors in the region; and

WHEREAS, NCTCOG, Dallas Area Rapid Transit (DART), Fort Worth Transportation Authority (The T), and Denton County Transportation Authority (DCTA) have represented that they will develop a joint procurement process under the Act and Texas Transportation Code Chapter 452 to develop the Cotton Belt Passenger Rail Project which involves city representation in the evaluation process.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, THAT:

Section I. The City of Plano requests and authorizes NCTCOG to seek proposals for the development of the Cotton Belt Passenger Rail Project on its behalf as the Responsible Governmental Entity utilizing the Act to procure a public-private partnership jointly with DART, The T and DCTA in accordance with the attached Interlocal Agreement. This Resolution does not authorize the NCTCOG as a responsible governmental entity to enter into an interim or comprehensive agreement on behalf of the City of Plano.

Section II. This Resolution shall be transmitted to NCTCOG and all affected jurisdictions along the corridor.

Section III. The terms and conditions of the Agreement, having been reviewed by the City Council of the City of Plano and found to be acceptable and in the best interests of the City of Plano and its citizens, are hereby in all things approved.

Section IV. The City Manager or his authorized designee is hereby authorized to execute the Agreement and all other documents in connection therewith on behalf of the City of Plano, substantially according to the terms and conditions set forth in the Agreement.

Section V. This Resolution shall become effective immediately upon its passage.

DULY PASSED AND APPROVED this the 10th day of December, 2012.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

INTERLOCAL COOPERATIVE AGREEMENT

Between

CITY OF PLANO, TEXAS

And

THE NORTH CENTRAL TEXAS COUNCIL OF GOVERNMENTS

For

PROCUREMENT OF PUBLIC-PRIVATE PARTNERSHIP TO DEVELOP THE COTTON BELT PASSENGER RAIL PROJECT

This AGREEMENT (the "Agreement") is by and between the City of Plano, Texas ("LOCAL GOVERNMENT"), a home rule municipality located in Collin and Denton Counties, Texas; and the North Central Texas Council of Governments ("NCTCOG"), the Regional Planning Commission for the 16-County North Central Texas Region created and existing under Chapter 391 of the Texas Local Government Code, acting by and through their duly authorized representatives.

WHEREAS, the Cotton Belt Passenger Rail Project is located wholly or partially within the territory of LOCAL GOVERNMENT; and,

WHEREAS, LOCAL GOVERNMENT is a NCTCOG member government and is interested in development of the Cotton Belt Passenger Rail Project; and,

WHEREAS, LOCAL GOVERNMENT possesses certain statutory powers to develop or operate passenger rail projects; and,

WHEREAS, NCTCOG may contract with member governments to perform services; and,

WHEREAS, LOCAL GOVERNMENT desires to contract with NCTCOG to utilize Senate Bill 1048, now codified in Texas Government Code, Chapter 2267, Subchapter A, as the Responsible Governmental Entity to initiate and potentially procure a public-private partnership to develop the Cotton Belt Passenger Rail Project, in whole or in part, on its behalf and jointly with a Local Government Corporation created by the transit authorities; and,

WHEREAS, this Agreement was authorized by Resolution of the LOCAL GOVERNMENT City Council at its meeting on December 10, 2012; and,

WHEREAS, the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code provides authority for LOCAL GOVERNMENT and NCTCOG to enter into this agreement for the provision of governmental functions and services of mutual interest.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions contained herein, the Parties agree as follows:

1.00 Definitions

1.01 Cotton Belt Passenger Rail Project. “Cotton Belt Passenger Rail Project” refers to the approximately 62-mile passenger rail project, or any subsection thereof, from southwest Fort Worth to Plano.

1.02 Senate Bill 1048. “Senate Bill 1048” refers to the Public and Private Facilities and Infrastructure Act passed by the 2011 Texas Legislature and effective September 1, 2011, now codified in Subchapter A, Chapter 2267 of the Texas Government Code.

1.03 Responsible Governmental Entity. “Responsible Governmental Entity” means a governmental entity that has the power to develop or operate an applicable qualifying project as defined in Senate Bill 1048.

1.04 Local Government Corporation. “Local Government Corporation (LGC)” means a corporation incorporated to act on behalf of one or more transit authorities as provided by Subchapter D of Texas Transportation Code Chapter 431.

