

STATE OF TEXAS	§	Inter Local Cooperation Agreement by
	§	and Between The City of Plano, and the
	§	City of Dallas for Construction of
	§	the Preston Ridge Trail Connection
COUNTY OF COLLIN	§	

This Inter Local Cooperation agreement is by and between the City of Plano, a Texas municipal corporation located in Collin County, Texas ("Plano"), and the City of Dallas, a Texas municipal corporation located in Dallas County, Texas ("Dallas"), (collectively Plano and Dallas, referred to as the "Parties", or singularly as a "Party"), acting by and through their authorized representatives.

W I T N E S S E T H:

WHEREAS, the Parties desire to enter into an agreement for the design and construction of certain recreational trails that will serve Plano and Dallas; and

WHEREAS, Plano has agreed at its sole cost to cause the design and construction of the Preston Ridge Trail Connection, to be constructed along Ohio Drive in Plano and Dallas, connecting the existing concrete trail in Dallas to Tradition Trail in Plano, as generally depicted in **Exhibit "A"** (hereinafter defined as the "Preston Ridge Trail Connection") as set forth herein; and

WHEREAS, the Parties have determined that the Preston Ridge Trail Connection is beneficial and in the best interests of both cities and their inhabitants; and

WHEREAS, the actual alignment of the Preston Ridge Trail Connection will be determined during the design phase of the project; and

WHEREAS, Dallas has agreed to grant Plano and its contractors a temporary construction easement for Plano to cause the design and construction of Preston Ridge Trail Connection; and

WHEREAS, Dallas has agreed to maintain the Preston Ridge Trail Connection portion in Dallas upon completion;

NOW, THEREFORE, for and in consideration of the mutual consideration stated herein, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**Article I
Definitions**

For purposes of this Agreement, each of the following terms shall have the meaning set forth herein unless the context clearly indicates otherwise:

"Bid Documents" shall mean the contract(s) for the construction of the Preston Ridge Trail Connection, which shall include: the construction plans, notice to bidders, proposal and bid

schedule, the requirements for contractor insurance, payment, performance, and for maintenance bonds; general and technical specifications for the construction; provisions for retainage in the amounts and in accordance with the North Central Texas Council of Governments Standard Specifications for Public Works, Section 109.52, or successor provision; and which include other items agreed to by the Parties.

“Commencement of Construction” shall mean that (i) the plans have been prepared and all approvals thereof required by applicable governmental authorities have been obtained for construction of the Preston Ridge Trail Connection; (ii) all necessary permits for the construction of the Preston Ridge Trail Connection, pursuant to the respective plans therefore have been issued by all applicable governmental authorities; and (iii) the grading of land has commenced.

“Completion of Construction” shall mean that (i) the construction of the Preston Ridge Trail Connection has been substantially completed in accordance with the Bid Documents; and (ii) Dallas has inspected and accepted the Preston Ridge Trail Connection.

“Effective Date” shall mean the last date of execution hereof.

“Force Majeure” shall mean any contingency or cause beyond the reasonable control of a party including, without limitation, acts of God or the public enemy, war, terrorist act, or threat thereof, riot, civil commotion, insurrection, government action or inaction (unless caused by the intentionally wrongful acts or omissions of the party), fires, earthquake, tornado, hurricane, explosions, floods, strikes, slowdowns or work stoppages.

“Preston Ridge Trail Connection” or “Project” shall mean the design and construction of the Preston Ridge Trail Connection, a concrete multi-use trail to be constructed along Ohio Drive from Tradition Trail in Plano to the currently existing concrete trail near the north city limits of Dallas, , as partially depicted on **Exhibit “A”**.

“Plano” shall mean the City of Plano, Texas acting by and through its city manager, or designee.

“Dallas” shall mean the City of Dallas, Texas acting by and through its city manager, or designee.

Article II

Term

The term of this Agreement shall begin on the last date of execution hereof (the “Effective Date”), and shall continue until the Parties have fully satisfied their respective obligations hereunder, unless sooner terminated as provided herein.

Article III Purpose

The purpose of this Agreement is to set forth the understanding of the Parties with regard to the design and construction of the Preston Ridge Trail Connection.

Article IV Trail Project

4.1 General. Plano agrees, at its sole cost, to design, bid, and award contract, construct and inspect the Project.

4.2 Design. Dallas design standards shall apply to the Project. Plano shall submit the design plans for the Project (the "Design Plans") to the Director of the Dallas Park and Recreation Department or his or her designee ("Director") for review and approval within nine (9) months after the Effective Date. Within thirty (30) business days after receipt of the Design Plans, the Director shall approve or disapprove the Design Plans. In the event the Director disapproves the Design Plans Plano shall cause the Design Plans to be amended, and re-submit the Design Plans as amended to the Director for review and approval. This process shall continue until the Design Plans are approved or this Agreement is terminated.

4.2 Project Alignment. The alignment of the Preston Ridge Trail Connection shall be determined at the time of approval of the Design Plans.

