



RESOLUTION NO. 2025-022

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS; AUTHORIZING EXECUTION OF THE FIRST AMENDMENT TO MULTIPLE USE AGREEMENT WITH THE NORTH TEXAS TOLLWAY AUTHORITY (“NTTA”); TO CONSTRUCT UPGRADES TO THE CONNECTION FROM THE WESTSIDE ART TRAIL TO THE JOHN F. BURKE NATURE PRESERVE; AUTHORIZING THE CITY MANAGER TO EXECUTE THE APPROPRIATE AGREEMENTS AND PROVIDE FOR PAYMENT ON THE CITY’S BEHALF; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Farmers Branch, Texas previously authorized the execution of an Advance Funding Agreement (AFA) with the Texas Department of Transportation (TxDOT) by Resolution 2025-28 for the design, construction, and installation of a guardrail along the President George Bush Turnpike ramp, a crosswalk landing, and a signal pole (“Trail Project”) at the intersection of Valley View Lane and a PGBT off-ramp/Mercer Parkway which will connect the Westside Art Trail to the John F. Burke Nature Preserve; and; and

WHEREAS, the North Texas Tollway Authority (“NTTA”) owns a portion of the property on which City desires to construct, operate, and maintain the Trail Project, and the City and NTTA wish to amend the Multiple Use Agreement (“Original Agreement”) between the City and NTTA which was executed on October 27, 2008; and

WHEREAS, the City Council of the City of Farmers Branch, Texas, upon full review and consideration of the proposed Trail Project, finds it in the best interest of the City to authorize the execution of the First Amended Multiple Use Agreement with the NTTA as attached as **Exhibit A**.

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

SECTION 1. The City Manager is hereby authorized to execute the First Amendment to Multiple Use Agreement, 2600-PGB-04-IL-PM, attached hereto as **Exhibit A**.

SECTION 2. This resolution shall become effective immediately from and after its passage.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, THIS 15th DAY OF JULY, 2025.

ATTEST:

APPROVED:

Erin Flores, City Secretary

Terry Lynne, Mayor

APPROVED AS TO FORM:

Nicole Corr, City Attorney
[sr_06.03.2025]

EXHIBIT A

FIRST AMENDMENT TO MULTIPLE USE AGREEMENT 2600-PGB-04-IL-PM

This **First Amendment to Multiple Use Agreement** ("**First Amendment**") is entered between the **NORTH TEXAS TOLLWAY AUTHORITY**, a regional tollway authority and a political subdivision of the State of Texas ("**NTTA**"), and the **CITY OF FARMERS BRANCH, TEXAS**, a home-rule municipality ("**City**"), and on the terms and conditions set forth herein, as of the Effective Date (as defined on the signature page of this First Amendment). NTТА and City are sometimes referred to collectively as the "**parties**" or individually as a "**party**."

RECITALS

WHEREAS, City and NTТА previously entered into a Multiple Use Agreement, ("**Original Agreement**") on October 27, 2008, to permit City's construction, maintenance and operation of a guardrail along the PGBT ramp, a public parking facility, and a trailhead on right-of-way owned by NTТА and used as NTТА's President George Bush Turnpike ("**PGBT**"), in connection with the City's John F. Burke Nature Preserve; and

WHEREAS, City has been presented with an Advance Funding Agreement from the Texas Department of Transportation for the design, construction, and installation of a guardrail along the PGBT ramp, a crosswalk landing, and a signal pole ("**Trail Project**") at the intersection of Valley View Lane and a PGBT off-ramp/Mercer Parkway which will connect the Westside Art Trail to the John F. Burke Nature Preserve; and

WHEREAS, NTТА owns a portion of the property on which City desires to construct, operate, and maintain the Trail Project, said portion property being depicted in **Exhibit A-1**, attached hereto and incorporated herein (the "**NTТА ROW**"); and

WHEREAS, City desires to enter onto and use the NTТА ROW to construct, repair, and maintain the Trail Project, together with all incidental improvements and all necessary appurtenances thereto, as set forth in the plans and specifications approved by NTТА as hereinafter set forth; and

