

**INTERLOCAL GOVERNMENTAL AGREEMENT  
FOR RECREATIONAL FACILITIES BY AND BETWEEN  
CINCO MUNICIPAL UTILITY DISTRICT NO. 1 AND  
FORT BEND COUNTY**

THE STATE OF TEXAS           §  
   §  
COUNTY OF FORT BEND       §

This INTERLOCAL GOVERNMENTAL AGREEMENT FOR RECREATIONAL FACILITIES (the "Agreement") is entered into by and between CINCO MUNICIPAL UTILITY DISTRICT NO. 1, a body politic and corporate and a political subdivision of the State of Texas organized under the provisions of Article XVI, Section 59, of the Texas Constitution and Chapters 49 and 54 of the Texas Water Code, as amended ("the District"), and Fort Bend County, a body corporate and politic under the laws of the State of Texas, acting by and through its Commissioners Court (the "County").

**RECITALS**

WHEREAS, the County intends to construct the Buffalo Bayou Nature Trail and Regional Park, (the "Project"), which will consist of trail systems, a ball field complex, canoe launches and other recreational facilities which will be open and available to the public, including all County and District residents; and

WHEREAS, the County has received a conditional grant from Texas Parks and Wildlife Department ("TPWD") in the amount of \$500,000 to design and construct the Project (the "Grant"); and

WHEREAS, the Grant consists of elements that must be constructed or installed in order to receive the Grant for the Project, all as detailed on **Exhibit "A"** attached hereto (the "Project Elements"), and the County intends to or has previously designed, bid or purchased all of the items required to fulfill its Grant obligations to TPWD; and

WHEREAS, pursuant to Chapter 49 of the Texas Water Code, as amended, the District has the authority to construct, improve, and extend parks and recreational facilities for its residents; and

WHEREAS, the District is the master district in a regional system consisting of eleven municipal utility districts that are listed on **Exhibit "B"** attached hereto (and collectively referred to as the "Project Participants") which also have the authority to construct, improve, and extend parks and recreational facilities for its residents; and

WHEREAS, the Project Participants, including the District, have determined that the Project is of benefit to its residents, and have agreed to contribute funds toward the

design and construction of the Project in the aggregate sum of \$662,500 as shown on **Exhibit "B"** (collectively the "Project Participant Contribution"); and

WHEREAS, the Project Participants and the District have entered into interlocal agreements whereby the District will administer the Project Participant Contribution on behalf of the Project Participants; and

WHEREAS, the District has received a total of \$30,000 from Westbrook Cinco East, Terrabrook/Cinco Southwest, and Newland Communities (collectively referred to as the "Developer") for the development and construction of the Project ("the Developer Contribution"); and

WHEREAS, the District and the County will enter into a definitive interlocal government agreement pursuant to Chapter 791 of the Texas Government Code, as amended, to specify the terms and conditions under which the District will distribute the Project Participant Contributions and the Developer Contribution for a total of \$692,000 (collectively the "Project Contribution") to the County for the construction of certain elements of the Project; and

WHEREAS, the Commissioners Court of the County finds that the Project contemplated in this Agreement serves a County purpose; and

WHEREAS, the governing bodies of the County and the District have authorized this Agreement;

### **AGREEMENT**

NOW, THEREFORE, for and in consideration of the mutual promises, covenants, obligations, and benefits of this Agreement, the District, and the County contract and agree as follows:

#### **I.**

### **INCORPORATION OF RECITALS**

The representations, covenants, and recitations set forth in the foregoing recitals are material to this Agreement and are incorporated into this Agreement.

#### **II.**

### **COUNTY RIGHTS AND OBLIGATIONS**

- A. Design and Construction. The County has prepared or will prepare the plans and specifications for the construction of the Project and will construct such Project in accordance with good engineering standards and in accordance with all applicable rules, regulations, and requirements of all governmental entities

having jurisdiction over the Project, if any. The County will acquire all rights of way, if necessary, in connection with the Project. The District may review any such plans upon request by the District.

