

AGREEMENT

ARTICLE I. PERMISSION, USE AND TERM

- 1.01 **City Permission.** City hereby authorizes County, its officials, employees, agents, representatives and contractors to enter the Park and to establish, provide, maintain, construct, equip and operate playgrounds, recreation centers, jogging trails, tennis courts, athletic fields, swimming pools, a community center, and other park or recreational facilities appropriate for the use and enjoyment of residents of Fort Bend County and the City of Houston. County may not use the Park, or a portion thereof, for any purpose other than as set forth in the foregoing sentence.
- 1.02 **Term.** The Parties understand and agree that County may enter upon and use the Park as described in Section 1.01 for a period of thirty (30) years (the “Term”) commencing on the Effective Date, as hereinafter defined, of this Agreement.
- 1.03 **No Interest in Land.** It is expressly understood that City is not granting County a lease, franchise, easement, or other interest in the land comprising the Park notwithstanding any contrary inference contained herein or elsewhere.

ARTICLE II CONTROL, USE AND FUNDING

- 2.01 **Management, Operation and Control of the Park.** During the Term of this Agreement, County will exclusively manage, operate, control and supervise the Park. County will operate the Park according to County’s park rules and regulations. County will maintain the Park during the Term of this Agreement in a safe condition in compliance with the Americans with Disabilities Act; the Texas Architectural Barriers Act, Chapter 469 of the TEXAS GOVERNMENT CODE; the Texas Accessibility Standards; and other relevant state and federal statutes and regulations.
- 2.02 **Use of Park.** City may schedule use of the Park, or a portion thereof, provided that City coordinates such activities in advance with County. County shall not deny any person use of the Park because of race, creed, national origin, religion, color, or sex. County shall provide that City of Houston residents have the use of all amenities of the Park on an equal basis with Fort Bend County residents.
- 2.03 **County Funding.** During the Term of this Agreement, County is responsible for and shall pay any and all costs and expenses associated with the Park including costs and expenses of maintenance, operation and construction of improvements to the Park and utilities for the Park. The Parties acknowledge that County (i) does not have any funds appropriated for the performance of this Agreement, (ii) contemplates performing its obligations under this



Agreement out of its current budget, and (iii) is not obligated to appropriate funds now, or in the future, for any construction, operations, or maintenance of the Park, and all improvements to the Park are at County's sole discretion.

- 2.04 **City Funding.** City may, but shall not be obligated to, contribute funds and/or materials, personnel, and supplies for the operation and maintenance of all or any portion of the Park from time to time during the Term of this Agreement.
- 2.05 **Park Name.** County shall not change the name of the Park without the prior written consent of City's Director of Parks and Recreation Department ("Parks Director").

ARTICLE III.
DEFAULT, TERMINATION AND IMPROVEMENTS

- 3.01 **Default.** If, at any time during the term of this Agreement, County (i) fails to operate and/or maintain the Park for public park and recreational purposes for a period of ninety (90) continuous days, or (ii) defaults under any other provision of this Agreement, City will provide County written notice of such default, specifying in detail the nature of the default. County will have sixty (60) days after receipt of the written notice to commence cure of the default. In the event County fails to commence cure of the default within the sixty (60) day period, or to thereafter reasonably prosecute the cure to completion, the sole and exclusive remedy of City is to terminate this Agreement. County may but is not obligated to plan, design or construct permanent improvements to the Park, and the failure to plan, design or construct permanent improvements shall not be an event of default. There shall not be an event of default under subsection (i) above during the time of construction of permanent improvements in the Park and to the extent that such construction interferes with the use of part or all of the Park.
- 3.02 **Termination.** This Agreement may only be terminated (i) by 365 days prior written notice of termination by County to City, (ii) upon mutual agreement of the Parties, (ii) upon ten (10) days prior written notice by City to County upon an uncured event of default under Section 3.01.

ARTICLE IV.
IMPROVEMENTS AND SUBSURFACE CONDITIONS

- 4.01 **Improvements.** The Parks Director will have the right, but not the obligation, to review each construction contract for any permanent improvements to the Park and to review and approve each change order prior to its execution by County and the respective contractor and such approval(s) will not be unreasonably withheld or delayed. Change orders shall be deemed approved unless Parks Director provides written notice to County within ten (10) calendar days of City's receipt of proposed change orders. Pursuant to the terms of this Agreement, County will bear the full cost of construction, including architectural and engineering fees, and other professional fees, related to permanent improvements to the Park.



