

SECOND INTERLOCAL PROJECT AGREEMENT
FOR RECREATIONAL FACILITIES BY AND BETWEEN
FORT BEND COUNTY, TEXAS AND
WILLOW FORK DRAINAGE DISTRICT
(Road Improvements for Exploration Park)

THE STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

This SECOND INTERLOCAL PROJECT AGREEMENT FOR RECREATIONAL FACILITIES (the "Second Project Agreement") is entered into by and between 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") and Willow Fork Drainage District, created by an Order of the Texas Water Commission (the "District.")

RECITALS

WHEREAS the District has been created and organized for the purposes, among others, of protecting, preserving, and restoring the purity and sanitary condition of water within the State, and has the authority pursuant to Chapters 49 and 51 of the Texas Water Code, as amended, to finance, develop and maintain, parkways, greenbelts, sidewalks, trails and other recreational facilities for its residents; and

WHEREAS, the County is a body corporate and politic under the laws of the State of Texas and has the authority to, amongst other things, install and maintain parks, trail ways and other recreational facilities; and

WHEREAS, the District and County have entered into a Primary Interlocal Agreement dated December 6, 2011; and

WHEREAS, the District and the County entered into that certain Interlocal Project Agreement for Recreational Facilities (the "First Project Agreement") dated December 6, 2011, pursuant to which the District agreed to contribute funds towards the design and construction of improvements to the ball fields at Freedom Park for the benefit of the residents including a concession stand at the ball field complex ("Freedom Park Project"); and

WHEREAS, District sold bonds, constructed the Freedom Park Project, and the County now owns and operates the facilities at Freedom Park, and both parties have satisfied their mutual obligations under the First Project Agreement; and

WHEREAS, the District is further constructing an additional park within the County ("Exploration Park") generally shown on the District's park plan approved by District voters and attached hereto as **Exhibit "A"**;

WHEREAS, the Parties find that Exploration Park will provide recreational amenities to residents in both the District and the County and will be beneficial to both parties; and

WHEREAS, the County will construct certain road improvements and parking for Exploration Park; and

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

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual promises, covenants, obligations, and benefits of this Second Project 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 Second Project Agreement and are incorporated into this Second Project Agreement.

II.
FREEDOM PARK PROJECT

The District's obligation under the First Project Agreement to fund certain facilities included a contribution of \$260,200 for a concession stand. While the actual costs of the concession stand were less than \$260,200, the District contributed costs to the County water well and irrigation system. The parties agree that the District's financial obligations to Freedom Park Improvements under the First Project Agreement have been satisfied, and the District is not obligated to expend any further funds on Freedom Park Improvements.

III.
ROAD IMPROVEMENTS

- A. General Description. The parties agree the following road improvements are integral to the construction and enjoyment of Exploration Park and shall constitute the Road Improvements that are the subject of this Second Project Agreement. The Road Improvements will include the following:
1. The widening of the access road to the Cinco Municipal Utility District No. 1 South Wastewater Treatment Plan with asphalt as depicted on **Exhibit "B."** The existing road will be widened approximately 22 feet for 450 linear feet, which will add approximately 50 "head in" parking spots.
 2. Construction of wheel stops and approximately 500 linear feet of four-foot sidewalk on the north side of the access road as shown on **Exhibit "B"**.
 3. Construction of a speed table at the pedestrian crossing as depicted on **Exhibit "C"** on Cinco Park Road.
- B. Design, Environmental Permits, and Easement.
1. The District has prepared the plans and specifications for the construction of the Road Improvements and has designed the Road Improvements in accordance with good engineering standards and in accordance with all applicable rules, regulations, and requirements of all governmental entities having jurisdiction over the Road Improvements, including the County, which has approved such plans. There are no environmental permits required in connection with the construction of the Road Improvements.
 2. The District will be responsible for obtaining easements, if any, for the construction, operation and maintenance of the Road Improvements. The easements will be granted to both the District and the County for access purposes and to the County for operation and maintenance purposes.
- C. Construction and Funding of the Road Improvements. The County intends that the County's Road and Bridge Department shall construct the Road Improvements. In the event that the County does not construct the Road Improvements, the County shall be the owner on the construction contract, and bid, award and fund the Road Improvements in accordance with state law. The County agrees to complete the construction of the improvements to Cinco Park Road as described on Exhibit "B" by August

31, 2015. In addition to any other construction contract provisions, any construction contract for the Road Improvements shall include the contractor's or the County's one (1) year warranty of work performed under the contract.

