

**AGREEMENT BETWEEN FORT BEND COUNTY AND CINCO LANDSCAPE
MAINTENANCE ASSOCIATION, INC.**

This Agreement ("Agreement") is made and entered into by and between **Fort Bend County** ("County") a body corporate and politic under the laws of the State of Texas acting by and through its Engineering Department ("Department"), and **Cinco Landscape Maintenance Association, Inc.**, a Texas non-profit corporation ("CLMA") The County and CLMA may each be referred to herein collectively as the "Parties" and individually as a "Party."

1) GENERAL SCOPE OF SERVICES

- A) CLMA currently maintains the landscaping and irrigation and related appurtenances ("Non-Standard Elements"), along several county owned and maintained roads and easements (collectively "Road ROW"), located in Fort Bend County as generally illustrated on Exhibit A attached hereto and incorporated herein by reference.
- B) CLMA understands that the maintenance and repair of the Non-Standard Elements ("Maintenance") is not standard maintenance for the County.
- C) The County understands that CLMA was formed for the purpose of completing Maintenance of the Non-Standard Elements.
- D) CLMA warrants and represents it will perform the Maintenance in compliance with all federal, state, and local laws, ordinances, rules, and regulations relating to the Maintenance.
- E) Unless otherwise stated in this Agreement, words which have well-known technical or industry meanings are used in accordance with such recognized meaning.
- F) CLMA shall verify that each contractor and subcontractor it retains to perform the Maintenance are in compliance with Section D above.
- G) CLMA agrees that no part or appurtenance of the Road ROW shall be considered private property and the general public shall have the same access to such parts and appurtenances as to other County road right-of-ways.

2) CLMA'S RESPONSIBILITIES

- A) CLMA accepts full responsibility for the Maintenance of the Non-Standard Elements, at no cost to the County, in accordance with the standards set forth in this Agreement. CLMA will, at no cost to the County, provide Maintenance of the Road ROW to the extent that the need for such Maintenance is caused by CLMA or its contractors or agents.
- B) Maintenance required by CLMA shall include, but not be limited to, maintaining the intended function and the aesthetic appearance of the Non-Standard Elements. It shall also include, at no cost to the County, relocating and repairing the Non-Standard Elements if the County determines that it will be desirable due to changes in applicable regulations, including the Texas Accessibility Standards, or planned future improvements to the intersections, such as signalization or construction of additional lanes. In addition to satisfying the standards set forth in this Agreement in performance of its maintenance responsibilities, CLMA's performance shall conform to the standards prevailing in the County at the time of such maintenance with respect to scope, quality, due diligence, and care, in regard to usual and customary maintenance by the County on its typical medians and appurtenances in the median.