County will be solely responsible for providing for the management of each construction contract and the payment to each contractor, subject to the availability and certification of funds by the Fort Bend County Auditor. Prior to commencement of the construction of permanent improvements to the Park, County will provide the Parks Director with evidence from the Fort Bend County Auditor of certification of the availability of funds for the total construction and construction management costs of the permanent improvements to the Park. City is a third party beneficiary to the construction contract between County and contractors working on the permanent improvements to the Park. The Parks Director has the right, but not the obligation, to review all work in progress as well as to inspect the permanent improvements to the Park following completion. In the event that the Parks Director identifies material variations from the approved plans for the permanent improvements, or damages to other portions of the Park, County agrees to cause the appropriate contractor or have County's own personnel and equipment to make any necessary adjustments or repair any such damage or material variation. County further agrees that it will require each contractor to provide performance and payment bonds for the construction of permanent improvements to the Park. This section 4.01 shall only apply to the construction of permanent improvements to the Park costing in excess of \$250,000.00.

- 4.02 **Permits for Work.** County, its contractors and subcontractors, will be responsible for all permits required for any construction in the Park and all consents required to be obtained from any applicable governmental agency. City, as owner of the land comprising the Park, agrees to cooperate fully in County's applications for such permits and consents.
- 4.03 **Ownership of Improvements at Expiration of Term.** Upon the expiration of the Term of this Agreement or in the event this Agreement is terminated pursuant to this Article, any and all improvements to the Park by County will become the property of City at no cost or expense to City and the management, operation, and control of the Park will become the sole responsibility of City.
- 4.04 **Subsurface Conditions.** Material below the surface of City Property is assumed to be earth and other material that can be removed by power shovel or similar equipment. Should conditions encountered below the surface of the ground be at variance to conditions indicated by testings, drawings or specifications as determined by County through County engineers or County contractors, County shall have the authority to terminate this Agreement upon supplying City with information on the conditions encountered below the surface of the ground.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK



ARTICLE V.
NOTICES

All notices and communications under this Agreement will be sent by certified mail, return receipt requested, addressed as follows:

If to City, to the following address:

Director
Parks and Recreation Department
City of Houston
601 Sawyer Street
Houston, Texas 77007

changed after November 1, 2009 to:

Director
Parks and Recreation Department
City of Houston
2999 South Wayside
Houston, Texas 77023

If to County, to the following address:

Fort Bend County Commissioner, Precinct 2
303 Texas Parkway
P.O. Box 459
Missouri City, Texas 77459

Copy to:

Fort Bend County Attorney
301 Jackson, Suite 728
Richmond, Texas 77469

ARTICLE VI.
RELEASE, INDEMNIFICATION AND INSURANCE

- 6.01 **Release.** To the extent permitted by the constitution and laws of the State of Texas, County, its predecessors, successors, and assigns hereby release, relinquish, and discharge City, its predecessors, successors, assigns, legal representatives, and its former, present, and future agents, employees, and officers (collectively referred to in this paragraph as "City") from any liability to County as a result of the joint or concurrent negligence of City as a result of any injury, including death or damage to persons or property, where such damage is sustained in connection with the Park or rights or duties under this Agreement.



6.02 **Indemnification.** COUNTY AGREES THAT IT WILL REQUIRE EACH CONTRACTOR PERFORMING DEMOLITION, CONSTRUCTION, OR MAINTENANCE WORK THAT CONTRACTS DIRECTLY WITH COUNTY (COLLECTIVELY, “CONTRACTOR”) UTILIZED IN CONNECTION WITH THIS AGREEMENT TO PROTECT, DEFEND, INDEMNIFY, AND HOLD HARMLESS CITY, ITS EMPLOYEES, OFFICERS AND LEGAL REPRESENTATIVES (COLLECTIVELY IN THIS SECTION 6.02 AS “CITY”) FROM ANY AND ALL THIRD PARTY CLAIMS, DEMANDS AND LIABILITY, INCLUDING DEFENSE COSTS RELATING IN ANY WAY TO DAMAGES, CLAIMS, OR FINES ARISING BY REASON OF OR IN CONNECTION WITH CONTRACTOR’S NEGLIGENCE OR OTHER ACTIONABLE PERFORMANCE OR OMISSION OF THE CONTRACTOR IN CONNECTION WITH OR DURING THE PERFORMANCE OF ITS DUTIES IN CONNECTION WITH THE PARK. COUNTY WILL REQUIRE EACH CONTRACTOR TO MAINTAIN THIS INDEMNITY DURING THE PERFORMANCE OF SUCH CONTRACTOR’S WORK AND UP TO THE DATE OF COUNTY’S ACCEPTANCE OF SUCH WORK.

