

# **INTERLOCAL AGREEMENT FOR THE DEVELOPMENT OF THE ROCK ISLAND ROAD BIKE AND PEDESTRIAN FACILITY**

## **RECITALS**

**WHEREAS**, this Agreement (hereinafter referred to as the “Agreement”), which is authorized under the Interlocal Cooperation Act, Texas Government Code, Chapter 791, is made by and entered into between the City of Irving, Texas (hereinafter referred to as “City of Irving”), the City of Grand Prairie, Texas (hereinafter referred to as “City of Grand Prairie”), for the purpose of constructing a trail (hereinafter referred to as “Trail”) that will provide a Trail in Grand Prairie and connect to the Rock Island Road Bike and Pedestrian Facility in Irving.

**WHEREAS**, the City of Irving applied for and received transportation enhancement funding from the Texas Department of Transportation (hereinafter referred to as “TxDOT”) for construction of the Trail, which will be constructed pursuant to a Local Project Advance Funding Agreement (hereinafter referred to as the “LPAFA”) between the City of Irving and TxDOT, dated June 26, 2014; and

**WHEREAS**, the Trail will be located on property owned or controlled by the Trinity Railway Express (hereinafter referred to as “TRE”), which operates pursuant to Chapter 452, Texas Transportation Code; and

**WHEREAS**, the City of Irving entered into a Hike and Bike License Agreement with TRE (hereinafter referred to as the “License Agreement”), dated October 7, 2014, which authorizes the City of Irving to construct, install, maintain, and operate the Trail; and

**WHEREAS**, pursuant to the terms of the LPAFA and the License Agreement, the Trail will be constructed and maintained by the City of Irving, including the portion of the Trail located in the City of Grand Prairie; and

**WHEREAS**, the City of Grand Prairie and the City of Irving are entering into this Agreement in the interest of the public health, safety, and welfare and in the exercise of their governmental functions for the public benefit of the state, the region, and the residents of the City of Grand Prairie and the City of Irving,

**NOW, THEREFORE**, in consideration of the foregoing and other valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties agree to the following:

## **I. TERM OF AGREEMENT**

The term of this Agreement shall be for a period of twenty-five (25) years commencing on the last day all of the parties have executed this Agreement, unless terminated earlier as provided herein.

## **II. DESIGN/ALIGNMENT OF TRAIL**

The Trail that will be constructed under this Agreement will be a part of the City of Irving's Rock Island Road Bike and Pedestrian Facility, which will extend into the City of Grand Prairie. The Trail shall have the general alignment as denoted in the attached map and shall be constructed of reinforced concrete and shall generally have a width of at least eleven (11) feet in accordance with the License Agreement, LPAFA, and AASHTO standards. This Trail shall be known as the Rock Island Road Bike and Pedestrian Facility for the term of this Agreement.

## **III. TRAIL USE**

The Trail shall be accessible to all users, free of charge, regardless of residence and shall be used for public trail activities, including, but not limited to hiking, walking, jogging, biking, and roller-blading and for non-motorized alternative transportation purposes. Each City reserves the right to establish hours of operation that are consistent with other public trail facilities in its jurisdiction.

## **IV. TRAIL IMPLEMENTATION RESPONSIBILITIES**

The City of Irving shall be responsible for securing any real property rights or licenses needed for the Trail as required by the License Agreement and the LPAFA.

The City of Irving shall be responsible for proposing the alignment of the Trail, designing the Trail (or selecting a consultant engineer and overseeing the design of the Trail), proposing needed signage, bidding, and awarding the construction contract for the Trail (including the installation of signage), administering the construction contract, and overseeing the construction of the Trail as required by this Agreement, the License Agreement, and the LPAFA. The City of Irving shall also be responsible for funding and installing any amenities within the portion of the Trail that is located within the City of Irving and that are not provided for under the terms of this Agreement.

The City of Grand Prairie shall also be responsible for reviewing and approving the Trail's proposed alignment, design plans, safety standards, signage, and ensuring that Trail is adequately built to its standards. The City of Grand Prairie shall signify its approval of design, alignment, and signage by execution of the plans.

The City of Grand Prairie shall also be responsible for funding any amenities within the portion of the Trail that is located within the City of Grand Prairie and that are not provided for under the terms of this Agreement, the License Agreement, or the LPAFA.

## **V. FUNDING**

The Trail construction is being funded through a TxDOT Transportation Enhancement Program up to One-Million-Eight Hundred Thousand Dollars (\$1,800,000) and the federal Congestion Mitigation and Air Quality Improvement Program for One Million-Two Hundred Thousand Dollars (\$1,200,000), plus matching funding of Nine Hundred Thousand Dollars (\$900,000) from the City of Irving. These funds may be used solely for the construction of the Trail. They may not be used to conduct environmental assessments or to alleviate any environmental hazard or to construct or install any other capital improvement or amenity or for land acquisition. TxDOT will reimburse the City of Irving for the reasonable costs associated with the construction of trail surfaces within sixty (60) days of having received proof of the satisfactory completion of associated work items, invoices, and supporting documentation.

Each party paying for the performance of governmental functions or services under this Agreement must make those payments from current revenues available to the paying party.

Should sufficient funding not be available or if field conditions present design constraints which prevent the construction of the Trail's alignment as described in Article II, then the scope of the project may be revised with the mutual consent of the parties, one or more parties may provide additional funding, or the Trail Project may be terminated.