- C) If the Fort Bend County Engineer ("County Engineer") determines that any Maintenance work is not being performed in accordance with the standards for same, as specified in this Section, he/she may request that the work be discontinued. CLMA shall thereafter discontinue such work until CLMA demonstrates to the County Engineer that the work will be performed in accordance with such standards and the County Engineer provides notice that CLMA may proceed.
- D) CLMA agrees to make necessary repairs to the Non-Standard Elements or medians, or the Road ROW to the extent such repairs to the Road ROW are necessary due to damage to the Non-Standard Elements or is otherwise caused by the Non-Standard Elements or Maintenance of the Non-Standard Elements, as soon as reasonably practicable. Should the deficiencies requiring such repairs endanger the public, CLMA shall implement interim safety measures until it can provide such Maintenance. However, the County may provide such measures on behalf of CLMA without prior notice to CLMA if the County Engineer, in his/her sole discretion, determines that it is necessary to implement interim safety measures until such time as CLMA can provide its own safety measures. CLMA agrees to provide necessary Maintenance within one hundred and twenty (120) days from the date CLMA becomes aware or reasonably should have become aware of the need for such Maintenance.
- E) Prevention and Repair of Damage. In performing the Maintenance, CLMA shall cause its contractors to follow necessary safety measures and to take measures to prevent damage to persons and property resulting from the conditions that CLMA is responsible for repairing and maintaining and resulting from repairs thereto.
- F) Notice of Repair or Maintenance. CLMA shall notify the County in writing before commencement of repair or maintenance work under this Section, other than Routine Maintenance defined below. If the repair or maintenance is of an emergency nature, such notification may be provided by telephone and confirmed in writing as soon as reasonably practicable thereafter. CLMA shall provide written documentation to the County of the work done after completion of any non-routine maintenance or repairs within thirty (30) days of completion of such repairs. The County shall have thirty (30) days to respond to the notice issued by CLMA. CLMA shall move forward with commencement of repair or maintenance work under this section unless the County objects within thirty (30) days.
 - i.) Routine Maintenance includes, but is not limited to, installation, alteration and removal of irrigation; erosion control measures, installation and removal of seasonal landscaping, planting and removal of trees and shrubs, trimming tree branches, mowing, edging, line trimming, annual maintenance and installations of flowers and plants, fertilization, weed control, insect and disease control, mulch applications, etc.
 - ii.) Routine Maintenance does not include removal of healthy trees which exceed 6 inches in diameter. Notwithstanding the foregoing, any tree which caused immediate harm to the health and safety of the public may be removed by CLMA without notice and any tree determined to be dead, diseased or infested by a qualified arborist may be properly removed without County approval, but CLMA shall submit information to Engineering for record keeping, including the method of removal and destruction for diseased or infested trees.
- G) Failure to Maintain
 - a. If the County believes CLMA has failed to perform its Maintenance duties pursuant to this Agreement, the County shall notify CLMA in writing of such failure and allow

CLMA sixty (60) days to cure any such failure ("Notice to Cure"). If the CLMA has not taken reasonable steps to cure such failure within sixty (60) days of receipt of the Notice to Cure, then the County may, in its sole discretion alter, reduce, replace, remove, or authorize other changes to the Non-Standard Elements.

- b. Notwithstanding the foregoing provisions in Section G(a), the County may perform such Maintenance if (a) the Non-Standard Elements are in need of Maintenance and (b) CLMA has failed to perform such Maintenance in a timely manner. If the County performs any Maintenance or removal of any of the Non-Standard Elements, the County shall not be required to restore the Non-Standard Elements to their previous condition or specifications. CLMA shall then have the right, at any time in the future, to enhance, replace, or restore any Non-Standard Elements repaired, replaced, modified, or removed by the County, and in this event, CLMA will return all salvageable materials utilized by the County.

3) COUNTY'S RESPONSIBILITIES

- A) The execution of this Agreement in itself does not constitute the County's approval of the Non-Standard Elements within the Road ROW. If drawings and specifications that include the Non-Standard Elements are submitted to the County, the County will review such drawings and specifications. If such drawings and specifications are approved by the County, the Non-Standard Elements must be constructed in accordance with the approved and permitted drawings and specifications.
- B) When the drawings and specifications are submitted to the County for permitting, the specific locations of any proposed Non-Standard Elements shall be clearly indicated on such drawings.
- C) In consideration of CLMA entering into this Agreement, the County agrees that it shall not refuse to approve the installation of the Non-Standard Elements if installed in accordance with the approved and permitted drawings.
- D) It is specifically agreed that the County shall have no responsibility for the condition or maintenance of the Non-Standard Elements.
- E) Notwithstanding any provision of this Agreement that might be construed to the contrary, the Non-Standard Elements shall be considered part of the Road ROW. The County may at any time alter or remove the Non-Standard Elements, at the County's sole expense if and when the County, in the sole discretion of the County Engineer or County representative ("County Representative"), determines it interferes with the proper use, safety, or operation of the Road ROW, for road purposes, or is necessary in order to make improvements to the Road, or has determined that the aesthetic appeal of the Non-Standard Elements has not been maintained. The County Engineer or the County Representative shall provide notice to CLMA at least sixty (60) days prior to any such alteration or removal. The County agrees that CLMA may replace, repair, or reconstruct the Non-Standard Elements altered or removed by the County pursuant to this Section 3(E), at CLMA's sole cost and expense and subject to approval of plans and specifications by the County. Otherwise, upon complete removal of the Non-Standard Elements, CLMA's maintenance responsibility shall end for the Non-Standard Elements.

