

HARRIS COUNTY

OFFICE OF THE COUNTY ENGINEER

1001 Preston, Suite 500
Houston, Texas 77002
(713) 755-5370

May 27, 2021

Honorable County Judge
& Commissioners

**SUBJECT: Interlocal Agreement – Cinco Landscape Maintenance
Association, Inc.**

Recommendation for authorization to execute an Interlocal agreement with Cinco Landscape Maintenance Association, Inc. for maintenance of landscaping, irrigation, medians and easements within the existing road right-of-way, Precinct 3.

Sincerely,

A handwritten signature in black ink that reads "John R. Blount for JRB".

John R. Blount, P.E.
County Engineer

Attachment

cc: Commissioner Tom S. Ramsey, P.E.
Lynn Blue

AGREEMENT BETWEEN HARRIS COUNTY AND CINCO LANDSCAPE MAINTENANCE ASSOCIATION, INC.

This Agreement (“Agreement”) is made and entered into by and between **Harris 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, irrigation, medians and easements and related appurtenances (“Non-Standard Elements”), along several county maintained roads (“Road ROW”), located in Harris County Precinct 3 as generally illustrated on Exhibit A attached hereto and incorporated herein by reference for the following projects:
- Peek Rd from Katy Ft Bend Rd to south to Green Bridge Dr
 - Peek Rd @ Highland Knolls Dr West approximately 1,300ft
 - Peek Rd @ Highland Knolls Dr East approximately 1,000ft
 - S Fry Rd @ T103 Drainage Channel South approximately 750ft South of Westheimer Parkway
 - Westheimer Parkway @ Serrano Trail East approximately 1,300ft East of S Fry Rd
- B) CLMA agrees that the maintenance and repair of the Non-Standard Elements (“Maintenance”) is not standard maintenance for the County.
- C) 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.
- D) Unless otherwise stated in this Agreement, words which have well-known technical or industry meanings are used in accordance with such recognized meaning.
- E) CLMA shall verify that each contractor and subcontractor it retains to perform the Maintenance pursuant to this Agreement are in compliance with Section C above.
- F) 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 agrees to accept full ownership of the Non-Standard Elements and responsibility for the perpetual 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 a direct result of damage to the Non-Standard Elements or is otherwise directly caused by the Non-Standard Elements. CLMA shall have no responsibility for maintenance and repair of the Road ROW, except as stated in this Agreement.

- 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 removing and relocating 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 Harris 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 sole discretion, determines that it is necessary to implement interim safety measures until such time as CLMA can provide its own safety measures. CLMA shall be responsible for the cost incurred by the County in providing any interim safety measures on its behalf. In any event, 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 follow necessary safety measures and shall 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. 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.
- 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 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, (a) alter, reduce, replace, remove, or authorize other changes to the Non-Standard Elements, at CLMA's sole expense, including an administrative cost equal to 10% of the cost, or (b) terminate this Agreement.

- 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 in accordance with the Regulations of Harris County, Texas for the Approval and Acceptance of Infrastructure ("Regulations"), 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 CLMA's sole expense, including an administrative cost equal to 10% of the cost, if and when the County, in the sole discretion of the County Engineer or the Applicable County Precinct Road and Bridge Superintendent ("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 under this Agreement are performed by CLMA as an independent contractor. 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, firing, discipline, compensation, insurance, and benefits in accordance with the applicable laws of the State of Texas. 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) **IN THE EVENT THAT ANY STATE OR FEDERAL AGENCY, OR COURT OF COMPETENT JURISDICTION DETERMINES THAT CLMA IS NOT AN INDEPENDENT CONTRACTOR, CLMA AGREES TO INDEMNIFY AND HOLD HARMLESS THE COUNTY FOR ANY AND ALL DAMAGES, PENALTIES, ASSESSMENTS, TAXES, OR EXPENSES THAT MAY BE INCURRED BY COUNTY AS A RESULT OF THIS DETERMINATION.**
- C) CLMA warrants that it will comply with all federal and state laws including but not limited to the Prompt Pay Act, in the payment of its workers.
- D) CLMA is solely responsible for the payment of wages and any applicable benefits to workers for Maintenance performed for the County. CLMA shall be responsible for withholding federal and state income taxes, paying Federal Social Security taxes, maintaining unemployment insurance and maintaining workers' compensation insurance in an amount and under such terms as required by the applicable laws of the State of Texas.

THE COUNTY'S PAYMENT IS TO CLMA. THE COUNTY SHALL HAVE NO LIABILITY, DIRECTLY OR INDIRECTLY, FOR PAYMENT TO CLMA'S WORKERS OR SUBCONTRACTORS. CLMA SHALL INDEMNIFY AND HOLD THE COUNTY HARMLESS FROM ANY AND ALL SUCH CLAIMS.