- B. TPWD Grant. The County has applied for a grant from Texas Parks and Wildlife Department ("TPWD") and must meet certain criteria in order to receive the Grant funds. The County is solely responsible for the administration of the Grant and meeting any and all conditions to receipt of the Grant monies in a timely manner.
- C. County Financial Contributions. The County is responsible for funding or constructing through in-kind services an amount of \$875,000 which includes monies received from the Grant (the "County Contribution"). The County has estimated that the County Contribution along with the Project Contribution will be sufficient to construct the Project. If the County does not receive money from the Grant, the County will still be responsible for its County Contribution to the Project.
- D. Ownership, Operation and Maintenance. The County will own, operate, and maintain the Project at its sole cost and expense, in accordance with the requirements of all laws, rules, and regulations applicable to the County and the Project.
- E. Insurance. The County agrees to require any contractor who constructs any phase of the Project to maintain insurance policies, with the minimum limits of insurance coverage, consistent with Fort Bend County's general requirements for construction activities of comparable value to the particular phase of the Project that may be under construction. All insurance policies carried by such contractors, except Worker's Compensation insurance, shall name the Project Participants as additional insureds (with respect to liability arising out of work performed by the contractors or subcontractors, as applicable) and shall contain a waiver of subrogation against the Project Participants.
- F. Final Accounting. Upon completion of the Project, but no later than ninety (90) days after, the County will furnish the District with a full accounting of the Project Contribution expended on the Project and a set of record drawings showing the Project as constructed. The District's bookkeeper or auditor may review the County's records regarding this Project at any time by providing at least twenty-four (24) hours written notice to the County.

### III.

#### DISTRICT RIGHTS AND OBLIGATIONS

- A. Financial Obligation. The District's sole obligation is to provide the funding to the County as specified in this Section. Within thirty (30) days of execution of this Agreement, the District will pay the County an amount of \$692,500 to be used solely for the following Project Elements ("District Project Elements") detailed on **Exhibit "A"**:

DISTRICT PROJECT ELEMENTS	CONSTRUCTION ESTIMATE
Multi-purpose Trail (1.9 miles)	\$271,349.76
Shelter Bridge	\$330,000.00
Interpretative Stations (10)	\$ 10,000.00
Wood Foot Bridges with Overlook	\$ 16,000.00
Contingency (10%)	\$ 62,734.98
Total	\$690,084.74

The County shall cause the Project Contribution to be deposited into a County Parks Department account or subaccount for disbursement of funds for payment of the costs of the District Project Elements. The County will bid, if legally required, and purchase the District Project Elements. Upon the County's receipt of bids or invoices for the District Project Elements, the County will forward to the District's bookkeeper a description of the contract awarded or item purchased with copies of the bid sheet and notice to proceed or paid invoices.

The District is not obligated to expend any further funds over the \$692,500 on the Project. If after the County receives bids for the construction of the District Project Elements and if the construction costs exceed the construction estimates listed above by 10%, the District shall have to option to either (i) allow the Project Contribution to be used for the construction of whichever portions of the District Project Elements that may be accomplished by the Project Contribution or (ii) fund another Project Element on **Exhibit "A"** that will not exceed the total Project Contribution. If the entire Project exceeds the budget on **Exhibit "A"** by more than 15%, the District may either (i) allow the Project Contribution to be used for the construction of whichever portions of

the Project that may be accomplished by the Project Contribution, or withdraw from participation of the Project, and may terminate this Agreement without penalty. Any unexpended Project Contribution may be spent in accordance with Section B below.

- B. Unexpended Funds. If after completion of the Project and after the County has expended its County Contribution, there are any unexpended funds from the Project Contribution, the County and District may mutually agree to bid or purchase any additional items in connection with the Project. Examples of such additional items that may be constructed or purchased are on **Exhibit "C"** attached hereto. However, the District will not be required to spend any excess funds from the Project Contribution unless and until the County has expended its County Contribution.

#### IV.

#### LIABILITY

The District and County are entitled to the immunities and defenses of the Texas Tort Claims Act.