4.3 Bid Document Review and Approvals. Plano agrees to provide the Director an opportunity to review and approve the final Bid Documents prior to advertising for competitive bids for construction. Within thirty (30) business days after receipt of the proposed Bid Documents prepared by Plano, The Director shall review and provide comments or disapprove the Bid Documents. In the event the Director rejects the Bid Documents, Plano shall amend and re-submit the Bid Documents to the Director for review and approval. This process shall continue until the Bid Documents are approved or this Agreement is terminated. In addition, Plano shall acquire, as required by applicable laws, ordinances, or regulations and at its sole cost and expense, all building permits, certificates of occupancy, and other permits, as required by Dallas permitting offices including, if applicable, notices of intent under storm water regulations promulgated pursuant to the Federal Clean Water Act, licenses, permissions, consents, and approvals required to be obtained from government agencies or third parties in connection with construction, occupancy and uses of any improvements to the Premises. Plano shall furnish Dallas evidence thereof. The Bid Documents as approved by the Parties shall constitute the "Approved Plans".

4.4 Design and Bid Documents Requirements. In the award of the design and construction contracts for the Project, Plano shall comply with applicable state law governing the construction of public works by a governmental entity.

4.5 Construction Schedule. Plano agrees, subject to events of Force Majeure, to cause the Completion of Construction of the Project to occur not later than twenty-four (24) months after the Effective Date. Plano's contractor(s) will have access to the Ohio Drive in Dallas and may

only perform work for the construction of the Project between the hours of 7:00 a.m. and 6:00 p.m., Monday through Friday.

4.6 Construction Inspection and Acceptance.

(a) Plano agrees, at its sole cost and expense, to provide construction inspection services for the construction of the Project. Dallas may at its sole cost provide for construction inspection services. Plano and Dallas shall resolve any disputes during construction as equal equitable partners and share the responsibility to inspect and to accept or reject any work performed by the contractors for any portion of the project.

(b) Dallas does hereby grant to Plano, its employees, contractors and agents, permission to enter upon Dallas property for the purposes of inspecting the work performed by the Project contractors.

(c) Final acceptance of the Project shall require the submittal of, and Director's approval of, a Contractor Affidavit of Final Payment and Release and Consent of Surety for each contractor, prior to the final payment and release of retainage by Plano to the contractor(s) for the Project.

(d) Plano shall cause its contractor(s) to provide maintenance bonds reasonably satisfactory to Dallas and warrant the construction of the Project for a period of two years following Completion of Construction of the Project and shall name the City of Dallas as co-obligee with the City of Plano.

4.7 Project Maintenance. Dallas agrees, upon Completion of Construction, to maintain and repair the Project within Dallas city limits. The provisions of this section shall survive termination.

4.8 Temporary Construction Easement. Dallas does by execution of this Agreement hereby grant Plano, its employees, contractors and agents, a temporary construction easement for the construction of the Project in accordance with the Approved Plans. This temporary construction easement shall terminate upon Completion of Construction of the Project.

4.9 Bonds. Plano shall cause its contractors and subcontractors to provide such performance bonds and payment bonds in forms as are reasonably satisfactory to Dallas for the construction of the Project to ensure completion of the Project and payment of the contractors and subcontractors performing the work and shall name the City of Dallas as co-obligee with the City of Plano.

Article V Indemnification/Immunity/Insurance

5.1 To the extent authorized by the statutes and the Constitution of the State of Texas, each Party agrees to release, defend, indemnify, and hold harmless the other Party (and its officers, agents, and employees) from and against all claims or causes of action for injuries (including

death), property damages (including loss of use), and any other losses, demands, suits, judgments, and costs, including reasonable attorney's fees and expenses, in any way arising out of, related to, or resulting from the indemnifying Party's breach or default in the performance of any of its obligations under this Agreement, or caused by the negligent acts or omissions of its respective officers, agents, employees, or any other third Parties for whom it is legally responsible in connection with performing this Agreement. This Agreement and the indemnity provided herein is not intended to and shall not create any cause of action for the benefit of third parties or any person not a party to this Agreement. This indemnity shall survive the termination or expiration of this Agreement.

5.2 It is expressly understood and agreed that, in the execution of this Agreement, no Party waives, nor shall be deemed hereby to have waived, any immunity or defense that would otherwise be available to it against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the Parties do not create any obligations, express or implied, other than those set forth herein, and this Agreement shall not create any rights in parties not signatories hereto.

5.3 In addition to Plano's insurance requirements for contractors, Plano shall add the following language in Sections 5.3 to 5.9 below to its bid requirements for contractors for Dallas, with CONTRACTOR meaning any and all construction contractors and subs, and PARTY or CITY meaning the City of Dallas: CONTRACTOR shall procure, pay for and maintain the following insurance written by companies approved by the State of Texas and acceptable to Party. The insurance shall be evidenced by delivery to the Party, at the address shown in Section 5.5 (A.), certificates of insurance executed by the insurer or its authorized agent stating coverages, limits, expiration dates and compliance with all applicable required provisions. Party shall be named as an additional insured by endorsement to the policy and thus will be entitled to notice of cancellation of the policy in accordance with Section 1811 of the Texas Insurance Code. Upon request, the Dallas shall be entitled to receive without expense, copies of the policies and all endorsements. PARTY HAS NO DUTY TO PAY CONTRACTOR UNTIL SUCH CERTIFICATE HAS BEEN DELIVERED TO THE CITY.

