

THE STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

**AGREEMENT FOR INSTALLATION AND MAINTENANCE OF
DONATED TREES WITHIN HAWKS LANDING SUBDIVISION**

This Agreement (the “Agreement”), is made and entered into, by and between Fort Bend County, Texas (the “County”), a body corporate and politic, acting by and through its Commissioners Court and Hawks Landing Homeowners Association, Inc. (the “Association”), a non-profit corporation organized under the laws of the State of Texas. The County and the Association may be referred to collectively herein as the “Parties.”

RECITALS:

WHEREAS, the Association is a Texas non-profit corporation created to, among other things, maintain common areas and provide certain services for the benefit of the residents of the Hawks Landing Subdivision (“Subdivision”); and

WHEREAS, the Association requested the installation of certain oak trees which were donated to the County for public use (“Trees”), in an effort to provide aesthetic enhancements to the public right of way located within the Subdivision; and

WHEREAS, the County is a body corporate and politic under the laws of the State of Texas with authority to maintain public right of way; and

WHEREAS, the Association recognizes the County is not obligated to install Trees within its public right of way, and is therefore willing to fund all maintenance costs associated with having the County install the Trees within the public right of way at certain locations within the Subdivision; and

WHEREAS, the Association desires that the County delivers and to installs up to forty (40) Trees upon the terms and conditions herein, it being understood that the County desires that each segment of public right of way where the Trees will be installed under this Agreement will be irrigated and maintained as proposed by the Association; and

WHEREAS, the County and the Association believe it is in their best interests to enter into this Agreement to install and maintain the Trees to provide aesthetic enhancements to the public right of way within the Subdivision.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth below, the Parties agree as follows:

SECTION 1
PURPOSE

The purpose of this Agreement is to outline the obligations related to the installation and maintenance of donated Trees within public right of way within the Subdivision.

SECTION 2
OBLIGATIONS

2.1 The County agrees to deliver and install the Trees within the public right of way at locations within the Subdivision at its discretion, upon consultation with the Association. The Trees shall be delivered with their roots contained in a burlap "ball" and the County will excavate holes for, and plant such Trees at designated locations after consultation with the Association.

2.2 Upon the completion of the installation of the Trees, the Association shall be responsible for all costs to maintain the Trees in a proper manner, including costs for the installation and operation of irrigation lines to serve the Trees, at its sole cost and expense, in accordance with all laws, rules and regulations applicable for maintenance within public right of way, for as long as the Trees remain in place within the Subdivision. Such maintenance responsibilities shall include but are not limited to the costs of repair, replacement, relocation and other modifications, as needed.

SECTION 3
TERM

This Agreement shall be in effect from the date of execution of the last party hereto and shall continue in full force and effect until completion of the installation of the Trees.

SECTION 4
INSURANCE AND LIABILITY

4.1 Liability Insurance. At all times, the Association will provide and keep in force liability insurance covering the Association for liability for property damage and personal injury. This insurance is to be carried by one or more insurance companies duly authorized or admitted to transact business in Texas. The insurance provided under this section must be in the amount of not less than \$100,000.00 for property damage and not less than \$100,000.00 for one person and \$300,000.00 for one accident for personal injury. This insurance will protect the Association against liability to any employees or servants of the Association, and to any other person or persons whose property damage or personal injury arises out of or in connection with the occupation, use, or condition of the Trees. The Association shall include the County and the members of Commissioners Court as an additional insured on such insurance.

4.2 Each party is solely responsible for the actions and omissions of its employees and officers. No party hereto waives or relinquishes any immunity or defense on behalf of itself, its trustees, its officers, employees, and agents as a result of the execution of this Agreement and the performance of the covenants contained herein.

SECTION 5
NOTICES

5.1 Each party giving any notice or making any request, demand, or other communication (each, a "Notice") pursuant to this Agreement shall do so in writing and shall use one of the following methods of delivery, each of which, for purposes of this Agreement, is a writing: personal delivery, registered or certified mail (in each case, return receipt requested and postage prepaid), or nationally recognized overnight courier (with all fees prepaid).

5.2 Each party giving a Notice shall address the Notice to the receiving party at the address listed below or to another address designated by a party in a Notice pursuant to this Section:

County: Fort Bend County
Attn: County Judge
401 Jackson Street
Richmond, Texas 77469

With a copy to: Fort Bend County, Commissioner Precinct 3
Attn: Commissioner
22333 Grand Corner Drive
Katy, Texas 77494

Association: Hawks Landing Homeowners Association, Inc.
c/o Crest Management
Attn: Heather Esteban
Post Office Box 219320
Houston, Texas 77218

5.3 A Notice is effective only if the party giving or making the Notice has complied with subsections 5.1 and 5.2 and if the addressee has received the Notice. A Notice is deemed received as follows:

5.3.1 If the Notice is delivered in person, or sent by registered or certified mail or a nationally recognized overnight courier, upon receipt as indicated by the date on the signed receipt.

5.3.2 If the addressee rejects or otherwise refuses to accept the Notice, or if the Notice cannot be delivered because of a change in address for which no Notice was given, then upon the rejection, refusal, or inability to deliver.

SECTION 6
MISCELLANEOUS

6.1 The Parties may not amend or waive this Agreement, except by a written agreement executed by both Parties.

6.2 The laws of the State of Texas govern all disputes arising out of or relating to this Agreement. The Parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all legal actions or proceedings arising out of or relating to this Agreement and waive the right to sue or be sued elsewhere. Nothing in the Agreement shall be construed to waive the County's sovereign immunity.

6.3 If a court finds or rules that any part of this Agreement is invalid or unlawful, the remainder of the Agreement continues to be binding on the Parties.

6.4 This Agreement supersedes any and all other agreements, either oral or in writing between the Parties hereto with respect to the subject matter hereof, and no other agreement, statement, or promise relating to the subject matter of this Agreement which is not contained herein shall be valid or binding.

6.5 This Agreement cannot be assigned by either party.

6.6 This Agreement does not confer any enforceable rights or remedies upon any person other than the Parties. No provision of this Agreement constitutes consent to suit.

6.7 The section captions used in this Agreement are for convenience of reference only and do not affect the interpretation or construction of this Agreement.

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EXECUTED on this the _____ day of _____, 2020.

FORT BEND COUNTY

KP George, County Judge

ATTEST:

Laura Richard, County Clerk

EXECUTED on this the 1 day of October, 2020.

HAWKS LANDING HOMEOWNERS ASSOCIATION, INC

By: *Timothy M Graney*
Authorized Board Member – Signature

Timothy M Graney
Authorized Board Member – Name and Title

ATTEST:

Harry A Harrison
Board Secretary
HARRY A HARRISON