

NEIGHBORHOOD VITALITY PARTICIPATION AGREEMENT FOR PROJECTS WITH PLAY AND/OR FITNESS EQUIPMENT

This Neighborhood Vitality Participation Agreement ("Agreement") is made by and between the City of Garland, Texas, a home-rule municipality (the "City") and Fall Creek Estates HOA, including its successors and assigns, ("Applicant") located at or near Ravine Crossing Dr. and Overlook Ln., Garland, Texas (collectively, the "Parties").

WHEREAS, the City has agreed to participate in the expenses of a project to be undertaken by Applicant whereby Applicant will construct, place and maintain certain improvements (the "Project") at or near Ravine Crossing Dr. and Overlook Ln. in the Fall Creek Estates HOA in Garland, Texas ("Property") for the benefit of the citizens of Garland, as the Property and the Project are more particularly described in Exhibit "A", attached hereto and incorporated herein by reference; and

WHEREAS, Applicant has agreed to undertake and diligently pursue the construction of the Project to full and satisfactory completion, in full compliance with all approved plans, specifications, permits, ordinances, rules, and regulations; and

WHEREAS, it is the intention of the City to assist and financially participate in the Project by reimbursing Applicant for a portion of the allowed and approved Project costs;

NOW THEREFORE, in consideration of the following mutual covenants and promises, the City and Applicant agree as follows:

Section 1. Administration and Construction of the Project.

(A) Applicant shall prepare and submit to the City such plans, specifications, reports, and studies (the "Plans") describing the Project as the City may reasonably require. At a minimum, the Plans shall adequately describe the Project, and all components thereof, in a manner that will provide the City with a means of verifying that the work described in the Project application and the work as finally approved for the Project has, upon completion, actually been performed and completed satisfactorily and in accordance with the Project application and the Plans. Applicant acknowledges that the preparation of such Plans may necessitate the retention of appropriate professionals including, without limitation, architects and engineers. Applicant shall obtain all necessary City, State, and Federal permits.

(B) If required by the City, Applicant shall attend a pre-submittal meeting. Applicant shall prepare bid specifications for the construction of the Project and the solicitation of such bids or proposals from potential contractors. Applicant shall evaluate those bids or proposals and shall award a contract for the work only to the lowest responsible or best-value bidder for construction of the Project. Applicant shall provide the City with true and complete copies of all contracts for the Project. During the course of constructing the Project, Applicant shall provide oversight and management of the Project in accordance with the construction contract, the Plans, and this Agreement. Applicant shall coordinate with appropriate City personnel regarding the performance, inspection, and completion of the Work, and shall provide such information to the

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City as it may reasonably request regarding completion of the Project.

(C) Applicant shall review and approve or disapprove all payment requests submitted by the contractor(s) for the Project, shall promptly pay all approved payment requests, and shall provide copies of the same to the City. Upon completion of the Project, Applicant shall certify to the City that the Project has been completed in accordance with the Plans, shall provide the City with copies of all invoices, payment applications, and other proof of Project expenses as the City may reasonably require.


(D) Parties acknowledge that the Project involves using public funds for the construction of permanent improvements to the Applicant's private property. As a part of the consideration for this Agreement, the Applicant shall dedicate a permanent public easement to the City granting the public access to, on, over, and upon the Property for the purpose of use of the Property by the public for ingress, egress, maintenance, and recreational purposes between the hours of 6:00 a.m. and 10:00 p.m. ("Public Easement").

(E) The terms and conditions of this Section 1 shall survive Closing.

F) The Applicant must begin implementation of the Project within 12 months of City Council approval. Requests for time extensions must be submitted to the City in writing.


Section 2. Payment of Project Costs.

(A) At the completion of the Project, Applicant shall submit proof acceptable to the City that the Applicant's share of Project expenses has been paid including: (i) an "all bills paid" affidavit from the contractor(s) who or which provided the work for the Project; and (ii) lien releases from all contractors, subcontractors, and vendors for the Project.

 (B) The maximum amount of Project costs that the City will reimburse the Applicant under this Agreement is **\$75,000.** In no event shall the reimbursement exceed the actual, approved costs for the Project even if the final cost of the Project exceeds the cost estimated in the Project application. If actual costs are less than those estimated in the Project application, the reimbursement shall be equitably reduced on a percentage basis to reflect the cost savings.

