



**WHEREAS**, the Cities agree that in order to properly connect the new construction with existing trail system, it is necessary to construct a segment of trail within the City of Mesquite.

**NOW THEREFORE**, in exchange for the mutual covenants set forth herein and other valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the Cities agree as follows:

### **Article I Purpose**

The purpose of this Agreement is to set forth the understandings and obligations of the Cities with respect to the construction of improvements to a segment of the Duck Creek multipurpose trail.

### **Article II Definitions**

Except when the context clearly indicates a different meaning, the following words and phrases shall have the following meanings:

“City” shall mean respectively Garland and Mesquite.

“Cities” shall mean Garland and Mesquite collectively.

“Designated Representative” shall mean the person designated by each City to act on its behalf during the term of this Agreement. Each City may from time to time replace the Designated Representative, at which time the City will notify the other City in writing of the newly appointed Designated Representative.

“Garland” shall mean the City of Garland.

“Mesquite” shall mean the City of Mesquite.

“Project” shall collectively mean the design and construction of the improvements to the Trail within the Mesquite city limits.

“Trail” shall mean the 7,240 linear feet of 12-foot wide concrete trail that will be constructed within electric transmission corridors south of IH-30 and will extend from the existing Mesquite Heritage Trail at the city limits of Mesquite towards Ablon Park located in Garland and to the east. A detailed depiction of the Trail is reflected in the **Exhibit A**, which is attached and incorporated hereto.

### **Article III Term**

This Agreement shall become effective as to each Party on the date of execution as indicated on the signature page for each Party and shall continue in force and remain binding on each Party until the Project has been completed and the Cities have substantially fulfilled each and every obligation to one another as described herein.

### **Article IV Project**

**4.1 Preparation of Duck Creek South Extension Trail (Duck Creek Trail Connections) Project Plans and Specifications.** The Cities acknowledge, understand, and agree that prior to the Effective Date, Garland has caused the “Duck Creek South Extension (Duck Creek Trail Connections) Project Plans” and specifications, a copy of which is attached hereto as **Exhibit B** and incorporated hereto, to be prepared by BW2 Engineers, Inc., a professional engineering firm. Garland further agrees to direct its engineer to complete the Duck Creek South Extension (Duck Creek Trail Connections) Project Plans to 100% completion. These Plans and Specifications shall be in conformance with the ordinances and regulations of the City of Mesquite, and approved by the Mesquite City Engineer prior to the commencement of construction activities within the City of Mesquite.

**4.2 Bidding.** Garland shall be responsible for soliciting competitive bids, and awarding a contract for the construction of the Project in accordance with applicable state law, including the costs related to preparation of bid packages and advertising.

**4.3 Construction Costs; Payment.**

- (a) Garland shall be responsible for the payment to contractors for the costs associated with construction of the Project.
- (b) After Garland awards the bid for the Project, if Mesquite determines additional work is required and provides written approval for any change orders related to such additional work, Mesquite shall pay the change order amounts to Garland for the additional work as they become due.
- (c) Any Party paying for the performance of governmental functions or services under this Agreement shall make those payments from current revenues available to the paying party.

**4.4 Acquisition of Easements.** Garland shall obtain, at Garland’s cost, any necessary easements located within Mesquite that are required to complete the Project. Garland shall be named as the Grantee for any perpetual easement located within Mesquite. After completion and acceptance of the Project by Garland, Garland shall assign its interests to any perpetual easement

granted in connection with the Project located within Mesquite to Mesquite. Any and all temporary construction easements shall name Garland as grantee.

**4.5 Right of Entry.** Mesquite hereby grants to Garland, its employees, agents, and contractors, the nonexclusive right and license to enter upon the area of the multipurpose trail segment located along Duck Creek and within Mesquite, as described and depicted in **Exhibit "A"**, to conduct the necessary construction activities related to the Project, as described in **Exhibit "B"**.

**4.6 Ownership and Maintenance of Improvements.** Upon completion of the Project and final acceptance by Garland, ownership of the Trail improvements within the City of Mesquite shall transfer to Mesquite. Following the conveyance of ownership of the Project improvements, unless otherwise stated herein, all repair and maintenance shall be Mesquite's sole responsibility.