4) INDEPENDENT PARTIES

- A) The Maintenance performed by CLMA or its contractors under this Agreement is performed by CLMA and its contractors as an independent party. This Agreement is not intended to create and shall not constitute a partnership or joint venture between the Parties. CLMA shall have and retain the exclusive right of control over employment and firing of contractors hired to complete the Maintenance. CLMA has no authority to bind or otherwise obligate the County orally, in writing or by any act or omission. Nothing contained herein shall establish an agency, employee-employer relationship, partnership, joint enterprise, joint employer, or joint venture relationship by or between the County and CLMA.
- B) CLMA is solely responsible for the payment of its contractors completing the Maintenance. CLMA shall be responsible for paying any taxes incurred in relation to CLMA's hiring of contractors under such terms as required by the applicable laws of the State of Texas.
- C) CLMA's workers are not entitled to any contributions by or benefits from the County for any pension plan, bonus plan or any other benefit plan. The County is not liable for payment of any federal or state taxes and charges including, but not limited to, income withholding taxes, social security, unemployment, workers' compensation, and similar taxes and charges. This Article shall survive the expiration or termination of this Agreement.
- D) CLMA shall not have the authority to enter into contracts or agreements on behalf of the County.

5) TERM

This Agreement is effective as of the date that it has been approved and executed by all Parties (the "Effective Date") and remains in force and effect for a period of 20 years ("Term"). Thereafter, this Agreement shall be renewed automatically for successive one (1) year terms (each a "Renewal Term"), unless either Party provides the other Party with at least 60 days' written notice of its intent not to renew.

6) LIMITATION OF APPROPRIATION

CLMA understands and agrees, said understanding and agreement also being the absolute essence of this Agreement, that the County is not appropriating any funds under this Agreement.

7) TEXAS PUBLIC INFORMATION ACT

- A) The Parties expressly acknowledge that this Agreement is subject to the Texas Public Information Act, Tex. Gov't Code Ann. §§ 552.001 *et seq.*, as amended (the "Act"). CLMA expressly understands and agrees that the County shall release any and all information necessary to comply with Texas law without the prior written consent of CLMA.
- B) It is expressly understood and agreed that the County, its officers and employees may request advice, decisions and opinions of the Attorney General of Texas ("Attorney General") in regard to the application of the Act to any software, or any part thereof, or other information or data furnished to the County, whether or not the same are available to the public. It is further understood that the County, its officers and employees shall have the right to rely on the advice, decisions, and opinions of the Attorney General, and that the County, its officers, and employees shall have no liability or obligations to CLMA for the disclosure to the public,

or to any person or persons, of any software, or a part thereof, or other information or data furnished to the County in reliance on any advice, decision or opinion of the Attorney General.

- C) In the event the County receives a written request for information pursuant to the Act that affects CLMA's rights, title to, or interest in any information or data or a part thereof, furnished to the County by CLMA under this Agreement, then the County will promptly notify CLMA of such request. CLMA may, at its own option and expense, prepare comments and submit information directly to the Attorney General stating why the requested information is exempt from disclosure pursuant to the requirements of the Act. CLMA is solely responsible for submitting the memorandum brief and information to the Attorney General within the time period prescribed by the Act. CLMA is solely responsible for seeking any declaratory or injunctive relief regarding the disclosure of information that it deems confidential or privileged.
- D) Electronic Mail Addresses. CLMA affirmatively consents to the disclosure of its e-mail addresses that are provided to the County, including any agency or department of the County. This consent is intended to comply with the requirements of the Act, and shall survive termination of this Agreement. This consent shall apply to e-mail addresses provided by CLMA and agents acting on behalf of CLMA and shall apply to any e-mail address provided in any form for any reason whether related to this Agreement or otherwise.