(C) Unless approved in advance as part of the Project application, Applicant shall not be entitled to any "draw" payments during the course of Project construction and the City shall make only one reimbursement payment of the City's share of Project costs, at the completion of Project construction ("Closing"). Notwithstanding any provision contained herein to the contrary, the City's reimbursement of Project costs shall not become due unless the Applicant (1) has finally completed the construction of the Project in accordance with the Plans, which shall be confirmed by the City in a post-construction review, (2) is not in breach of any provision of this Agreement, (3) has produced written certification from an insurance carrier of the liability insurance policy required by below Section 4, and (4) has dedicated and conveyed the Public Easement to the City in a form provided by the City.

Section 3. Project Records. Applicant shall keep true, complete and accurate books and




records of all costs for which it seeks reimbursement from the City under this Agreement. The City shall have the right, upon reasonable notice and during business hours, to audit those books and records and to obtain, at the expense of the City, copies of those books and records.

Section 4. Maintenance; Indemnity; Liability Insurance.

(A) After Closing, Applicant shall keep the Property and the Project, including any personal property or equipment related thereto, in good repair and in a clean, safe, and healthy condition. The Applicant shall conduct annual inspections of the Property and shall be responsible for all maintenance of the Property and the Project, including any personal property or equipment related thereto, and shall cause repairs and maintenance to be performed in a timely fashion.

(B) After Closing, in the event that the City reasonably determines that the Project, or any portion thereof, needs maintenance, repair, removal, or reconstruction, the City shall send written notice to the Applicant describing any condition that the City, in its sole discretion, reasonably determines to be unfit, in bad repair, unsafe, substandard, or a public nuisance. The Applicant shall have 30 days from the time the City sends notice to complete any repairs or reconstruction described in the City's written notice. In the event that the Applicant does not complete the repairs within 30 days, the City, at its sole discretion, shall have the right, but not required, to access the Property to maintain, repair, rebuild, remove, or reconstruct the Project, or portion thereof, at the Applicant's sole cost and expense, which among any other legal remedy available to the City, may be enforced through a lien filed by the City against the Property.

(C) Applicant hereby indemnifies, releases, discharges, and agrees to hold harmless the City of Garland, Texas, and all of its present, future and former agents, employees, officials, successors, assigns, attorneys, and representatives in their official, individual and representative capacities, (collectively referred to herein as the "Released Parties") from any and all claims, demands, causes of action, judgments, liens and expenses (including attorney's fees, whether common law or statutory), costs and damages (whether common law or statutory, whether actual, punitive, consequential or incidental) of any conceivable character, due to or arising from injuries to persons (including death) or to property (both real and personal) created by, arising from or in any manner relating to: (i) the Project; (ii) to any approval, permission, inspection, or review provided by any Released Party; or (iii) the conditions and circumstances that necessitated the Project. The foregoing release expressly includes any form of liability including strict liability, liability arising under the constitutions of the United States and Texas, and those caused by the negligence or other fault of any Released Party. This Release is intended to cover and release all possible claims and damages which Applicant, any other third-party or successor in title, may have at the present, at any time in the past, or may possess at any time in the future against any Released Party to the extent those claims relate to the Project or the conditions and circumstances that created, led to or necessitated the Project, related to the condition, maintenance, or use of any personal property, fixtures, or equipment related to the Project, and regardless of whether those claims and damages are fully known or appreciated at this time.



(D) Applicant shall procure and maintain, at all times, a commercial or general liability insurance policy in the minimum amount of **\$1,000,000** on the Property, including any personal property or equipment associated with the Project. Upon written request from the City, Applicant shall produce written certification of the aforementioned insurance requirements from the insurance carrier to the City within 5 working days of the City requesting proof of liability insurance. *

(E) The terms and provisions of this Section 4 shall survive Closing.

Section 5. Notices. Any notice required or desired to be given from one party to the other party to this Agreement shall be in writing and shall be given and shall be deemed to have been served and received (whether actually received or not) if (1) delivered in person to the address set forth below; (ii) deposited in an official depository under the regular care and custody of the United States Postal Service located within the confines of the United States of America and sent by certified mail, return receipt requested, and addressed to such party at the address hereinafter specified; or (iii) delivered to such party by courier receipted delivery. Either party may designate another address within the confines of the continental United States of America for notice, but until written notice of such change is actually received by the other party, the last address of such party designated for notice shall remain such party's address for notice.