**4.7 Contractor Compliance.** Unless otherwise agreed between the Designated Representatives, Garland shall have the responsibility of determining whether the contractor has complied with the provisions in the contract for construction of the Project.

**4.8 Final Acceptance.** Garland shall not accept the portion of the Project within Mesquite until those portions are inspected by Mesquite and authorization to accept is given to Garland by the Mesquite Designated Representative. Authorization to accept shall not be unreasonably withheld or delayed and, in any case, the inspection must occur within 60 days after the written request to inspect and approve is given to Mesquite by Garland.

## **Article V Use and Operation of the Trail**

**5.1 Prohibition/Signs.** Regulations shall be established by the Cities that cars, trucks, and motorcycles are not permitted on the Trail except those vehicles used by Mesquite, Garland, or utility companies (GP&L or Oncor), including any vendors working at the direction of one of the cities, for purposes of construction and maintenance and public safety vehicles including, without limitation, police vehicles, ambulances, fire truck apparatus, and other vehicles used by police and fire personnel. The erection of signs along the Trail other than those required for proper use of the area shall be prohibited.

**5.2 Maintenance and Administration.** Each City will take on the responsibility to maintain, repair and operate the part of the Trail located in its own jurisdiction. These responsibilities expressly include the timely maintenance and repair of any portion of the facility, including the bridge, providing adequate signage, and other actions necessary to comply with the Americans with Disabilities Act and aid the public enjoyment of these resources. Further, such responsibility shall include picking up trash, debris removal, mowing and otherwise keeping the Trail in a clean and sanitary condition, and other such steps as determined by each respective City to prevent the creation of a nuisance or hazard to the public. In the event of natural disasters or storms, both Cities will attempt to re-open the Trail as quickly as possible, consistent with other priorities.

**5.3 Trail Operations.** It is the intent of this Agreement that the Trail shall be open 365 days a year, and that access shall not be restricted. Restricted access is permissible only when in the interest of preserving public health, safety, and welfare.

## **Article VI Miscellaneous**

**6.1 No Waiver of Governmental Immunity; No Third-Party Liability.** No Party to this Agreement intends to waive, relinquish, limit or condition its general governmental or sovereign immunity from liability in any way.

Each Party agrees and acknowledges that it is not an agent, servant, or employee of the other Party and that under this provision each Party is responsible only for its own acts and for those of its agents, servants, independent contractors or employees. Such responsibility includes, but is not limited to any claims or amounts arising or recovered under the "Workers Compensation Law," the Texas Tort Claims Act, Chapter 101, Texas Civil Practice and Remedies Code; or any other applicable laws or regulations, all as time to time may be amended.

This Agreement shall not ever be construed as relieving any third party from any liability against the Parties.

**6.2 Severability.** If a provision contained in this Agreement is held invalid for any reason, the invalidity does not affect other provisions of the Agreement that can be given effect without the invalid provision, and to this end the provisions of this Agreement are severable.

**6.3 Validity and Enforceability.** If any current or future legal limitations affect the validity or enforceability of a provision of this Agreement, then the legal limitations are made a part of this Agreement and shall operate to amend this Agreement to the minimum extent necessary to bring this Agreement into conformity with the requirements of the limitations, and so modified, this Agreement shall continue in full force and effect.

**6.4 Amendment.** This Agreement may be amended only by the mutual written consent of the Cities.

**6.5 Third Parties.** This Agreement is intended to inure only to the benefit of the Parties hereto. This Agreement is not intended to create, nor shall be deemed or construed to create any rights in third parties.

**6.6 Audit.** The Parties may conduct an audit or investigation of any aspect of this Agreement. Each Party must provide the other with access to any information relevant to the investigation or audit. The audit can include, but is not limited to, any contract for construction or maintenance of the Trail authorized by this Agreement or any contract to provide a service to each Party if that service is authorized by this Agreement.