5.4 The CITY reserves the right to review the insurance requirements of this section during the effective period of the services or work performed by CONTRACTOR and to modify insurance coverages and their limits when deemed necessary and prudent by City's Office of Risk Management based upon changes in statutory law, court decisions or other relevant factors. The CONTRACTOR shall acquire and ensure execution of requests for deletions, revisions or modifications of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either CITY or CONTRACTOR).

5.5 REQUIRED PROVISIONS – The CONTRACTOR agrees, with respect to the required insurance as documented below, all certificate(s) of insurance will contain and state, in writing, the following required provisions:

A. The certificate of insurance or policy and endorsements shall be evidenced

by delivery to:

- a. Parks & Recreation, Attention: Jason Ney, 1500 Marilla St, Rm 5FS, Dallas, Texas 75201 and
 - b. Director, Office of Risk Management, 1500 Marilla, 6A-South, Dallas, Texas 75201.
- B. All certificates of insurance shall identify the service or product being provided, by including the bid number and contract or solicitation name.
- C. All certificates of insurance shall name the City of Dallas as the Certificate Holder.

5.6 INSURANCE COVERAGE REQUIRED - Subject to CONTRACTOR'S right to maintain reasonable deductibles, CONTRACTOR shall obtain and maintain in full force and effect for the duration of its engagement with the CITY and any extension hereof, at CONTRACTOR'S sole expense, insurance coverage in the following type(s) and amounts:

A. WORKERS' COMPENSATION and EMPLOYERS' LIABILITY

Workers' Compensation within the regulations of the Texas Workers' Compensation Act. The minimum policy limits for Employers Liability are:

Bodily Injury by Accident: \$1,000,000 Each Accident

Bodily Injury by Disease: \$1,000,000 Each Employee

Bodily Injury by Disease: 1,000,000 Policy Limit

The policy shall include:

- a) An endorsement to waive subrogation in favor of the City of Dallas, its officers, employees and elected representatives, for bodily injury (including death) or any other loss.
- b) An endorsement to provide thirty (30) days prior written notice in the event of cancellation to the address as shown in Section C, a (i) and (ii), or in accordance with Section 1811.155 of the Texas Insurance Code, Notice of Cancellation in accordance with the Notice of Insured in the policy for cancellation due to non-payment of premium.

NOTES:

- i. If CONTRACTOR will not be providing services under the contract at a City facility, has no employees and/or is operating as a sole owner and single operator, CONTRACTOR shall provide a signed letter, with the current date, on official letterhead stating such to meet the requirement.
- ii. If CONTRACTOR is a non-subscriber or is self-insured, Plano shall provide a copy of its Certificate of Authority to Self-Insure from the Texas Department of Insurance, Division of Workers' Compensation Self Insurance Regulation Program, evidence of alternative coverage and internal safety and injury coverage policies and procedures.

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business Automobile Liability Insurance covering owned, hired, and non-owned vehicles, with a minimum combined single limit for bodily injury (including death) and property damage limit of \$1,000,000 per occurrence.

The policy shall include:

- a) An endorsement naming the City of Dallas and its officers, employees and elected representatives as additional insureds.
- b) An endorsement to waive of subrogation in favor of the City of Dallas, its officers and employees, for bodily injury (including death), property damage or any other loss.
- c) An endorsement to provide thirty (30) days prior written notice in the event of cancellation to the address as shown in Section C, a (i) and (ii), or in accordance with Section 1811.155 of the Texas Insurance Code, Notice of Cancellation in accordance with the Notice of Insured in the policy for cancellation due to non-payment of premium.
- d) Provide that CONTRACTOR'S insurance is primary insurance as respects the CITY, its officers, employees and elected representatives.

NOTE:

- i. If CONTRACTOR has no owned, hired and non-owned autos or vehicles and/or no autos or vehicles will not be used in the performance of services under the contract, CONTRACTOR shall provide a signed letter, with the current date, on official letterhead stating such to meet the requirement for owned autos.

C. COMMERCIAL GENERAL LIABILITY INSURANCE

Commercial General Liability Insurance including, but not limited to, Premises/Operations, Personal & Advertising Injury, Products/Completed Operations, Independent Contractors and Contractual Liability with minimum combined bodily injury (including death) and property damage limits of \$1,000,000 per occurrence, \$2,000,000 products/completed operations aggregate, \$2,000,000 general aggregate.