- D. Ownership and Maintenance of the Road Improvements. The County will own and maintain those Road Improvements that are in public right of ways.
- E. Insurance. The County agrees to require any contractor who constructs any phase of the Road Improvements 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 Road Improvements that may be under construction.

IV. LIABILITY

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

V. SUCCESSORS AND ASSIGNS

This Second Project Agreement shall apply to and be binding upon the Parties hereto and their respective officers, directors, successors, and assigns. This Second Project Agreement and any of the rights obtained hereunder are not assignable by any Party hereto without the express written consent of the other Parties, which consent shall not be unreasonably withheld, conditioned or delayed.

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 Second Project Agreement.

VII. NOTICES

All notices and communications under this Second Project 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: County Judge
401 Jackson Street, First Floor
Richmond, Texas 77469
Tel: (281) 341-8608
Fax: (281) 341-8609

If to the District:

c/o Allen Boone Humphries Robinson LLP
3200 Southwest Freeway, Suite 2600
Houston, Texas 77027
Tel.: 713/860-6408
Fax: 713/860-6608
Attention: Stephen M. Robinson

VIII. **TERM**

The term of this Second Project Agreement shall begin on the Effective Date, and shall terminate three (3) years from the Effective Date, or upon completion of the Project, whichever is sooner. However, the maintenance obligations provided for in this Second Project Agreement shall survive the term of this Second Project Agreement.

IX. **DEFAULT AND REMEDIES**

- A.** A Party shall be deemed in default under this Second Project Agreement (which shall be deemed a breach hereunder) if such Party fails to materially perform, observe or comply with any of its covenants, agreements or obligations hereunder or breaches or violates any of its representations contained in this Second Project Agreement.
- B.** Before any failure of any Party to perform its obligations under this Second Project Agreement shall be deemed to be a breach of this Second Project Agreement, the party claiming such failure shall notify the Party alleged to have failed to perform of the alleged failure, in writing, and shall demand performance. No breach of this Second Project Agreement may be found to have occurred if performance has commenced to the reasonable satisfaction of the complaining party within 30 days of the receipt of such notice.
- C.** Upon a breach of this Second Project Agreement, the non-defaulting party, in any court of competent jurisdiction, by an action or proceeding at

law or in equity, may secure the specific performance of the covenants and agreements herein contained, may be awarded damages for failure of performance, or both. Except as otherwise set forth herein, no action taken by a Party pursuant to the provisions of this Section or pursuant to the provisions of any other Section of this Second Project Agreement shall be deemed to constitute an election of remedies; and all remedies set forth in this Second Project Agreement shall be cumulative and non-exclusive of any other remedy either set forth herein or available to any Party at law or in equity. Each of the parties shall have the affirmative obligation to mitigate its damages in the event of a default by the other Party.

- D. Notwithstanding anything in this Second Project Agreement which is or may appear to be to the contrary, if the performance of any covenant or obligation to be performed hereunder by any Party is delayed as a result of circumstances which are beyond the reasonable control of such party (which circumstances may include, without limitation, pending or threatened litigation, acts of God, war, acts of civil disobedience, fire or other casualty, shortage of materials, adverse weather conditions [such as, by way of illustration and not limitation, severe rain storms or below freezing temperatures, or tornadoes] labor action, strikes or similar acts) the time for such performance shall be extended by the amount of time of such delay ("Force Majeure").
- E. In addition to any other right or remedy available to the Parties pursuant to this Second Project Agreement, in the event of a default or a breach by any Party under this Second Project Agreement which continues for thirty (30) days after written notice to the Party alleged to have defaulted or breached and the failure of the Party alleged to have defaulted or breached to cure or diligently proceed to cure such breach to the complaining Party's reasonable satisfaction, the complaining Party shall have the right (but not the obligation), in its sole discretion, to exercise its rights with regards to mandamus, specific performance or mandatory or permanent injunction to require the Party alleged to have defaulted or breached to perform.