**6.7 Notice.** All notices required under this Agreement between the Cities must be in writing, addressed to the attention of each respective Designated Representative, and shall be delivered in person, or certified mail, return receipt requested to the following respective addresses:

City of Garland	City of Mesquite
Attn: Parks Department	Attn: Director of Public Works
PO Box 469002	PO Box 850137
Garland, TX 75046-9002	Mesquite, TX 75185-0137

With a required copy to:

City Attorney  
 City of Garland  
 200 N. Fifth Street  
 P.O. Box 469002  
 Garland, Texas 75046-9002  
 Phone: (972) 205-2380  
 Fax: (972) 205-2389

City Attorney  
 City of Mesquite  
 1515 N. Galloway Avenue  
 P.O. Box 850137  
 Mesquite, Texas 75149

**6.8 Governing Law.** The validity of this Agreement and any of its terms and provisions as well as the rights and duties of the Cities, shall be governed by the laws of the State of Texas; and venue for any action concerning this Agreement shall be in the State District Court of Dallas County, Texas.

**6.9 Headings.** The headings at the beginning of the various provisions of this Agreement have been included only in order to make it easier to locate the subject covered by each provision and are not to be used in construing this Agreement.

**6.10 Appropriation of Funds.** The Cities shall use best efforts to appropriate sufficient funds to support the obligations under this Agreement. However, in the event that sufficient funds are not appropriated by either City's governing body, and as a result, that City is unable to fulfill its obligations under this Agreement, that party (i) shall promptly notify the other City in writing; and (ii) may terminate this Agreement, effective as of the last day for which sufficient funds have been appropriated.

**6.11 Termination.** Either City may terminate its obligations under this Agreement upon ninety (90) days advance written notice to the other party and subject to the following condition: Following termination of this Agreement, each City is individually responsible for fulfilling any outstanding obligations under this Agreement incurred prior to the effective date of the termination.

**6.12 Entire Agreement.** This Agreement with the attached Exhibits A and B embodies the entire agreement of both Cities, superseding all oral or written previous and contemporary agreements between the Cities relating to matters set forth in this Agreement.

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

**City of Mesquite, Texas**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

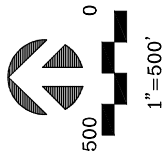
EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

**City of Garland, Texas**

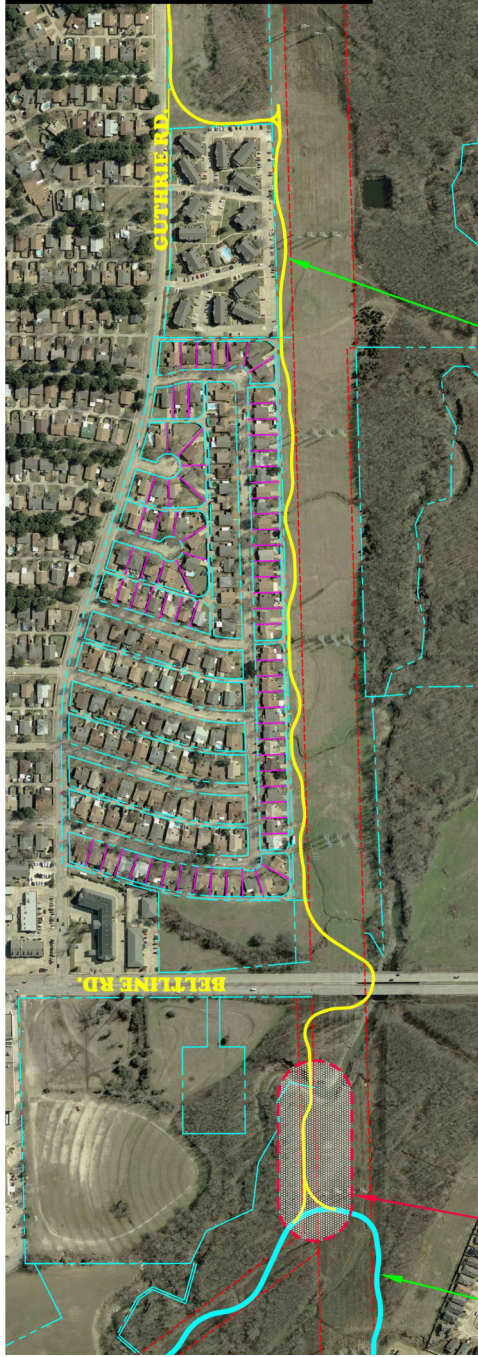
By: \_\_\_\_\_  
Printed Name: Bryan L. Bradford  
Title: City Manager