The policy shall include:

- a.) Coverage extended to apply to products/completed operations and XCU (explosion, collapse and underground) hazards.
- b.) An endorsement naming the City of Dallas, its officers, employees and elected representatives as additional insured using the broadest form of endorsement available, with such status extended to include the extension of the completed operations coverage as described above.
- c.) An endorsement to waive subrogation in favor of the City of Dallas, its officers and employees, for bodily injury (including death), property damage or any other loss.
- d.) An endorsement to provide thirty (30) days prior written notice in the event of cancellation to the address as shown in Section C, a (i) and (ii), or in accordance with Section 1811.155 of the Texas Insurance Code, Notice of Cancellation in accordance with the Notice of Insured in the policy for cancellation due to non-payment of premium.
- e.) The policy shall include endorsement CG2503 Amendment of limits (designated project or premises) in order to extend the policy's limits specifically to the project in question.
- f.) The Completed Operations coverage must be maintained for a minimum of one (1) year after final completion and acceptance of the Work, with evidence of same filed with the City of Dallas.
- g.) Provide that CONTRACTOR'S insurance is primary insurance as respects the CITY, its officers, employees and elected representatives.
- h.) If this insurance is written on a claims-made form, coverage shall be continuous (by renewal or extended reporting period) for not less than twenty-four (24) months following completion of the contract and acceptance by the City. Coverage, including any renewals, shall have the same retroactive date as the original policy.

5.7 SUBCONTRACTING LIABILITY

- (1) Without limiting any of the other obligations or liabilities of the CONTRACTOR, the CONTRACTOR shall require each Subcontractor performing work under the contract, at the Subcontractor's own expense, to maintain during the engagement with the CITY, types and limits of insurance that are appropriate for the work being performed, comply with all applicable laws and are consistent with industry standards. The Subcontractor's liability insurance shall name CONTRACTOR as an additional insured.

- (2) CONTRACTOR shall obtain and monitor the certificates of insurance from each Subcontractor. CONTRACTOR must retain the certificates of insurance for the duration of the contract and shall have the responsibility of enforcing insurance requirements among its subcontractors. The CITY shall be entitled, upon request and without expense, to receive copies of these certificates.

5.8 CONTRACTOR LIABILITY - Approval, disapproval or failure to act by the CITY regarding any insurance supplied by CONTRACTOR or its subcontractors shall not relieve CONTRACTOR of full responsibility or liability for damages and accidents as set forth in the contract documents. Neither shall the bankruptcy, insolvency nor denial of liability by the insurance company exonerate CONTRACTOR from liability.

5.9 INDEMNITY - CONTRACTOR agrees to defend, indemnify and hold the CITY, its officers, agents and employees, harmless against any and all claims, lawsuits, judgments, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned by CONTRACTOR'S breach of any of the terms or provisions of its engagement with the CITY, or by any negligent or strictly liable act or omission of CONTRACTOR, its officers, agents, employees, or subcontractors, in CONTRACTOR'S performance under its engagement with the CITY; except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence or fault of the CITY, its officers, agents or employees and in the event of joint and concurrent negligence or fault of CONTRACTOR and the CITY, responsibility and indemnity, if any, shall be apportioned comparatively in accordance with the laws of the State of Texas, without waiving any governmental immunity available to the CITY under Texas law and without waiving any defenses of the parties under Texas law. The provisions of this paragraph are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

Article VI Miscellaneous

6.1 Binding Agreement; Assignment. The terms and conditions of this Agreement are binding upon the successors and assigns of all parties hereto. This Agreement may not be assigned without the prior written consent of the other Party.

6.2 Notices. Any notice required or permitted to be delivered hereunder shall be deemed received three days thereafter sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the Party at the address set forth below or on the day actually received if sent by courier or otherwise hand delivered to the following addresses:

If intended for Dallas, to
John Jenkins, Park and Recreation
Director
1500 Marilla Street
Dallas, TX 75201

With a copy to:
Christine Lanners, Assistant City Attorney
City of Dallas
1500 Marilla Street, 7DN
Dallas, TX 75201

If intended for Plano, to:

With a copy to:

Attn: City Manager
City of Plano
1520 Avenue K
Plano, Texas 75074

Paige Mims
City of Plano
1520 Avenue K
Plano, Texas 75074

6.3 Governing Law. This Agreement will be governed by the laws of the State of Texas; and venue for any action concerning this Agreement shall be in Collin County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

6.4 Legal Construction. In the event any one or more of the provisions contained in this Agreement are for any reason held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect other provisions, and it is the intention of the Parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

6.5 Recitals. The recitals to this Agreement are incorporated herein.

6.6 Counterparts. This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

6.7 Exhibits. Any exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

6.8 Current Funding. Plano and Dallas agree that the Parties paying for the performance of governmental functions or services shall make those payments only from current revenues legally available to the paying Party.

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

6.10 Authorization. Each Party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement.

6.11 Consents and Approval. Unless otherwise expressly stated in this Agreement, whenever the consent or approval of a Party is required prior to the action to be taken by the other Party, such consent or approval shall not be unreasonably withheld, denied, or delayed.