8) TERMINATION

- A) This Agreement may be terminated by either Party at any time upon 60 days' written notice issued to the other Party.
- B) If the County permanently removes any of the roads with Non-Standard Elements from the Road Log for any reason, CLMA will have no further Maintenance responsibility for the Non-Standard Elements or median under this Agreement. If all the Road ROW with Non-Standard Elements covered under this Agreement are removed from the Road Log, this Agreement will terminate.
- C) The above termination provisions of this Section are in addition to rights of the County to terminate this Agreement under Section 2.
- D) *Force Majeure*. In the event that either Party is unable to perform any of its obligations under the Agreement or to enjoy any of the benefits because of natural disaster, actions or decrees of governmental bodies or communications line failure not the fault of the affected party (referred to as a "*Force Majeure Event*"), the Party who has been so affected immediately agrees to give notice to the other Party and agrees to do everything possible to resume performance. Upon receipt of such notice, the Agreement is immediately suspended. If the period of nonperformance exceeds ten (10) calendar days from the receipt of notice of the *Force Majeure Event*, the Party whose ability to perform has not been so affected may terminate the Agreement immediately by giving written notice to the other Party.

9) NOTICE

Any notice provided or permitted to be given under this Agreement ("Notice") must be in writing and may be served by (a) depositing same in the United States mail, certified and addressed to the Party to be notified; (b) delivering the same in person to such Party; or (c) sending same by electronic mail ("Email"). Notice given by mail shall be effective upon deposit in the United States mail and Notice delivered in person or sent by Email shall be effective upon receipt. The addresses for Notice are as follows:

COUNTY:

Fort Bend County Engineering Department
301 Jackson St., 4th Floor
Richmond, Texas 77469
Attention: County Engineer

With a copy to:

Fort Bend County
401 Jackson Street, 1st Floor
Richmond, Texas 77469
Attention: County Judge

CMLA:

Cinco Landscape Maintenance Association
C/O Maria Southall-Shaw
Principal Management Group of Houston – An Associa® Company
3022 Windemere Park Lane, Katy TX 77494
Telephone: 713-329-7100
Email: *msouthallshaw@pmghouston.com*

The Parties may designate another address for all purposes of this Agreement by giving to the other Party not less than fifteen (15) days' advance written notice of such change of address.

All other communications, except for Notices required under this Agreement, may be sent by electronic means or in the same manner as Notices described herein.

10) COMPLIANCE AND STANDARDS

- A) CLMA warrants and represents that it is not in breach of any other contract, obligation or covenant that would affect CLMA's ability to perform hereunder and, as a result of entering into this Agreement, will not breach any such contract, obligation, or covenant.
- B) CLMA warrants and represents that it is registered with the Texas Secretary of State to transact business in Texas, and is current on all state and local fees and taxes, including but not limited to Franchise Account Status of "in good standing" with the Texas Comptroller of Public Accounts.
- C) Conflict of Interest: CLMA warrants and represents to the County that it does not have nor shall it knowingly acquire any interest that would conflict in any manner with the performance of its obligations under this Agreement.

- D) Prior to execution of the Agreement, CLMA shall, as an update, complete Form 1295 in accordance with Tex. Gov't Code Ann. § 2252.908 concerning "Interested Parties," CLMA warrants and represents that all the information on the form is complete and accurate.
- E) Foreign Terrorists Organizations. In accordance with Tex. Gov't Code Ann. Chapter 2252 Subchapter F, CLMA warrants and represents that, at the time of execution of this Agreement and for the duration of the Term of this Agreement and any Renewal Terms, CLMA does not appear on the Texas State Comptroller's list of companies known to have contracts with or provide supplies or services to a foreign terrorist organization.
- F) Anti-Boycott. In accordance with Tex. Gov't Code Ann. § 2270.002, CLMA warrants and represents that it does not boycott Israel and agrees that it will not boycott Israel during the term of this contract.