# **EXHIBIT A**

Detail Description of the Duck Creek South Trail Extension



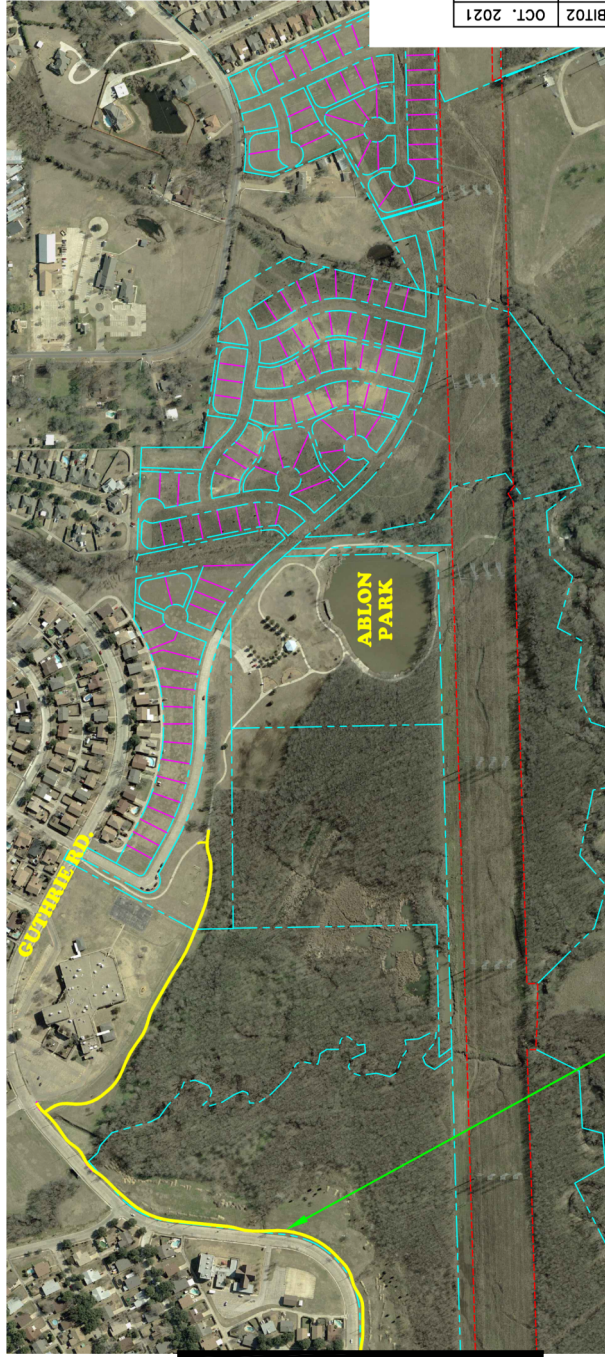
MATCH LINE



PROPOSED 12' TRAIL  
(WITHIN GP&L PROPERTY)

ONLY PORTION OF TRAIL  
WITHIN CITY OF MESQUITE

EXISTING MESQUITE-GARLAND  
TRAIL CONNECTOR



PROPOSED 12' TRAIL

MATCH LINE

**BW2**  
 BW2 ENGINEERS, INC.  
 15103 S. Shiloh Road  
 Suite 500, L.B. 27  
 Garland, Texas 75042  
 (972) 864-8300 (T) (972) 864-8320 (F)  
 Fax: (972) 864-8320  
 Email: BW2@BW2.com

1961-EXHIBIT02  
 DUCK CREEK TRAIL  
 SOUTH EXTENSION

EXHIBIT 'A'

OCT. 2021

# **EXHIBIT B**

**Duck Creek South Trail Extension (Duck Creek Trail Connections)  
Project Exhibit**