6.12 Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

6.13 Entire Agreement. This Agreement is the entire Agreement between the Parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written agreement between the Parties that in any manner relates to the subject matter of this Agreement, except as provided in any Exhibits attached hereto.

6.14 Default. If Plano fails to complete the construction of the Project by the deadline as provided herein, or if either Party breaches any of its other obligations under this Agreement and fails to cure the breach within thirty (30) days following written notice of the breach from the other Party (or such longer time as may be reasonable if the Party in breach commences cure within such thirty day period and thereafter diligently pursues the cure to completion), then the Party in breach shall be in default and the other Party may, at its election, terminate this Agreement, terminate any of the licenses described above, and/or exercise any other rights and remedies provided by law or equity.

(Signature page to follow)

EXECUTED on this _____ day of _____, 2021. (“**Effective Date**”)

Authorized by City Council Resolution No. 21-_____ adopted by the Dallas City Council on _____, 20____.

APPROVED AS TO FORM:

Christopher J. Caso, City Attorney

CITY OF DALLAS

T. C. Broadnax, City Manager

BY: _____ *C.L.*
Assistant City Attorney

BY: _____
Assistant City Manager

ATTEST:

**PARK AND RECREATION BOARD
CITY OF DALLAS, TEXAS**

By: _____
Secretary

By: _____
President

EXECUTED on this _____ day of _____, 2021.

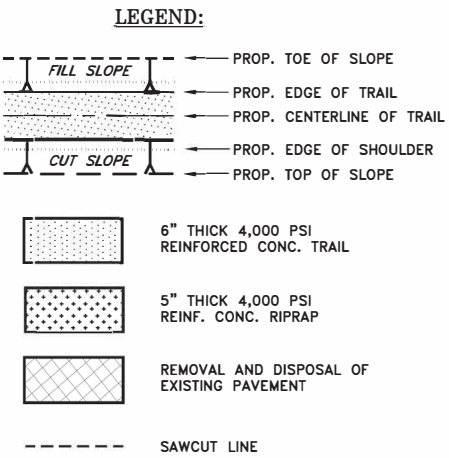
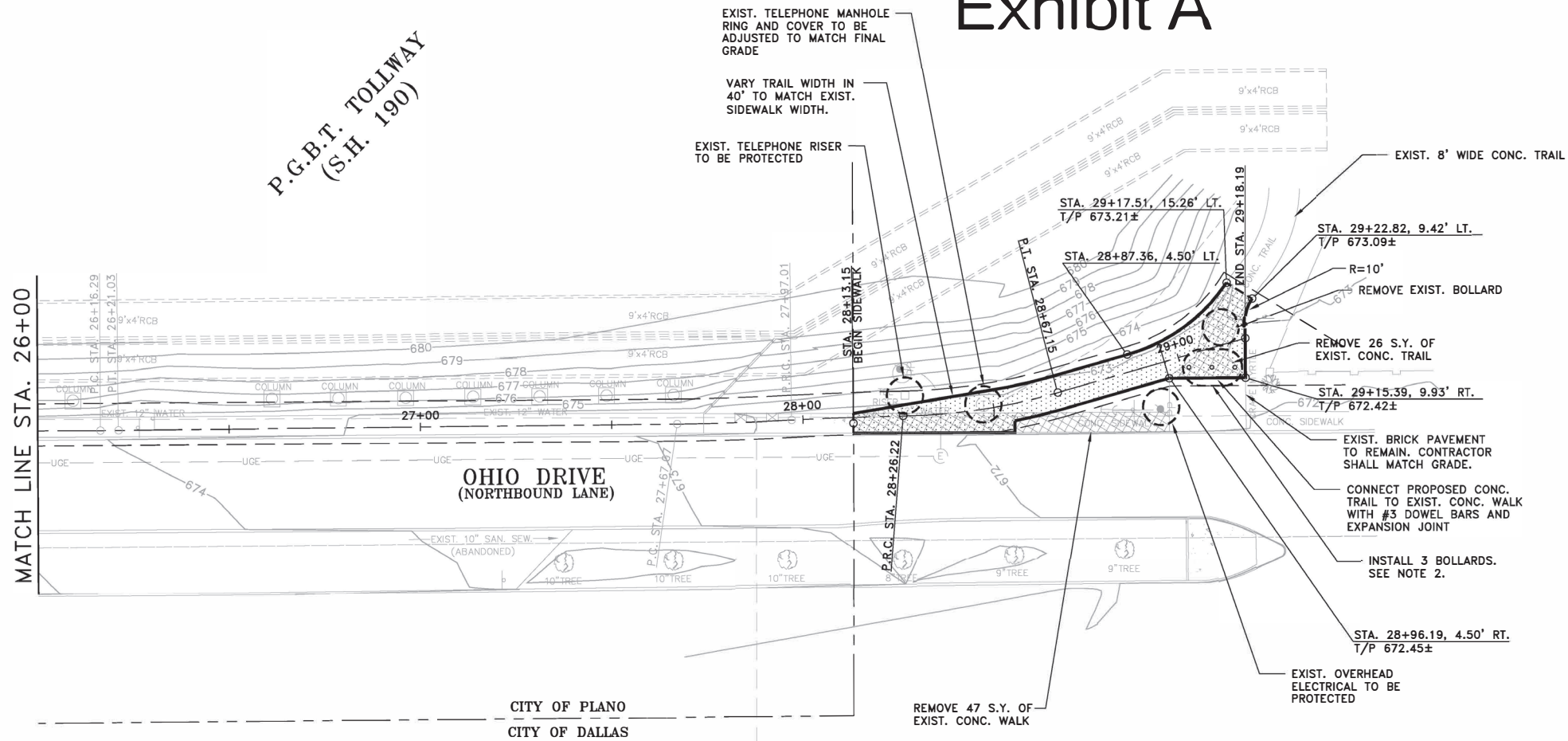
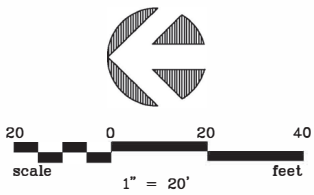
CITY OF PLANO, TEXAS