X.
ENTIRE AGREEMENT

This Second Project Agreement constitutes the entire agreement between the parties relating to the rights granted and the obligations assumed. There have been and are no agreements, covenants, representations, or warranties between the parties other than those expressly stated or provided for herein. No modification hereof or subsequent agreement relative to the subject matter hereof shall be binding on any Party unless reduced to writing and signed by

the Parties.

XI.
MERGER

This Second Project Agreement is the entire agreement among the Parties with respect to the subject matter hereof and, as to such matters, this Second Project Agreement sets forth all the promises and agreements among the Parties and supersedes all prior and contemporaneous agreements, understandings, inducements, or conditions, expressed or implied, oral or written.

XII.
SEVERABILITY

The provisions of this Agreement are severable, and if any word, phrase, clause, sentence, paragraph, section, or other part of this Agreement or the application thereof to any other person or circumstance shall ever be held by any court of competent jurisdiction to contravene or be invalid under the constitution or laws of the State of Texas for any reason, that contravention or invalidity shall not invalidate the entire Agreement. Instead, this Agreement shall be construed as if it did not contain the particular provision or provisions held to be invalid, the rights and obligations of the Parties shall be enforced accordingly, and this Agreement shall remain in full force and effect, as construed. The remainder of this Agreement and the application of such word, phrase, clause, sentence, paragraph, section, or other part of this Agreement to the other parties or circumstances shall not be affected thereby.

XIII.
AUTHORIZATION

Each Party represents that (i) execution and delivery of this Agreement by it has been duly authorized by its governing body or other persons from whom such Party is legally bound to obtain authorization; (ii) that the consummation of the contemplated transactions will not result in a breach or violation of, or a default under, any agreement by which it or any of its properties is bound, or by any statute, rule, regulation, order, or other law to which it is subject; and (iii) this Agreement is a binding and enforceable agreement on its part.

XIV.
APPLICABLE LAW

This Agreement shall be governed and construed in accordance with the laws of the State of Texas. Venue shall be in Fort Bend County.

XV.
EFFECTIVE DATE

This Agreement will be effective as of the date of the execution by the last Party to execute this Agreement.

FORT BEND COUNTY, TEXAS

Robert Hebert

Robert Hebert, Fort Bend County Judge

Date: June 23, 2015

ATTEST:

Laura Richard

Laura Richard, Fort Bend County Clerk

REVIEWED BY:

Marc Grant

Marc Grant
Fort Bend County Road Commissioner

WILLOW FORK DRAINAGE DISTRICT

Richard Ward

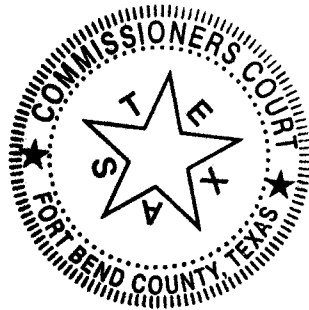
Richard Ward, President

Date: _____

ATTEST:

Joseph Robinson

Joseph Robinson, Secretary



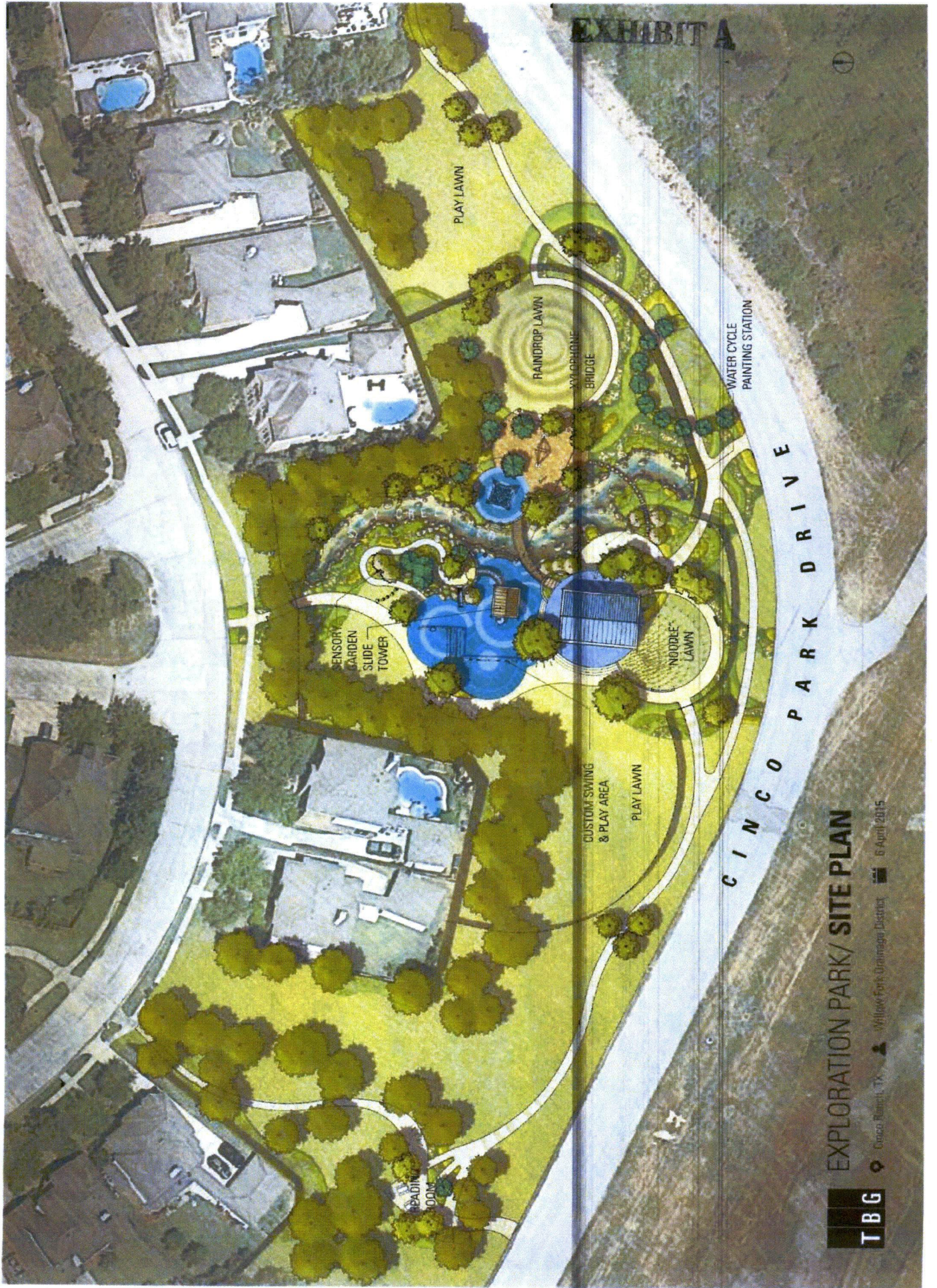


EXHIBIT A

WATER CYCLE PAINTING STATION

CINCO PARK DRIVE

SENSORY GARDEN SLIDE TOWER

RAINDROP LAWN

NOODLE LAWN

CUSTOM SWING & PLAY AREA

PLAY LAWN

PLAY LAWN

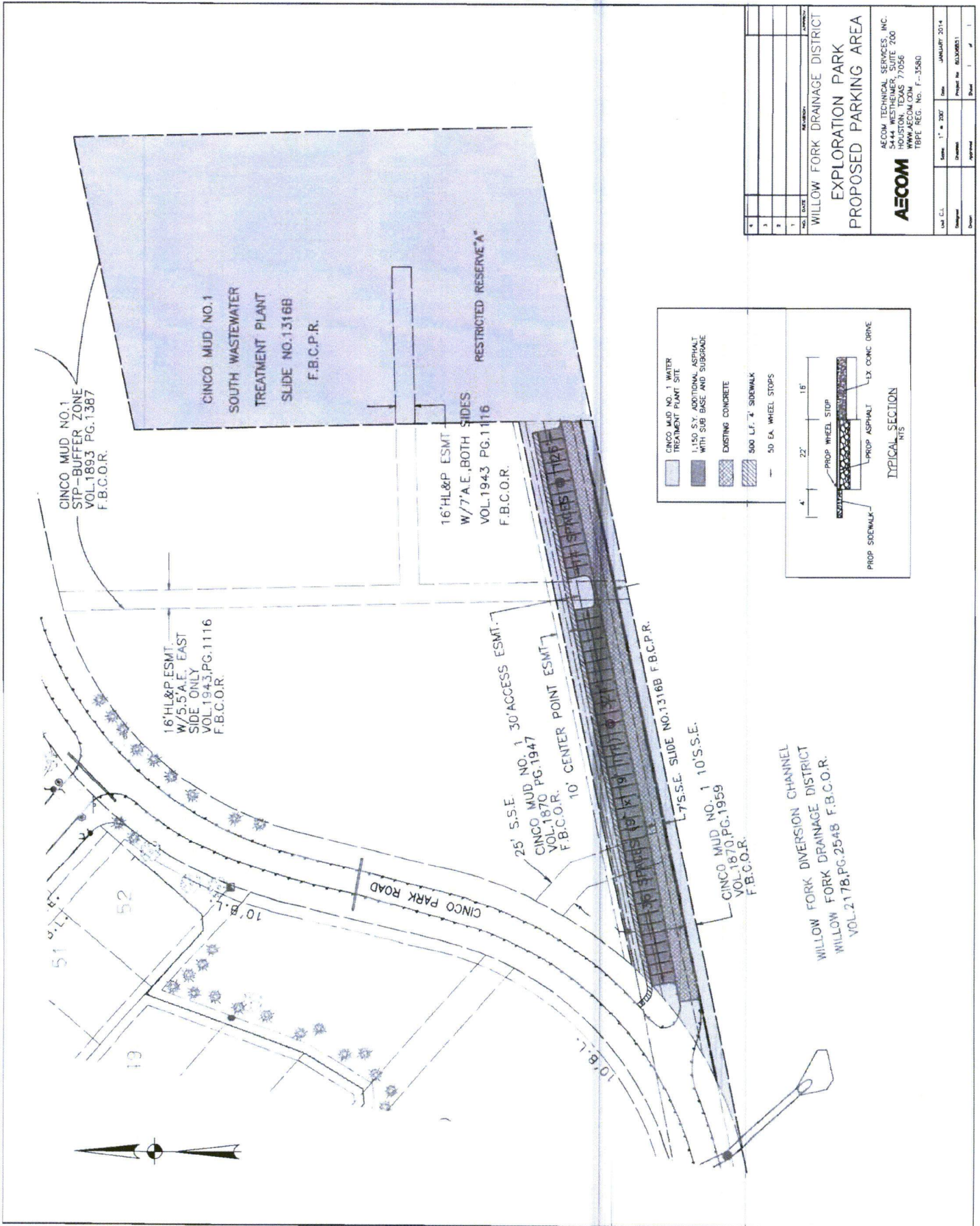
READING DOCK

EXPLORATION PARK/ SITE PLAN

Cinco Ranch, TX • Willbros Park Drainage District • 6 April 2015



EXHIBIT B



NO.	DATE	REVISION
1		
2		
3		
4		

CINCO MUD NO. 1 WATER TREATMENT PLANT SITE 1,150 S.Y. ADDITIONAL ASPHALT WITH SUB BASE AND SUBGRADE EXISTING CONCRETE 500 L.F. 4' SIDEWALK 50 EA. WHEEL STOPS	TYPICAL SECTION PROP. SIDEWALK PROP. WHEEL STOP PROP. ASPHALT 1x CONC. DRIVE
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CINCO MUD NO. 1 SOUTH WASTEWATER TREATMENT PLANT SLIDE NO. 1316B F.B.C.P.R. RESTRICTED RESERVE "A"	WILLOW FORK DRAINAGE DISTRICT EXPLORATION PARK PROPOSED PARKING AREA
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AECOM TECHNICAL SERVICES, INC. 5444 WESTHEIMER, SUITE 200 HOUSTON, TEXAS 77056 WWW.AECOM.COM TBP# REG. NO. F--3580	JANUARY 2014 Project No. 63300051
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EXHIBIT C