11) APPLICABLE LAW AND VENUE

- A) The Agreement is subject to the state and federal laws, orders, rules, and regulations relating to the Agreement.
- B) This Agreement is governed by the laws of the State of Texas.
- C) The forum for any action under or related to the Agreement is exclusively in a state or federal court of competent jurisdiction in Texas.
- D) The exclusive venue for any action under or related to the Agreement is in a state or federal court of competent jurisdiction in Fort Bend County, Texas.

12) PROHIBITION ON LIENS

CLMA will not permit to be placed, a lien or any other encumbrance on County property. If any such lien or encumbrance is placed on County property, CLMA shall pursue any lawful effort, including but not limited to seeking relief in a court of competent jurisdiction, to remove the lien or encumbrance from the property.

13) INSURANCE

- A) CLMA shall acquire and maintain liability insurance with a responsible insurance company or companies, insuring against liability for bodily or personal injury or death or damage to property.
- B) CLMA shall keep insured the Non-Standard Elements with a responsible insurance company or companies against risks, accidents, or casualties against which and to the extent insurance is usually carried by a similar contractor; provided, however, that at any time while any contractor engaged in construction work shall be fully responsible for the construction work, CLMA shall not be required to carry insurance on that construction work. In such instances, CLMA shall require any contractor engaged in construction work to procure, carry and maintain the insurance coverage set forth in this Section.

14) INDEMNIFICATION

THE PROVISIONS OF THIS ARTICLE SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT HOWEVER CAUSED.

CLMA SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE COUNTY ITS OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, SUCCESSORS AND ASSIGNS ("INDEMNIFIED PARTIES") FROM AND AGAINST ALL CLAIMS AND LIABILITY DUE TO THE ACTIVITIES OF CLMA, OR ANOTHER ENTITY OVER WHICH CLMA EXERCISES CONTROL, PERFORMED UNDER THIS AGREEMENT AND WHICH RESULT FROM ANY GROSSLY NEGLIGENT ACT, ERROR, OR OMISSION; INTENTIONAL TORT; OR FAILURE TO PAY A CONTRACTOR OR SUPPLIER; COMMITTED BY CLMA OR ANOTHER ENTITY OVER WHICH CLMA EXERCISES CONTROL.

CLMA SHALL ALSO INDEMNIFY, DEFEND, AND HOLD HARMLESS THE COUNTY FROM AND AGAINST ANY AND ALL EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES WHICH MIGHT BE INCURRED BY THE COUNTY, IN LITIGATION OR OTHERWISE RESISTING SAID CLAIMS OR LIABILITIES WHICH MIGHT BE IMPOSED ON THE COUNTY AS THE RESULT OF SUCH ACTIVITIES BY CLMA OR ANOTHER ENTITY OVER WHICH CLMA EXERCISES CONTROL UNDER THIS AGREEMENT.

CLMA SHALL INDEMNIFY, DEFEND, AND HOLD THE COUNTY HARMLESS FROM ANY AND ALL LIABILITY, EXPENSE, JUDGMENT, SUIT, CAUSE OF ACTION, OR DEMAND FOR PERSONAL INJURY, DEATH, OR DIRECT DAMAGE TO TANGIBLE PROPERTY WHICH MAY ACCRUE AGAINST THE COUNTY TO THE EXTENT IT IS CAUSED BY THE GROSS NEGLIGENCE OF CLMA OR ANOTHER ENTITY OVER WHICH CLMA EXERCISES CONTROL, WHILE PERFORMING SERVICES UNDER THIS AGREEMENT. COUNTY WILL GIVE CLMA PROMPT, WRITTEN NOTICE OF ANY SUCH CLAIM OR SUIT. COUNTY SHALL COOPERATE WITH CLMA IN ITS DEFENSE OR SETTLEMENT OF SUCH CLAIM OR SUIT.