1.05 Transit Authorities. “Transit Authorities” collectively refers to Dallas Area Rapid Transit (DART), the Fort Worth Transportation Authority (The T) and the Denton County Transportation Authority (DCTA).

2.00 Purpose. The purpose of this Agreement is to request and authorize NCTCOG to utilize Senate Bill 1048 and act as the Responsible Governmental Entity (“RGE”) to initiate and potentially procure, on behalf of LOCAL GOVERNMENT and similarly with other affected member governments, a public-private partnership to develop the Cotton Belt Passenger Rail Project. The procurement will be jointly undertaken by NCTCOG, authorized and representing LOCAL GOVERNMENT as the RGE, and Local Government Corporation (LGC), as lead for the transit authorities.

3.00 Term and Termination

3.01 Initial Term. The Initial Term of this agreement shall begin on the date executed by the last of the Parties and shall end on December 31, 2014.

3.02 Termination. Except as otherwise provided herein, this Agreement may be terminated by either Party ninety days (90) after written notice of termination is delivered by the Party desiring to terminate the Agreement to the other Party at the address provided herein.

4.00 NCTCOG Duties/Restrictions

4.01 Procurement Role. a.NCTCOG agrees to initiate statutorily required actions, upon execution of an appropriate number of agreements with member governments along the rail corridor, to become the Responsible Governmental Entity under Senate Bill 1048 for development of the Cotton Belt Passenger Rail Project.

b. Once effective, NCTCOG will initiate procurement of a public-private partnership jointly with LGC, including receipt of solicited or unsolicited proposals, posting of and acceptance of competing proposals, proposal evaluation, and all other actions except the NCTCOG is not authorized to execute a Joint Interim or Comprehensive Award unless the Plano City Council has approved the same. If the Plano City Council fails to take affirmative action to approve the proposed joint interim award and/or comprehensive agreement within 90 days of City of Plano's receipt of same, this Agreement shall terminate immediately unless the Parties agree to mutually extend the time for the City of Plano to act.

c. NCTCOG's agency in this regard is limited only to seeking proposals, it is not authorized to bind the Local Government in any respect or to enter into a joint interim or comprehensive award on behalf of Local Government unless it has received prior written approval by the Plano City Council.

4.02 Joint Procurement Process. Described generally:

- a. NCTCOG and LGC will jointly receive any unsolicited proposal that may be submitted for the Cotton Belt Passenger Rail Project with concurrent delivery to all affected jurisdictions along the corridor by the private sector proposer as required by Senate Bill 1048.
- b. NCTCOG and LGC will adopt common guidelines and evaluation criteria to govern the Joint Procurement Process.
- c. LGC will take the lead on publication of a joint RFP and subsequent receipt of proposals.
- d. Proposals will be evaluated through a Joint Evaluation Committee, consisting of representatives from DART, NCTCOG as the RGE, cities and transit authorities.
- e. LGC will take the lead on the technical evaluation of any proposals.
- f. NCTCOG, as the RGE, will take the lead on the financial evaluation of any proposals.
- g. LGC, under Texas Transportation Code Chapter 452, and NCTCOG, as the RGE under Senate Bill 1048, will make a Joint Interim Award following approval by their respective governing bodies, the recommendations of the Joint Evaluation Committee, and written approval by the Local Government as set out in 4.01 above.

NCTCOG will coordinate with all affected member governments when carrying out these functions.

4.03 Limitations. NCTCOG will not execute a Comprehensive Award, as that term is defined in Senate Bill 1048, with the selected proposer. The project governance structure, which is yet to be determined, will execute any final Comprehensive Award.

5.00 LOCAL GOVERNMENT Duties

5.01 Authorization. LOCAL GOVERNMENT covenants that it possesses statutory powers to develop passenger rail projects in its jurisdiction and authorizes NCTCOG, acting on its behalf as the Responsible Governmental Entity, to develop the Cotton Belt Passenger Rail Project through procurement of a public-private partnership utilizing Senate Bill 1048. This includes all actions and processes contemplated in Senate Bill 1048 up to and including execution of an Interim Award.