COUNTY FURTHER AGREES TO REQUIRE CONTRACTOR TO PROTECT, DEFEND, INDEMNIFY AND HOLD HARMLESS CITY FROM ALL CLAIMS, ALLEGATIONS, FINES, DEMANDS AND DAMAGES RELATING IN ANY WAY TO THE SOLE, JOINT, AND/OR CONCURRENT NEGLIGENCE OF CITY AND CONTRACTOR, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT.

6.03 **Insurance.** County will require all third party contractors, subcontractors, and vendors (collectively, the “Contractor”) who perform work or provide services at the Park to maintain such levels of insurance as are customary for the size and kind of work or services to be provided. All insurance policies, except workers compensation, must name City as an additional insured. County will obtain copies of insurance policies from the Contractor and deliver to City copies of such policies. All such policies must contain an agreement that the insurer will notify County in writing not less than thirty (30) days before any reduction in coverage or cancellation of any policy.

ARTICLE VII. MISCELLANEOUS

7.01 **Information Sharing.** County shall promptly provide City with a copy of all reports submitted by third party contractors through County to the Texas Commission on Environmental Quality (“TCEQ”) pertaining to the Park.

7.02 **No Partnership.** Nothing contained in this Agreement shall be deemed or construed by the Parties, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture between County and City, it being understood and agreed that neither any provisions contained in this Agreement, nor any acts of County or City, shall be



deemed to create any relationship between County and City other than the contractual relationship established under this Agreement.

- 7.03 **Captions.** The captions used here are for convenience only and do not limit or amplify the provisions in this Agreement.
- 7.04 **Recitals.** The representations, covenants and recitations set forth in the foregoing recitals are material to this Agreement and are incorporated into this Agreement.
- 7.05 **Venue.** This Agreement shall be construed under and in accord with the laws of the State of Texas, and all obligations of the Parties created hereunder are performable in Fort Bend County, Texas, and that venue for any litigation arising out of or related to this Agreement shall lie solely in the court of appropriate jurisdiction located in Fort Bend County, Texas.
- 7.06 **Assignment.** This Agreement shall not be assignable, in whole or in part, without first obtaining the written consent of the other Party. City shall not sell the land comprising the Park without the prior written consent of the County.
- 7.07 **Severability.** The provisions of this Agreement are severable, and if any provision or part of this Agreement or the application thereof to any person or circumstance shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such provision or part of this Agreement to other persons or circumstances shall not be affected.
- 7.08 **Merger.** This Agreement embodies the entire understanding between the Parties with respect to the operation, maintenance and improvement of the Park, and there are no prior effective representations, warranties or agreements between the Parties with respect to the operation, maintenance and improvement of the Park. This Agreement shall supersede and replace all previous agreements, if any, pertaining to the the operation, maintenance and improvement of the Park between the Parties.
- 7.09 **Entire Agreement; Amendment and Attachments.** This Agreement contains the entire agreement between the Parties, and no agreement shall be effective to change, modify, or terminate this Agreement, in whole or in part, unless such agreement is in writing and duly signed by the Party against whom enforcement of such change, modification, or termination is sought. Attached hereto is Exhibit A, an aerial map of Park which are made part of this Agreement for all purposes.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK



ARTICLE VIII.
EXECUTION

IN WITNESS WHEREOF, this Agreement has been executed in multiple counterparts by the Parties to be effective upon the date ("Effective Date") of countersignature by the Controller of the City of Houston.

ATTEST:

CITY OF HOUSTON

Anna Russell
City Secretary

Bill White
Mayor

APPROVED AND RECOMMENDED:

COUNTERSIGNED:

Joe Turner, Director
Parks and Recreation Department

City Controller
Annise D. Parker
Countersignature Date: _____

APPROVED AS TO FORM:

Robert R. Johnson
Senior Assistant City Attorney
L.D. File No. 049-0900 ___ -001

FORT BEND COUNTY, TEXAS

By: *Robert E. Hebert*
Robert E. Hebert, *June 2, 2009*
County Judge

Attest: *Dianne Wilson*
Dianne Wilson,
County Clerk

Approved as to Legal Form:

Mary E. Reveles
Mary E. Reveles,
First Assistant County Attorney



MER:Blue Ridge Park Interlocal Agreement.City of Houston. Pct 2.3858



Exhibit A