COUNTY RESERVES THE RIGHT, AT ITS OWN EXPENSE, TO BE INDEPENDENTLY REPRESENTED BY COUNSEL OF ITS OWN CHOICE IN CONNECTION WITH ANY SUCH SUIT OR PROCEEDING.

15) WAIVER OF BREACH

Waiver by either Party of a breach or violation of any provision of the Agreement is not a waiver of any subsequent breach.

16) SEVERABILITY

If any provision or part of the Agreement or its application to any person, entity, or circumstance is ever held by any court of competent jurisdiction to be invalid for any reason, the remainder of the Agreement and the application of such provision or part of the Agreement to other persons, entities, or circumstances are not affected.

17) SURVIVAL OF TERMS

Any provision of this Agreement that, by its plain meaning, is intended to survive the expiration or earlier termination of this Agreement including, but not limited to the indemnification provision, shall survive such expiration or earlier termination. If an ambiguity exists as to survival, the provision shall be deemed to survive.

18) CONTRACT CONSTRUCTION

- A) This Agreement shall not be construed against or in favor of any Party hereto based upon the fact that the Party did or did not author this Agreement.
- B) The headings in this Agreement are for convenience or reference only and shall not control or affect the meaning or construction of this Agreement.
- C) When terms are used in the singular or plural, the meaning shall apply to both.
- D) When either the male or female gender is used, the meaning shall apply to both.

19) SUCCESSORS AND ASSIGNS

- A) The County and CLMA bind themselves and their successors, executors, administrators, and assigns to the other Party of this Agreement and to the successors, executors, administrators, and assigns of such other Party, in respect to all covenants of this Agreement.
- B) Neither the County nor CLMA shall assign, sublet, or transfer its interest in this Agreement without written consent of the other Party, which will not be unreasonably withheld.

20) NO THIRD-PARTY BENEFICIARIES

- A) The County is not obligated or liable to any party other than CLMA for the performance of this Agreement.
- B) Nothing in the Agreement is intended or shall be deemed or construed to create any additional rights or remedies in any third party.
- C) Nothing contained in the Agreement shall be construed to or operate in any manner whatsoever to increase the rights of any third party, or the duties or responsibilities of County with respect to any third party.

21) ENTIRE AGREEMENT; MODIFICATIONS

- A) This instrument contains the entire Agreement between the Parties relating to the rights herein granted and obligations herein assumed.
- B) Any oral or written representations or modifications concerning this instrument shall not be effective excepting a subsequent written modification signed by both Parties.

22) EXECUTION, MULTIPLE COUNTERPARTS

This Agreement may be executed in several counterparts. Each counterpart is deemed an original. All counterparts together constitute one and the same instrument. Each Party warrants that the undersigned is a duly authorized representative with the power to execute this Agreement.

[EXECUTION PAGES FOLLOW]

FORT BEND COUNTY, TEXAS

By: _____
KP George, County Judge

Date: _____

ATTEST:

By: _____
Laura Richard, County Clerk

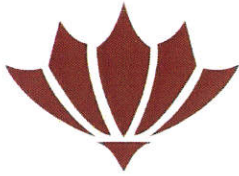
**CINCO LANDSCAPE MAINTENANCE
ASSOCIATION**

DocuSigned by:
By: Jodd Schutte
President, Board of Directors

Date: 4/30/2021

Contract Status

Fort Bend County



Memo

To: Maria Southall-Shaw
From: Sarah Gerdes, Associations Counsel
CC: Charlie Norton, Erica Morgan, Chantelle Mayo
Date: April 20, 2021
RE: Harris and Fort Bend County Landscape Agreements

With regards to the Landscaping Agreements with Harris and Ft. Bend County, I am waiting on the signed agreements which I believe were already approved. Once approved and signed by the County, I will work with each entity to prepare a form to request and obtain approval of large projects which require the County's consent.

Please let me know if you have any questions.

Sincerely,

Sarah B. Gerdes

Partner

Board Certified Property Owners Association Law & Residential Real Estate Law

Texas Board of Legal Specialization



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