



**CITY OF PLANO  
COUNCIL AGENDA ITEM**

<b>CITY SECRETARY'S USE ONLY</b>	
<input type="checkbox"/> Consent	<input type="checkbox"/> Regular <input type="checkbox"/> Statutory
Council Meeting Date:	10/8/12
Department:	Parks and Recreation
Department Head	Amy Fortenberry
Agenda Coordinator (include phone #): <b>Susan Berger (7255)</b>	

**CAPTION**

A Resolution of the City of Plano, Texas, approving the terms and conditions of an Inter Local Cooperation Agreement between the City of Plano, Texas, and the City of Richardson, Texas; authorizing its execution by the City Manager or his authorized designee; and providing an effective date.

**FINANCIAL SUMMARY**

NOT APPLICABLE       OPERATING EXPENSE       REVENUE       CIP

FISCAL YEAR: <b>2012-13</b>	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	<b>0</b>
Encumbered/Expended Amount	0	0	0	<b>0</b>
This Item	0	0	0	<b>0</b>
BALANCE	0	0	0	<b>0</b>

**FUND(S):      GENERAL FUND**

**COMMENTS:** This item approves Plano entering into an Inter Local Cooperation Agreement with the City of Richardson to design and construct a recreational trail together for the use of residents. Plano has sought funding from Collin County for this project, and approval of this item will have no immediate financial impact to the City of Plano.

**STRATEGIC PLAN GOAL:** Working with other area cities to provide services and amenities to Plano residents relates to the City's goal of Partnering for Community Benefit.

**SUMMARY OF ITEM**

The Cities of Plano and Richardson desire to enter into an Agreement for the design and construction of a recreational trail that will serve Plano, Richardson, and Murphy to be constructed in Breckinridge Park in Richardson.

The Richardson City Council authorized, through a Resolution, on September 24 to enter into an Inter Local Cooperation Agreement with the City of Plano.

The trail will provide neighborhood connectivity between Breckinridge Park in Richardson and the Timbers Nature Preserve Park in Murphy. Plano residents in this area do not have access to a neighborhood park. This trail connection will provide these residents with access to parks and provide connectivity between Plano, Richardson, and Murphy. The trail is currently in design.



## CITY OF PLANO COUNCIL AGENDA ITEM

For the section of trail in Breckinridge Park, the City of Richardson will provide the land and an existing trail crossing of Rowlett Creek. The City of Plano will provide for construction of approximately 3,000 linear feet of concrete recreational trail. The cost of this recreational trail will not exceed the estimated cost of constructing the trail in Plano if an alternate route was available. The City of Richardson will maintain the trail.

Plano has applied to the Collin County Parks and Open Space Funding Assistance Program for this project. Funding awards will be made in October 2012.

This trail is identified on the Collin County Regional Trails Master Plan and the City of Plano Park Master Plan.

List of Supporting Documents:

Location Map

Resolution

Inter Local Cooperation Agreement

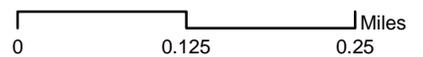
Other Departments, Boards, Commissions or Agencies



# Location Map



Inter Local Agreement Trail



**A Resolution of the City of Plano, Texas, approving the terms and conditions of an Inter Local Cooperation Agreement between the City of Plano, Texas, and the City of Richardson, Texas; authorizing its execution by the City Manager or his authorized designee; and providing an effective date.**

**WHEREAS**, the Cities of Plano and Richardson wish to enter into an Inter Local Cooperation Agreement attached hereto as Exhibit “A” for the design and construction of certain recreational trails that will serve Plano and Richardson; and

**WHEREAS**, Plano has agreed at its sole cost to cause the design and construction of Phase I of the Murphy Trail Connection, to be constructed within Breckinridge Park in Richardson connecting the existing concrete trail in Breckinridge Park to South Murphy Road in Plano, as generally depicted in Exhibit “A” (hereinafter defined as the “Murphy Trail Connection”); and

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

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

**WHEREAS**, Richardson has agreed to grant Plano and its contractors a temporary construction license for Plano to cause the design and construction of Murphy Trail Connection; and

**WHEREAS**, Richardson has agreed to maintain the Murphy Trail Connection portion in Breckinridge Park upon completion;

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

**Section I.** The City Council, after reviewing the terms and conditions of the Inter Local Cooperation Agreement attached hereto as Exhibit “A”, hereby approves the Agreement which render services that are beneficial to the public and serve a valid public purpose.