By: _____
Mark D. Israelson, City Manager

APPROVED AS TO FORM:

By: _____
Paige Mims, City Attorney

Exhibit A



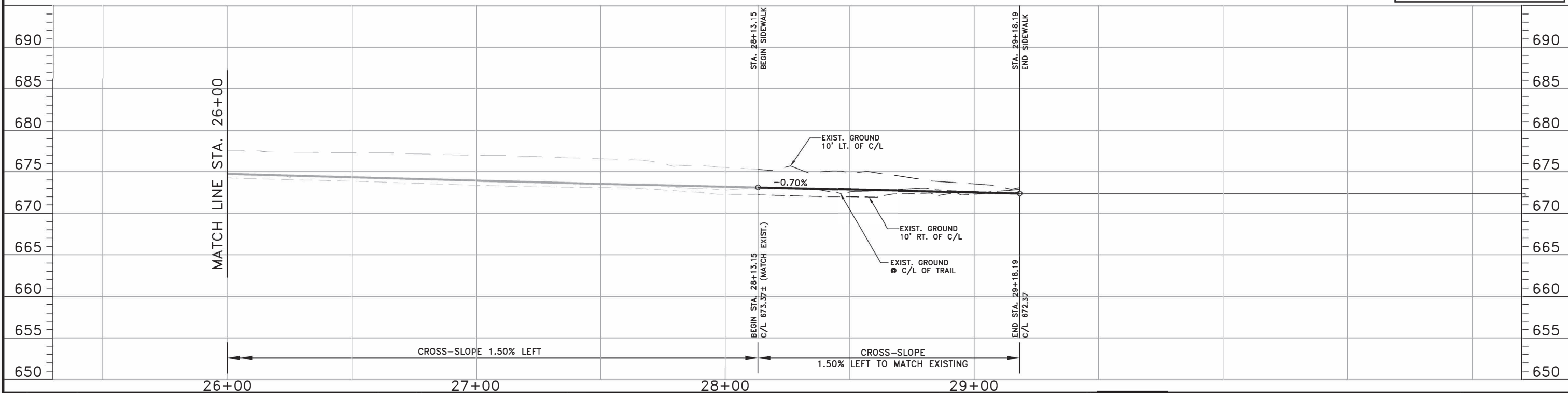
- NOTES:**
- CONTRACTOR SHALL DOWEL 12" INTO EXISTING RIP RAP USING A 24" LONG #3 BAR 18" O.C.
 - EXIST. BOLLARD TO BE REPLACED WITH THREE NEW 4" WIDE TRAFFICGUARD® BOLLARDS (MODEL-ROUND POST HRP) AT TRAIL ENTRANCE WITH A MINIMUM HEIGHT OF 40" AND A MINIMUM 6' HORIZONTAL CLEARANCE BETWEEN POSTS.

!! CAUTION !!

THERE ARE EXISTING AND/OR PROPOSED UTILITIES IN PROJECT AREA. UTILITY INFORMATION SHOWN ON PLANS REPRESENTS APPROXIMATE LOCATIONS OF EXISTING UTILITIES AND IS NOT NECESSARILY ALL-INCLUSIVE. CONTRACTOR SHALL BE RESPONSIBLE FOR VERIFYING EXACT LOCATIONS OF ALL EXISTING UTILITIES AND SHALL BE REQUIRED TO PROTECT UTILITIES TO AVOID DAMAGE.

PRIOR TO ANY EXCAVATION, CONTRACTOR SHALL CONTACT TEXAS811 AND OTHERS AS REQUIRED TO LOCATE EXISTING UTILITIES.

CONTRACTOR SHALL ALSO CONTACT APPROPRIATE CITY UTILITY DEPARTMENT FOR FIELD LOCATES OF MUNICIPAL INFRASTRUCTURE 48 HOURS PRIOR TO CONSTRUCTION.