WHEREAS, NTТА desires to grant City a non-exclusive right to use the NTТА ROW for the Trail Project under the terms and conditions set forth in this First Amendment and the Original Agreement; and

WHEREAS, the parties have investigated and determined that it is their mutual best interest to enter into this First Amendment for the provision of governmental functions and services as described herein; and

WHEREAS, City and NTТА now desire to amend the Original Agreement in the manner provided in this First Amendment, and it is understood by both Parties that this First Amendment includes additional rights and responsibilities with regards to the Trail Project and the remainder of

the Original Agreement remains in full effect. The Original Agreement, as amended by this First Amendment, shall from the Effective Date constitute and be referred to herein as the “Agreement.” A defined term used in the Original Agreement that is not defined in this First Amendment has the meaning given to that term in the Original Agreement.

AMENDMENTS

NOW, THEREFORE, in consideration of the covenants and conditions contained in this First Amendment, NTTA and City agree to the additional terms as set forth herein:

FIRST AMENDMENT ARTICLE 1 – RIGHT TO USE

1.1 **Grant of Right to Use.** NTTA hereby grants City a non-exclusive right to use the NTTA ROW to construct, operate, repair, maintain, and permit the public to use the NTTA ROW for the Trail Project at City’s sole cost and expense under the terms and conditions set forth in this First Amendment (the “Permitted Uses”) during the Term of the Agreement and in accordance with the terms and conditions of the Agreement. City’s right to enter on and use the NTTA ROW shall be limited solely to the Permitted Uses as set forth in this First Amendment and none other. The Trail Project shall constitute a portion of the Facility, as defined in the Original Agreement.

1.2 **Non-Exclusive Right to Use.** The right to use the NTTA ROW granted in Section 1.1 above is non-exclusive and is subject to any and all rights and interests of third parties affecting the NTTA ROW or the Permitted Uses, including, but not limited to, rights under: (a) any utility, drainage, communication or other public easement located in, on or under the NTTA; and (b) any lease, license or other property interest in the NTTA ROW as of the Effective Date of this First Amendment. Notwithstanding anything to the contrary herein, during the Term, NTTA shall not convey any other license, easement, or conflicting rights within the NTTA ROW which materially and unreasonably interfere with City’s rights granted herein; provided, however, City expressly acknowledges and agrees that all rights granted to City under the Agreement are inferior and subordinate to NTTA’s rights to use of the NTTA ROW as NTTA in its sole and absolute discretion determines to be necessary, useful, or advisable or to carry out any other powers granted to NTTA under law. If NTTA determines that the removal of or modification to all or any portion of the Trail Project must be made to allow NTTA to carry out any of the foregoing rights, City agrees to complete such removal or modification as required by NTTA at City’s sole expense. NTTA agrees to provide City with as much advance notice of a need to remove or modify the Trail Project as is reasonably feasible under the circumstances, and NTTA agrees to consult and cooperate with City to attempt to minimize the adverse effect to the Trail Project.

1.3 **Governmental Approvals.** City, at its sole cost and expense, shall be responsible for and shall obtain any and all licenses, permits or other approvals from any and all governmental agencies, federal, state or local, required to carry on any of the Permitted Uses.

FIRST AMENDMENT ARTICLE 2 – CONSTRUCTION AND MAINTENANCE

2.1 **Design and Construction.** City shall design, at City's sole cost and expense, the Trail Project. Prior to commencing construction of the Trail Project, City shall submit to NTTA's Project Delivery Department the designs, plans, and specifications for the Trail Project (collectively, "Plans"). Within ten business days after each submittal, NTTA shall clearly specify any required changes to the Plans in a written notice to City. NTTA agrees to consult with City regarding NTTA's required changes. Thereafter, City shall prepare revised plans and specifications ("Revised Plans") incorporating NTTA's required changes. If NTTA determines that the Revised Plans do not implement and incorporate NTTA's required revisions or if NTTA reasonably determines that additional revisions are required to ensure the safe and efficient operation of the Trail Project and/or the PGBT, NTTA shall notify City in writing, specifying the deficiencies in the Revised Plans, and City shall revise and provide a new set of Revised Plans to NTTA for review. NTTA agrees to consult with City regarding NTTA's required changes to each set of Revised Plans submitted to NTTA. The foregoing process shall continue until NTTA has approved the Revised Plans. In no event shall City be authorized to construct the Trail Project until Revised Plans are approved by NTTA, after which City shall be authorized to construct the Trail Project, upon complying with all other NTTA permit requirements, at its sole cost and expense in accordance with the final NTTA-approved Plans or Revised Plans (the "Approved Plans").