#### V.

#### ASSIGNMENT

No party hereto shall make, in whole or in part, any assignment of this Agreement or any obligation hereunder without the prior written consent of the other party.

#### VI.

#### THIRD PARTY BENEFICIARIES

The parties do not intend that any specific third party obtain a right by virtue of the execution or performance of this Agreement.

#### VII.

#### NOTICES

All notices and communications under this Agreement shall be mailed by certified mail, return receipt request, or delivered to the following addresses:

If to Fort Bend County:

Fort Bend County  
Attn: Parks Director  
301 Jackson  
Richmond, Texas 77469

If to the District:

Cinco Municipal Utility District No. 1  
c/o Stephen M. Robinson  
3200 Southwest Freeway, Suite 2600  
Houston, Texas 77027

If to the District's bookkeeper:

F. Matuska, Inc.  
P.O. Box 842023  
Houston, TX 77284-2023  
Attn: Fran Matuska

#### **VIII.**

#### **TERM.**

The term of this Agreement will be three years from the date the last party executes this Agreement. Any unexpended Project Contributions will be returned to the District upon termination of this Agreement, subject to the requirements of Section III(B) above.

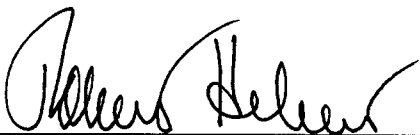
#### **IX.**

#### **ENTIRE AGREEMENT**

This Agreement contains the entire agreement between the parties relating to the rights granted and the obligations assumed. Any modifications concerning this instrument shall be of no force or effect, unless a subsequent modification in writing is signed by all parties hereto.

FORT BEND COUNTY, TEXAS

CINCO MUNICIPAL UTILITY DISTRICT NO. 1



Robert Hebert, Fort Bend County Judge

\_\_\_\_\_  
G. Tim Lawrence, President

Date: 6-8-2010

Date: \_\_\_\_\_

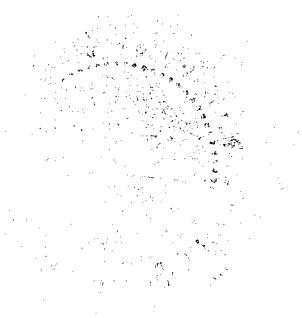
ATTEST:



Dianne Wilson, Fort Bend County Clerk

ATTEST:

\_\_\_\_\_  
Elbert E. Goins, Jr., Secretary



**EXHIBIT "A"**

**Buffalo Bayou Nature Trail / Regional Park  
Cost Study**

5/20/2010

<b>Grant Required Items</b>		<b>2010 Fort Bend County</b>
<u>ITEM</u>	<u>Grant Estimated Cost</u>	<u>Construction Estimate</u>
1 Canoe launches (3)	15,000.00	15,000.00
2 Boating safety instructional station	2,000.00	2,500.00
3 Wetlands enhancement	5,000.00	6,000.00
4 Wood duck boxes	2,000.00	3,200.00
5 Wetlands trail (0.3 mile)	13,500.00	
6 Multi-purpose trail (1.9 mile) +	401,500.00	271,349.76 *
7 Interpretive stations (6) +	6,000.00	6,000.00
8 Shelter Bridge +	155,500.00	330,000.00 **
9 Picnic Tables (8)	4,500.00	4,500.00
10 Benches (6)	2,600.00	2,600.00
11 Historical/Cultural interpretive stations (4) +	4,000.00	4,000.00
12 Interpretive playground	40,400.00	35,000.00
13 Baseball fields (2) w/bleachers	165,000.00	165,000.00 ***
<b>Grant Required Items Subtotal</b>	<b>\$ 817,000.00</b>	<b>\$845,149.76</b>
<b>10% Contingency</b>		<b>\$84,514.98</b>
<b>Grant Required Items Total</b>	<b>\$ 817,000.00</b>	<b>\$929,664.74</b>

\* Contract for 3000' feet of trail has been awarded for \$2.92 a square foot.

\*\* Shelter bridge has been replaced by standard pedestrian bridge and actual contract awarded.