5.02 Project Governance. LOCAL GOVERNMENT does not indicate favor or commit to any project governance structure under this Agreement. LOCAL GOVERNMENT agrees, however, to participate in discussions and understands collaboration among affected corridor jurisdictions and transit authorities is needed to reach consensus on governance and representation. Support of any governance structure is subject to future approval by the LOCAL GOVERNMENT.

5.03 No Financial Commitment. LOCAL GOVERNMENT does not commit any financial resources to NCTCOG or any other entity as a result of the undertakings under this Agreement or for any awards made to a selected proposer or for any other services that may be incurred as a part of this process.

5.04 No Equity Position. LOCAL GOVERNMENT does not indicate support of or commit to any strategy or position addressing equity among jurisdictions along the corridor as part of this Agreement.

5.05 Project Parameters. LOCAL GOVERNMENT does not commit to any proposer, project design, alignment or station locations under this Agreement.

5.06 No Fourth (4th) Transit Authority. NCTCOG's role as the Responsible Governmental Entity under this Agreement is expressly limited to the Cotton Belt Passenger Rail Project and does not constitute, nor does LOCAL GOVERNMENT or NCTCOG support, creation of a fourth (4th) transit authority in the region.

6.00 Indemnification. LOCAL GOVERNMENT and NCTCOG agree that each Party is responsible for its individual acts and deeds as well as the acts and deeds of their contractors, employees, representatives and agents.

7.00 Force Majeure. Force Majeure means any circumstance that is reasonably beyond the control of the Party obligated or permitted under this Agreement, and includes, but is not limited to reason of war, civil commotion, act of God, governmental restriction, regulation or interference, fire, explosion, hurricane, flood, failure of transportation, court injunction, or the action or failure to act of any person or entity that is not a Party to this Agreement. It is expressly understood and agreed by the Parties that if the performance of any duty or obligation under this Agreement is delayed by Force Majeure, regardless of whether any such circumstance is similar to any of those enumerated in this paragraph, the Party so obligated or permitted shall be excused from doing or performing the same during such period of delay or, in the alternative, the Parties may agree in writing to the performance of a substantially equivalent substitute.

8.00 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. Nor shall any Party be liable for any debts incurred by the other Party in the conduct of such other Party's business or functions.

9.00 Miscellaneous Provisions

9.01 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.

9.02 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.

9.03 Disputes. LOCAL GOVERNMENT and NCTCOG shall negotiate in good faith toward resolving any disputes that arise under this Agreement.

9.04 Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Texas.

9.05 Notice. Notices to either Party by the other Party required under this Agreement shall be in writing and delivered to the addresses shown below. A copy shall concurrently be provided to the Contact Person, provided on the Agreement Cover Sheet, of the Party receiving notice.

City of Plano, Texas
Bruce D. Glasscock, City Manager
P. O. Box 860358
Plano, TX 75086-0358

NCTCOG
Mike Eastland, Executive Director
P. O. Box 5888
Arlington, TX 76005-5888

The above contact information may be modified without requiring an amendment to the Agreement.

9.06 Interest of Public Officials. No member, officer, or employee of the public body or of a local public body during his tenure or for one year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

9.07 Assignment. Neither Party may assign this Agreement in whole or in part, without first obtaining the written consent of the other Party.

9.08 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.

9.09 Severability. In the event anyone 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.

9.10 Merger and Amendment. This instrument constitutes the entire agreement of the Parties with respect to the matters contemplated herein and supersedes all prior understandings and agreements regarding such subject matter. This Agreement may be modified or amended only in writing, signed by all Parties hereto.

9.11 Effective Date. This Agreement shall be effective on the date this Agreement is signed by the last of those required to sign this Agreement.

9.12 Nondiscrimination. In its performance of this Agreement, LOCAL GOVERNMENT and NCTCOG each warrants that it shall not discriminate against any person on account of race, color, sex, religious creed, age, disability, ethnic or national origin, or veteran status.

9.13 No Waiver. Neither Party 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.

EXECUTED by the Parties in duplicate originals.

CITY OF PLANO, TEXAS

NORTH CENTRAL TEXAS
COUNCIL OF GOVERNMENTS

Bruce D. Glasscock
City Manager

R. Michael Eastland
Executive Director

Date: _____

Date: _____