2.2 **Maintenance.** Maintenance and operation of the Trail Project shall be entirely the responsibility of City and at City's sole cost and expense. Upon prior written notice to NTTA, City may retain a qualified contractor(s) to perform the operation or maintenance of the Trail Project. In addition to maintenance obligations regarding the Facility under the Original Agreement, City will ensure that the guardrail along the PGBT ramp and crossing signal remain in good working order and repair during the Term. NTTA will grant City access rights, on the same terms and conditions as are set forth in this First Amendment regarding the use of the NTTA ROW, across NTTA's property to provide access to the NTTA ROW for City to carry out routine maintenance of the Trail Project. NTTA will approve the areas subject to these access rights during its approval of the Approved Plans for the Trail Project. Upon City's written request, NTTA will grant City temporary access rights, on the same terms and conditions as are set forth in this First Amendment regarding the use of the NTTA ROW, across NTTA's property to provide access to the NTTA ROW for City to carry out non-routine maintenance of the Trail Project. City acknowledges and agrees that its obligations under this Section constitute material consideration for NTTA's First Amendment to grant the use rights and enter into the other agreements set forth in this First Amendment. City shall contact NTTA's Project Delivery Department to gain approval to access the NTTA ROW where access is necessary for any maintenance or repairs outside of routine maintenance or if heavy machinery is required to perform the maintenance obligations. For the purpose of this Section, "routine maintenance" means mowing, trimming, trash pickup, and irrigation maintenance. City has no obligation to maintain any other property of NTTA, including but not limited to any irrigation systems, under this Agreement, but City shall be liable for any damage to NTTA property as set forth in the succeeding paragraph.

During and after completion of construction of the Trail Project, City shall not damage any existing improvements, equipment, and vegetation on or about the NTTA ROW except as expressly specified in the Approved Plans, and City shall not damage any other NTTA property used in

connection with the operation or maintenance of the NTTA ROW. City shall be wholly responsible for maintaining the Trail Project in good and safe condition and repair on the NTTA ROW during the Term. Without “waiver of” or “waiving” any governmental immunity to which it is entitled with respect to claims of third parties, City shall repair damages to the NTTA ROW and to any NTTA property caused by City’s use of the NTTA ROW or City’s activities under the Agreement (“City Damages”); provided, however, that City Damages shall not include damage to the NTTA ROW to the extent caused by NTTA or its employees or contractors acting in such capacities. All repairs of City Damages shall be made at City’s sole cost and expense. City acknowledges and agrees that its obligations under this Section 2.2 constitute material consideration for NTTA’s agreement to grant the use rights and enter into the other agreements set forth in this First Amendment.

2.3 **No Alterations.** City shall not make, nor allow to be made, any alterations of any kind to the NTTA ROW, except as provided herein and as set forth in the Agreement or as otherwise approved in writing by NTTA. City shall not damage in any manner the NTTA ROW, except as provided herein or otherwise approved in writing by NTTA.

2.4 **City Ownership.** City shall retain sole ownership of all alterations, modifications, improvements, and equipment installed and constructed as a part of the Trail Project on the NTTA ROW. Nothing in this First Amendment shall be construed to create a conveyance of any property rights other than the right of City to construct, repair, and maintain the Trail Project on the NTTA ROW.

IN WITNESS WHEREOF, the parties have executed this First Amendment and caused this First Amendment to be effective when all the parties have signed it. The date this First Amendment is signed by the last party to sign it (as indicated by the date associated with that party’s signature below) will be deemed the effective date of this First Amendment (“Effective Date”).

CITY OF FARMERS BRANCH, TEXAS,
a Texas home-rule municipality

By: _____

Date: _____

NORTH TEXAS TOLLWAY AUTHORITY,
a regional tollway authority

By: _____

Date: _____

[illegible]