Section 6. No Assignment. Neither party shall have the right to assign that party's interest in this Agreement without the prior written consent of the other party.

Section 7. Severability. If any term or provision of this Agreement is held to be illegal, invalid or unenforceable, the legality, validity or enforceability of the remaining terms or provisions of this Agreement shall not be affected thereby, and in lieu of each such illegal, invalid or unenforceable term or provision, there shall be added automatically to this Agreement a legal, valid or enforceable term or provision as similar as possible to the term or provision declared illegal, invalid or unenforceable. Provided, however, that if the illegality, invalidity or unenforceability of any term or terms renders the basic purposes of this Agreement illegal, invalid or unenforceable or otherwise materially and adversely affects the utility or financial parameters of this Agreement, then either the City or Applicant may, upon written notice to the other, terminate this Agreement and the parties agree to enter into good faith negotiations to replace this Agreement with a contract as similar to the terms and conditions of this Agreement as legally permissible.

Section 8. Waiver. Either City or Applicant shall have the right to waive any requirement contained in this Agreement, which is intended for the waiving party's benefit, but, except as otherwise provided herein, such waiver shall be effective only if in writing executed by the party for whose benefit such requirement is intended. No waiver of any breach or violation of any term of this Agreement shall be deemed or construed to constitute a waiver of any other breach or violation, whether concurrent or subsequent, and whether of the same or of a different type of breach or violation.

Section 9. Governing Law; Venue. This Agreement and all of the transactions contemplated herein shall be governed by and construed in accordance with the laws of the State of Texas. The provisions and obligations of this Agreement are performable in Dallas County, Texas such that

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exclusive venue for any action arising out of this Agreement shall be in Dallas County, Texas.

Section 10. Paragraph Headings; Construction. The paragraph headings contained in this Agreement are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraphs hereof. Both parties have participated in the negotiation and preparation of this Agreement and this Agreement shall not be construed either more or less strongly against or for either party.

Section 11. Binding Effect. Except as limited herein, the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, devisees, personal and legal representatives, successors and assigns.

Section 12. Gender. Within this Agreement, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, unless the context otherwise requires.

Section 13. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

Section 14. Exhibits. All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

Section 15. Entire Agreement. It is understood and agreed that this Agreement contains the entire agreement between the parties and supersedes any and all prior agreements, arrangements or understandings between the parties relating to the subject matter. No oral understandings, statements, promises or inducements contrary to the terms of this Agreement exist. This Agreement cannot be changed or terminated orally and no written modification of this Agreement shall be effective unless executed by both parties.

Section 16. Relationship of Parties; No Third-Party Beneficiaries. Nothing contained in this Agreement shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent or of partnership or of joint venture or of any association whatsoever between the parties, it being expressly understood and agreed that no provision contained in this Agreement nor any act or acts of the parties hereto shall be deemed to create any relationship between the parties other than the relationship of independent parties contracting with each other solely for the purpose of effecting the provisions of this Agreement. Except for the provisions of this Agreement relating to the release of claims against employees, agents and representatives of the City, there are no third-party beneficiaries to this Agreement and no third-party beneficiaries are intended by implication or otherwise.

Section 17. No Waiver of Immunity or Defense. Applicant acknowledges the City makes this Agreement in its governmental capacity. Neither party, by execution of this Agreement, waives nor shall be deemed to have waived, any immunity of defense that would otherwise be available to it including, without limitation, immunity from liability and suit for damages to one another or to any third-party except as otherwise provided by law. Applicant acknowledges that the City, in

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entering into this Agreement and participating in the Project, is acting in its governmental capacity.

Section 18. Dispute Resolution. In accordance with the provisions of Subchapter I, Chapter 271, TEX. LOCAL GOV'T CODE, the parties agree that, prior to instituting any lawsuit or other proceeding arising from a dispute under this Agreement, the parties will first attempt to resolve the dispute by taking the following steps: (1) A written notice substantially describing the nature of the dispute shall be delivered by the dissatisfied party to the other party, which notice shall request a written response to be delivered to the dissatisfied party not less than 5 days after receipt of the notice of dispute. (2) If the response does not reasonably resolve the dispute, in the opinion of the dissatisfied party, the dissatisfied party shall give notice to that effect to the other party whereupon each party shall appoint a person having authority over the activities of the respective parties who shall promptly meet, in person, in an effort to resolve the dispute. (3) If those persons cannot or do not resolve the dispute, then the parties shall each appoint a person from the highest tier of managerial responsibility within each respective party, who shall then promptly meet, in person, in an effort to resolve the dispute.