NO.	DATE	REVISION	REVIEWED
6			
5			
4			
3			
2			
1			

DRAWN: BW2
DESIGN: JFW
REVIEWED: MRB
SCALE: (H)1"=20', (V)1"=6'
DATE: DECEMBER 2020
DWG. NAME: 1511PAYPLN06

BW2 Engineers, Inc.
A subsidiary of **SCHAUMBURG & POLK, INC.**

1919 S. Shiloh Road
Suite 500, L.B. 27
Garland, Texas 75042
(972) 864-8200 (T) (972) 864-8220 (F)
Firm Registration No. F-5290

THIS DOCUMENT REPRESENTS
WORK-IN-PROGRESS AND IS NOT
TO BE USED FOR CONSTRUCTION
OR PERMITTING.

J.W.
JAMES F. WALDBAUER TEXAS P.E. NO. 65670

**PRESTON RIDGE
TRAIL CONNECTOR
PAVING PLAN AND PROFILE
STA. 26+00 TO STA. 28+90.97
CITY OF PLANO**

SHEET NO. **20**
OF **23** SHEETS
JOB NO. **11-1511**

SECTION A.

CONTRACTOR shall procure, pay for and maintain the following insurance written by companies approved by the State of Texas and acceptable to CITY. The insurance shall be evidenced by delivery to the CITY, at the address shown in **SECTION C** (a), certificates of insurance executed by the insurer or its authorized agent stating coverages, limits, expiration dates and compliance with all applicable required provisions. The CITY shall be named as an additional insured by endorsement to the policy and thus will be entitled to notice of cancellation of the policy in accordance with Section 1811 of the Texas Insurance Code. Upon request, the CITY shall be entitled to receive without expense, copies of the policies and all endorsements. CITY HAS NO DUTY TO PAY CONTRACTOR UNTIL SUCH CERTIFICATE HAS BEEN DELIVERED TO THE CITY.

SECTION B.

The CITY reserves the right to review the insurance requirements of this section during the effective period of the services or work performed by CONTRACTOR and to modify insurance coverages and their limits when deemed necessary and prudent by City's Office of Risk Management based upon changes in statutory law, court decisions or other relevant factors. The CONTRACTOR shall acquire and ensure execution of requests for deletions, revisions or modifications of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either CITY or CONTRACTOR).

SECTION C. REQUIRED PROVISIONS

The CONTRACTOR agrees, with respect to the required insurance as documented below, all certificate(s) of insurance will contain and state, in writing, the following required provisions:

- a) The certificate of insurance or policy and endorsements shall be evidenced by delivery to:
 - (i) Parks & Recreation, Attention: Jason Ney, 1500 Marilla St, Rm 5FS, Dallas, Texas 75201 and
 - (ii) Director, Office of Risk Management, 1500 Marilla, 6A-South, Dallas, Texas 75201.
- b) All certificates of insurance shall identify the service or product being provided, by including the bid number and contract or solicitation name.
- c) All certificates of insurance shall name the City of Dallas as the Certificate Holder.

SECTION D. INSURANCE COVERAGE REQUIRED

Subject to CONTRACTOR'S right to maintain reasonable deductibles, CONTRACTOR shall obtain and maintain in full force and effect for the duration of its engagement with the CITY and any extension hereof, at CONTRACTOR'S sole expense, insurance coverage in the following type(s) and amounts:

Insurance Requirements

1. WORKERS' COMPENSATION and EMPLOYERS' LIABILITY

Workers' Compensation within the regulations of the Texas Workers' Compensation Act. The minimum policy limits for **Employers Liability** are:

- Bodily Injury by Accident: \$1,000,000 Each Accident
- Bodily Injury by Disease: \$1,000,000 Each Employee
- Bodily Injury by Disease: \$1,000,000 Policy Limit

The policy shall include:

- a) An endorsement to waive subrogation in favor of the City of Dallas, its officers, employees and elected representatives, for bodily injury (including death) or any other loss.
- b) An endorsement to provide thirty (30) days prior written notice in the event of cancellation to the address as shown in Section C, a (i) and (ii), or in accordance with Section 1811.155 of the Texas Insurance Code, Notice of Cancellation in accordance with the Notice of Insured in the policy for cancellation due to non-payment of premium.

NOTES:

- i. If CONTRACTOR will not be providing services under the contract at a City facility, has no employees and/or is operating as a sole owner and single operator, CONTRACTOR shall provide a signed letter, with the current date, on official letterhead stating such to meet the requirement.
- ii. If CONTRACTOR is a non-subscriber or is self-insured, CONTRACTOR shall provide a copy of its Certificate of Authority to Self-Insure from the Texas Department of Insurance, Division of Workers' Compensation Self Insurance Regulation Program, evidence of alternative coverage and internal safety and injury coverage policies and procedures.

2. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business Automobile Liability Insurance covering owned, hired, and non-owned vehicles, with a minimum combined single limit for bodily injury (including death) and property damage limit of \$1,000,000 per occurrence.