**Section II.** The City Manager or his authorized designee is hereby authorized to execute such Agreement on behalf of the City of Plano, substantially according to the terms and conditions set forth in the Agreement, and to act in behalf of the City with regard to its terms and conditions.

**Section III.** This Resolution shall become effective from and after its passage.

**DULY PASSED AND APPROVED** this the 8<sup>th</sup> day of October, 2012.

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Phil Dyer, MAYOR

ATTEST:

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Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

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Diane C. Wetherbee, CITY ATTORNEY

STATE OF TEXAS           §  
   §           **Inter Local Cooperation Agreement by and between**  
   §           **the City of Plano and the City of Richardson for**  
   §           **Construction of the Murphy Trail Connection, Phase I**  
 COUNTY OF COLLIN       §

This Inter Local Cooperation Agreement is made by and between the City of Plano, a Texas municipal corporation located in Collin and Denton Counties, Texas (“Plano”), and the City of Richardson, a Texas municipal corporation located in Dallas and Collin Counties, Texas (“Richardson”) (collectively Plano and Richardson, referred to as the “Parties”, or singularly as a “Party”), acting by and through their authorized representatives.

**WITNESSETH:**

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

**WHEREAS**, Plano has agreed at its sole cost to cause the design and construction of Phase I of the Murphy Trail Connection, to be constructed within Breckenridge Park in Richardson (the “Breckenridge Park”), connecting the existing concrete trail in Breckenridge Park to South Murphy Road in Plano, as generally depicted in **Exhibit “A”** (hereinafter defined as the “Murphy Trail Connection”) as set forth herein; and

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

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

**WHEREAS**, Richardson has agreed to grant Plano and its contractors a temporary construction license for Plano to cause the design and construction of Murphy Trail Connection; and

**WHEREAS**, Richardson has agreed to maintain the Murphy Trail Connection portion in Breckenridge Park 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 Murphy 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 Murphy Trail Connection; (ii) all necessary permits for the construction of the Murphy 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 Murphy Trail Connection has been substantially completed in accordance with the Bid Documents; and (ii) Richardson has inspected and accepted the Murphy 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.

“Murphy Trail Connection” or “Project” shall mean the design and construction of Phase I of the Murphy Trail Connection, a concrete multi-use trail to be constructed along the north side of Breckenridge Park from the end of the currently existing concrete trail at the north city limits of Richardson, to South Murphy Road in Plano, as partially depicted on **Exhibit “A”**.

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

“Richardson” shall mean the City of Richardson, 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 Murphy Trail Connection.

### **Article IV Trail Project**

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

4.2 Design. Richardson design standards shall apply to the Project. Plano shall submit the design plans for the Project (the “Design Plans”) to Richardson for review and approval within nine (9) months after the Effective Date. Within fifteen (15) business days after receipt of the Design Plans, Richardson shall approve or disapprove the Design Plans. In the event Richardson disapproves the Design Plans, Plano shall cause the Design Plans to be amended, and re-submit the Design Plans, as amended, to Richardson for review and approval. This process shall continue until the Design Plans are approved or this Agreement is terminated.

4.3 Project Alignment. The alignment of the Murphy Trail Connection shall be determined at the time of approval of the Design Plans.

4.4 Bid Document Review and Approvals. Plano agrees to provide Richardson an opportunity to review and approve the final Bid Documents prior to advertising for competitive bids for construction. Within fifteen (15) business days after receipt of the proposed Bid Documents prepared by Plano, Richardson shall review and provide comments or disapprove the Bid Documents. In the event Richardson rejects the Bid Documents, Plano shall amend and re-submit the Bid Documents to Richardson for review and approval. This process shall continue until the Bid Documents are approved or this Agreement is terminated. The Bid Documents as approved by the Parties shall constitute the “Approved Plans”.

4.5 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.

4.6 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 Breckinridge Park 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.

#### 4.7 Construction Inspection and Acceptance.

(a) Plano agrees, at its sole cost and expense, to provide construction inspection services for the construction of the Project. Richardson may at its sole cost provide for construction inspection services. Plano and Richardson 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) Richardson does hereby grant to Plano, its employees, contractors and agents, permission to enter upon Richardson 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 Richardson'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 Richardson and warrant the construction of the Project for a period of one year following Completion of Construction of the Project.