## **VII. OWNERSHIP/OPERATION/MAINTENANCE**

The City of Irving shall own the Trail improvements in accordance with the LPAFA and the License Agreement, and each City shall own all other related amenities and improvements located within its own jurisdiction. The City of Irving is authorized to maintain of that portion of the Trail located in the City of Grand Prairie as required by the License Agreement and the LPAFA. Each City's ownership and maintenance responsibility shall commence immediately upon the start of construction within its jurisdiction.

Each City shall be responsible for operating the Trail as a public trail facility for a period of at least twenty-five (25) years after the date this Agreement is executed by both parties, unless terminated at an earlier date in accordance with Article XIII of this Agreement.

Each City shall also be responsible for adequately maintaining the Trail and its amenities in accordance with its standard trail maintenance practices.

The Trail shall be used for hike and bike transportation and other similar recreational and pedestrian transportation purposes in accordance with the LPAFA and License Agreement, but shall not be dedicated or designated as a park subject to Texas Gov't Code Ch. 253 or Texas Parks and Wildlife Code Ch. 26, as they may be amended.

### **VIII. TRAIL SYSTEM ACKNOWLEDGEMENT**

Once opened for public use, signs that acknowledge that the Trail is a City of Irving or a City of Grand Prairie facility shall be posted at the Trail's various starting and ending points and at key entrances and shall be maintained by each City as long as the Trail is operated under the terms of this Agreement. The City of Grand Prairie and the City of Irving shall jointly agree on any "Welcome to..." monument signage installed on or near their respective City Limits.

### **IX. AMENDMENTS AND CHANGES IN THE LAW**

This Agreement may be amended; however, no modification, amendment, novation, renewal or other alteration of this Agreement shall be effective unless mutually agreed upon in writing and executed by the parties hereto. Any alteration, addition, or deletion to the terms of this Agreement which are required by changes in federal or State law are automatically incorporated herein without written amendment to this Agreement and shall be effective on the date designated by said law.

### **X. AGENCY AND LIABILITY**

City of Irving and City of Grand Prairie agree that each entity is not an agent of the other entity and that each entity is responsible for its own acts, forbearance, negligence and deeds, and for those of its agents or employees in conjunction with the performance under this Agreement.

Each City agrees to be responsible for any liability or damages each City may suffer as a result of claims, demands, costs or judgments against each City, including workers' compensation claims, arising out of the performance of the work and services under this Agreement, or arising from any accident, injury or damage, whatsoever, to any person or persons, or to the property of any person(s) or corporations in connection with this Agreement and caused by sole negligence of each City, its agents, officers and/or employees.

Each City agrees that such liability or damages as stated above occurring during the performance of this Agreement caused by the joint or comparative negligence of their employees, agents and officers shall be determined in accordance with the comparative responsibility laws of the State of Texas.

Nothing herein shall be deemed in any manner to constitute a waiver of immunity or defense which may be asserted by each City pursuant to law; nor shall this provision be in any manner construed to create a cause of action for the benefit of any person not a party to this Agreement or to create any rights for the benefit of any person not a person to this Agreement.

## **XI. VENUE AND APPLICABLE LAW**

This Agreement is made subject to and shall be construed under and in accordance with the laws of the State of Texas, and the exclusive venue for any legal action between the parties arising from this Agreement shall be in Dallas County, Texas.

## **XII. GOVERNMENTAL IMMUNITY**

The parties expressly agree that no provision of this Agreement is in any way intended to constitute a waiver of any immunities from suit or from liability that the parties have by operation of law.

## **XIII. TERMINATION**

This Agreement may also be terminated before commencement of construction with the mutual written consent of the parties; or by either party providing thirty (30) days prior written notice to the other party or may be terminated during construction by the mutual consent of the parties.

## **XIV. NOTICE**

Any notice required or permitted to be delivered hereunder shall be deemed received when sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the party at the address set forth below, or by hand-delivery, or upon receipt of facsimile transmission thereof:

**Director of Parks & Recreation  
City of Irving  
Parks & Recreation  
825 W. Irving Boulevard  
Irving, TX 75060**

**Director of Parks & Recreation  
City of Grand Prairie  
Parks & Recreation  
326 W. Main Street  
Grand Prairie, TX 75053**

## **XV. SEVERABILITY**

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

## **XVI. PREVIOUS AGREEMENTS**

This Agreement embodies the complete understanding of the parties hereto, superseding all oral or written, previous and contemporary, agreements between the parties relating to the matters in this Agreement, and except as otherwise provided herein, cannot be modified without written agreement of the parties.

## **XVII. COUNTERPARTS**

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

## **XVIII. EFFECTIVE DATE**

This Agreement shall not become effective until executed by the authorized representatives of the City of Irving and the City of Grand Prairie.

**Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2018.**

**FOR THE CITY OF IRVING**

**FOR THE CITY OF GRAND PRAIRIE**

\_\_\_\_\_  
Richard H. Stopfer, Mayor

\_\_\_\_\_  
Tom Hart, City Manager

Attest:

Attest:

\_\_\_\_\_  
Shanae Jennings, City Secretary

\_\_\_\_\_  
Cathy DiMaggio, City Secretary

Approved as to form:

Approved as to form:

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
City Attorney