\*\*\* Contract awarded for the construction of 4 baseball fields in the amount of \$207,944.

+ Project Elements funded by Districts' contribution per agreement with County

**Additional Items - Required to Implement Grant Items**

<u>ITEM</u>	<u>Unit Cost</u>	<u>Total Cost</u>
1 Wood Foot Bridges at Wetlands (2) +	15,000.00	
2 Boardwalk with Overlook +	25,000.00	16,000.00 *
3 Parking lot	804,822.50	400,000.00 **
4 Water Well	35,000.00	35,000.00
5 Aerobic Treatment System	50,000.00	13,000.00
6 Site Irrigation @ Ballfields	n/a	n/a
<b>Additional Items Subtotal</b>		<b>\$464,000.00</b>
<b>10% Contingency</b>		<b>\$46,400.00</b>
<b>Additional Items Grand Total</b>		<b>\$510,400.00</b>

\* County already purchased boardwalk and foot bridges for a combined \$16,000.00

\*\* As estimated by County Road and Bridge.

**Overall Project Grand Total** **\$1,440,064.74**



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**Revenue Sources**

<b>Entity</b>	<b><u>Purpose</u></b>	<b><u>Amount</u></b>
Westbrook Cinco East	Cash	<b>\$10,000.00</b>
Terrabrook/Cinco Southwest	Cash	<b>\$10,000.00</b>
* Fort Bend County	In-Kind	<b>\$875,000.00</b>
Newland Communities	Cash	<b>\$10,000.00</b>
Cinco MUD 1	Cash	<b>\$10,000.00</b>
Cinco MUD 2	Cash	<b>\$10,000.00</b>
Cinco MUD 3	Cash	<b>\$104,000.00</b>
Cinco MUD 5	Cash	<b>\$10,000.00</b>
Cinco MUD 6	Cash	<b>\$7,500.00</b>
Cinco MUD 7	Cash	<b>\$50,000.00</b>
Cinco MUD 8	Cash	<b>\$10,000.00</b>
Cinco MUD 9	Cash	<b>\$25,000.00</b>
Cinco MUD 10	Cash	<b>\$125,000.00</b>
Cinco MUD 12	Cash	<b>\$121,000.00</b>
Cinco MUD 14	Cash	<b>\$75,000.00</b>
<b>Grand Total Revenue</b>		<b>\$1,567,500.00</b>

Westbrook Cinco West (Newland Communities) has pledged \$169,000 towards engineering / design expenses

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<b>Overall Project Total From Above</b>	<b>\$1,440,064.74</b>
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<b>Surplus Funds</b>	<b>\$127,435.26</b>
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- \* In-kind dollar figure represents the construction cost of labor and/or materials to be provided by Ft. Bend County including work for trails, duck boxes, site work, and the ballfield area parking lot; includes grant monies from Texas Parks and Wildlife.

DISCLAIMER – This cost estimate does not represent actual construction costs and is provided as a tool to the client. Costs included herein are based on recent construction experience, but actual bids may vary. Cost included herein are also subject to change based upon comments recd by the USACE, TPWD, or other government entities which could require changes to the construction documents.

EXHIBIT "B"

<u>District</u>	<u>Amount Committed</u>
Cinco 1	\$125,000.00
Cinco 2	10,000.00
Cinco 3	104,000.00
Cinco 5	10,000.00
Cinco 6	7,500.00
Cinco 7	50,000.00
Cinco 8	10,000.00
Cinco 9	25,000.00
Cinco 10	125,000.00
Cinco 12	121,000.00
Cinco 14	75,000.00
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<b>Total</b>	<b>\$662,500.00</b>

## EXHIBIT "C"

### Optional Items – implemented with surplus funding

<u>Item</u>	<u>Total Cost</u>
1 Concession bldg w/restrooms and storage	\$250,000.00
2 Baseball fields (2) w/bleachers	\$170,000.00
3 Baseball fields (4) w/bleachers	\$340,000.00
4 Parking lot expansion	\$400,000.00
<b>Optional Items – Total</b>	<b>\$1,160,000.00</b>