4.8 Project Maintenance. Richardson agrees, upon Completion of Construction, to maintain and repair the Project within Breckenridge Park. The provisions of this section shall survive termination.

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

4.10 Bonds. Plano shall cause its contractors and subcontractors to provide such performance bonds and payment bonds in forms as are reasonably satisfactory to Richardson for the construction of the Project to ensure completion of the Project and payment of the contractors and subcontractors performing the work.

### **Article V Indemnification/Immunity/Insurance**

5.1 Each Party agrees to waive all claims against, to release, and to hold harmless, the other Party and its respective officials, officers, agents, employees, in both their public and private capacities, from any and all liability, claims, suits, demands, losses, damages, attorney's fees, including all expenses of litigation or settlement, or causes of action which may arise by reason or injury to or death of any person or for loss of, damage to, or loss of use of any property arising out of or in connection with this Agreement. In the event that a claim is filed, each Party shall be responsible for its proportionate share of liability.

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 Plano shall name Richardson, its officers, agents and employees, as an additional insured on any general liability policy carried that would cover the Project and other construction activities described herein. Plano's Workers Compensation policy shall provide a waiver of subrogation in favor of the City of Richardson, and its respective employees, officers, and agents. Richardson acknowledges and agrees that Plano may satisfy the requirement to provide general liability insurance through self-insurance provided such self insurance extends to and covers Richardson, its officers, agents and employees

5.4 Plano shall cause its contractors working on the Project to provide the following insurance coverages with companies admitted to do business in the State of Texas and having an A.M. Best Rating of A-:VII or better, and in amounts (unless otherwise specified), as Richardson may require:

Workers' Compensation Insurance with statutory limits, and Employer's Liability Insurance with limits of not less than \$500,000:

Employers Liability - Each Accident	\$500,000
Employers Liability - Each Employee	\$500,000
Employers Liability - Policy Limit	\$500,000

Policies must include (a) Other States Endorsement to include TEXAS if business is domiciled outside the State of Texas, and (b) a waiver of all rights of subrogation and other rights in favor of the City of Richardson.

Commercial General Liability Insurance with limits of not less than:

Each Occurrence Limit	\$1,000,000
Damage to Rented Premises	\$ 100,000
Medical Expenses (any one person)	\$ 10,000
Personal & Advertising Injury	\$1,000,000
General Aggregate	\$2,000,000
Products - Completed Operations Aggregate	\$2,000,000

Policy shall include independent contractor's liability covering, but not limited to, the liability assumed under the indemnification provision of this contract, fully insuring contractor's (or subcontractor's) liability for bodily injury (including death) and property damage. Policy shall be

endorsed to name Richardson as an additional insured along with a waiver of subrogation and other rights in favor of Richardson.

Business Auto Liability Insurance covering all owned, non-owned or hired automobiles, with coverage for at least \$1,000,000 Combined Single Limit Bodily Injury and Property Damage. Policy shall be endorsed to name Richardson as an additional insured along with a waiver of subrogation and other rights in favor of Richardson.

5.5 Plano and/or its contractors shall provide to Richardson copies of policies, endorsements and certificate(s) of insurance evidencing the aforementioned insurance coverage prior to commencement of any work related to the Projects contemplated herein.

## **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 Richardson, to

Attn: City Manager  
City of Richardson  
411 W. Arapaho Road  
Richardson, Texas 75080

With a copy to:

Peter G. Smith  
Nichols, Jackson, Dillard, Hager & Smith, LLP  
Suite 1800, Lincoln Plaza  
500 N. Akard Street  
Dallas, Texas 75201

If intended for Plano, to:

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

With a copy to:

Diane C. Wetherbee  
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.

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 Richardson 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 \_\_\_\_\_, 2012.

**CITY OF RICHARDSON, TEXAS**

By: \_\_\_\_\_  
Dan Johnson, City Manager

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Peter G. Smith, City Attorney

**EXECUTED** on this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

**CITY OF PLANO, TEXAS**

By: \_\_\_\_\_  
Bruce D. Glasscock, City Manager

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Diane C. Wetherbee, City Attorney



Exhibit A – ILA for Phase I of Murphy Trail Connection  
 City of Richardson and City of Plano (TM 56975)