The policy shall include:

- a) An endorsement naming the City of Dallas and its officers, employees and elected representatives as additional insureds.
- b) An endorsement to waive of subrogation in favor of the City of Dallas, its officers and employees, for bodily injury (including death), property damage or any other loss.
- c) An endorsement to provide thirty (30) days prior written notice in the event of cancellation to the address as shown in Section C, a (i) and (ii), or in accordance with Section 1811.155 of the Texas Insurance Code, Notice of Cancellation in accordance with the Notice of Insured in the policy for cancellation due to non-payment of premium.
- d) Provide that CONTRACTOR'S insurance is primary insurance as respects the CITY, its officers, employees and elected representatives.

Insurance Requirements

NOTE:

- i. If CONTRACTOR has no owned, hired and non-owned autos or vehicles and/or no autos or vehicles will not be used in the performance of services under the contract, CONTRACTOR shall provide a signed letter, with the current date, on official letterhead stating such to meet the requirement for owned autos.

3. **COMMERCIAL GENERAL LIABILITY INSURANCE**

Commercial General Liability Insurance including, but not limited to, Premises/Operations, Personal & Advertising Injury, Products/Completed Operations, Independent Contractors and Contractual Liability with minimum combined bodily injury (including death) and property damage limits of \$1,000,000 per occurrence, \$2,000,000 products/completed operations aggregate, \$2,000,000 general aggregate.

The policy shall include:

- a) Coverage extended to apply to products/completed operations and XCU (explosion, collapse and underground) hazards.
- b) An endorsement naming the City of Dallas, its officers, employees and elected representatives as additional insured using the broadest form of endorsement available, with such status extended to include the extension of the completed operations coverage as described above.
- c) An endorsement to waive subrogation in favor of the City of Dallas, its officers and employees, for bodily injury (including death), property damage or any other loss.
- d) An endorsement to provide thirty (30) days prior written notice in the event of cancellation to the address as shown in Section C, a (i) and (ii), or in accordance with Section 1811.155 of the Texas Insurance Code, Notice of Cancellation in accordance with the Notice of Insured in the policy for cancellation due to non-payment of premium.
- e) The policy shall include endorsement CG2503 Amendment of limits (designated project or premises) in order to extend the policy's limits specifically to the project in question.
- f) The Completed Operations coverage must be maintained for a minimum of one (1) year after final completion and acceptance of the Work, with evidence of same filed with the City of Dallas.
- g) Provide that CONTRACTOR'S insurance is primary insurance as respects the CITY, its officers, employees and elected representatives.
- h) If this insurance is written on a claims-made form, coverage shall be continuous (by renewal or extended reporting period) for not less than twenty-four (24) months following completion of the contract and acceptance by the City. Coverage, including any renewals, shall have the same retroactive date as the original policy.

Insurance Requirements

SECTION E. SUBCONTRACTING LIABILITY

(1) Without limiting any of the other obligations or liabilities of the CONTRACTOR, the CONTRACTOR shall require each Subcontractor performing work under the contract, at the Subcontractor's own expense, to maintain during the engagement with the CITY, types and limits of insurance that are appropriate for the work being performed, comply with all applicable laws and are consistent with industry standards. The Subcontractor's liability insurance shall name CONTRACTOR as an additional insured.

(2) CONTRACTOR shall obtain and monitor the certificates of insurance from each Subcontractor. CONTRACTOR must retain the certificates of insurance for the duration of the contract and shall have the responsibility of enforcing insurance requirements among its subcontractors. The CITY shall be entitled, upon request and without expense, to receive copies of these certificates.

SECTION F. CONTRACTOR LIABILITY

Approval, disapproval or failure to act by the CITY regarding any insurance supplied by CONTRACTOR or its subcontractors shall not relieve CONTRACTOR of full responsibility or liability for damages and accidents as set forth in the contract documents. Neither shall the bankruptcy, insolvency nor denial of liability by the insurance company exonerate CONTRACTOR from liability.

SECTION G. INDEMNITY

CONTRACTOR agrees to defend, indemnify and hold the CITY, its officers, agents and employees, harmless against any and all claims, lawsuits, judgments, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned by CONTRACTOR'S breach of any of the terms or provisions of its engagement with the CITY, or by any negligent or strictly liable act or omission of CONTRACTOR, its officers, agents, employees, or subcontractors, in CONTRACTOR'S performance under its engagement with the CITY; except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence or fault of the CITY, its officers, agents or employees and in the event of joint and concurrent negligence or fault of CONTRACTOR and the CITY, responsibility and indemnity, if any, shall be apportioned comparatively in accordance with the laws of the State of Texas, without waiving any governmental immunity available to the CITY under Texas law and without waiving any defenses of the parties under Texas law. The provisions of this paragraph are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

CONTRACTOR (COMPANY NAME):_____

BY:_____
Signature of Authorized Representative

NAME:_____

Insurance Requirements

Name of Authorized Representative (please print)

DATE: _____