EXECUTED this 19th day of October, 2016

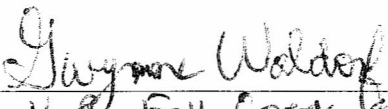
CITY OF GARLAND, TEXAS:

By: 
Title: Senior Neighborhood Planner

ADDRESS FOR NOTICE:

City of Garland
200 North Fifth Street
P.O. Box 469002
Garland, Texas 75046-9002

APPLICANT:

By: 
Title: V.P. Fall Creek Estates HOA

ADDRESS FOR NOTICE:

P.O. Box 460057
Garland, TX 75046-0057

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EXHIBIT "A"

NEIGHBORHOOD VITALITY MATCHING GRANT
PROJECT SUMMARY

Neighborhood Association: Fall Creek Estates HOA

Project Name: Pavilion, Walking Trail, Exercise Stations, Creek Beautification/Erosion Control, Benches, Rainwater Harvesting Stations for Irrigation

Project Location: Pleasant Valley, Autumn Trail, Mossy Glen Ct., Harvest Run

Total Project Cost:	\$ 100,000
Requesting Amount:	\$ 75,000
Neighborhood Match:	\$ 25,000
Match %:	25%

Project Summary:

- Install a multi-purpose pavilion at Overlook Ln. and Ravine Crossing Dr.
- Extend walking path around the creek with decomposed granite.
- Install 4 exercise stations along the walking path.
- Install concrete benches.
- Install rain water harvesting stations for irrigation.
- Clear out brush around creek and install rip rap rock to help prevent erosion and beautify the area along walking path.

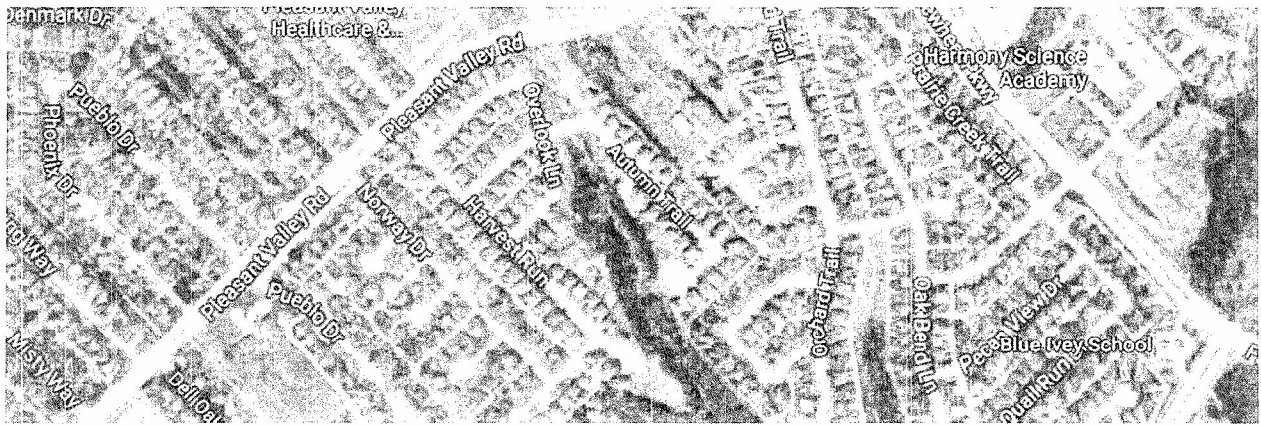
Project Impact:

- Fall Creek Estates and Garland residents will become healthier and more productive in the community through exercise, walking, and neighborhood exercise opportunities. Residents can enjoy the enhanced beauty of the greenbelt and attend community events in the new pavilion.

Staff Comments:

- The neighborhood group plans to implement this project in phases over the course of 5 years and they have requested the maximum allowed amount for a 5 year period with this project.





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