- E) 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. CLMA and the workers furnished by CLMA shall not be entitled to any fringe benefits or similar benefits afforded to employees of the County. 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.
- F) The County is not responsible to CLMA or CLMA's workers for payment of any overtime compensation or any additional payments pursuant to the Fair Labor Standards Act, 29 U.S.C. Section 207 9a(1), as amended; the Texas Pay Day Act; the Equal Pay Act; Title VII

of the Civil Rights Act of 1964, 42 U.S.C. Section 2000e, *et al.*, as amended; or any provisions of the *Texas Labor Code Ann.*, as amended.

- G) 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 for successive one (1) year terms (each a “Renewal Term”).

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 mutual written agreement and consent of CLMA and the County.
- 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.
- E) Copies of all completed or partially completed information, programs, inventions, software (including source code), firmware, designs, documentation or data (the “Documents”) developed, created or invented under this Agreement shall be delivered to the County when this Agreement is terminated or completed.

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:

Harris County Engineering Department
1001 Preston, 7th Floor
Houston, Texas 77002
Attention: County Engineer

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

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 represents and warrants that it is capable and willing to provide the Services called for in the Agreement, and agrees to render the Services in accordance with the generally accepted standards applicable to the Services. CLMA shall use that degree of care and skill commensurate with the profession to comply with all applicable federal, state, and local laws, ordinances, rules, and regulations relating to the Services and CLMA's performance to be rendered hereunder. CLMA represents that CLMA and its personnel are fully qualified to perform the Services and provide the deliverables described in this Agreement.
- B) CLMA agrees to keep confidential the contents of all its discussions with County officials. CLMA agrees to keep confidential the contents of all County records and all other information obtained during CLMA's performance of Services under this Agreement. CLMA shall not release any confidential information unless the County, in writing, authorizes CLMA to release specific information to any third parties.
- C) CLMA shall not access any information it is not authorized to receive, nor shall CLMA copy, recreate, or use any proprietary information or Documents obtained in connection with this Agreement other than for the performance of this Agreement.
- D) 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.
- E) 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.
- F) CLMA warrants and represents that neither it, nor any of its principals or other affiliated entities, owe any debts to Harris County, including, but not limited to delinquent taxes, court judgments, tickets, tolls, fees, or fines. Taxes are deemed delinquent on the date certain as

specified by the Harris County Tax Office. For the purposes of this Agreement, a court judgment is not required for delinquent taxes to be considered a debt.

- G) 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. Furthermore, CLMA warrants that no company or person, other than a bona fide employee, has been employed to solicit or secure this subcontract with County, and that CLMA has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this provision, the County shall have the right to terminate the Agreement without liability.
- H) Lobbying: CLMA shall not use County funds to directly or indirectly pay any person for influencing or attempting to influence any public employee or official in connection with the awarding of any contract or the extension, continuation, renewal, amendment or modification of any contract. Pursuant to 31 U.S.C.A. § 1352 (2003), if at any time during the Agreement term funding to CLMA exceeds \$100,000.00, CLMA shall file with the County the Federal Standard Form LLL titled “Disclosure Form to Report Lobbying.”
- I) County and its designee shall have the right to conduct examinations, studies and audits of the services, payments, and efficiencies provided under this Agreement and County may make such examinations, studies, and audits at any time whether before or after payment. CLMA shall cooperate with such examinations, studies, and audits and provide County with such records, data, documents, including all of CLMA’s backup and support data for billings, and CLMA shall provide access to such records, data, documents and personnel as are requested by County or the County Auditor. This section shall survive termination of this Agreement.
- J) Whistleblower Protection Act: CLMA understands and agrees that this Agreement and employees working on this Agreement will be subject to the whistleblower rights and remedies in the pilot program on CLMA employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239) and FAR 3.908. CLMA shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C. 4712, as described in section 3.908 of the Federal Acquisition Regulation. CLMA shall insert the substance of this clause; paragraph M (“Whistleblower Protection Act”), in all subcontracts providing services under this Agreement.
- K) 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.
- L) 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.

- M) 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 Houston, Harris County, Texas.

12) PROHIBITION ON LIENS

In accordance with Texas Property Code §43.002, CLMA, or its contractors or agents, will not create or place, or permit to be created or 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) The Contactor 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) Every such policy of insurance shall provide coverage limits in amounts at least as great as the maximum liability authorized to be imposed against a similar contractor for governmental acts by the Texas Tort Claims Act, Chapter 101, Texas Civil Practices and Remedies Code, as amended and then in effect.
- C) 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, AND NO PAYMENT, PARTIAL PAYMENT, OR ISSUANCE OF EITHER A CERTIFICATE OF SUBSTANTIAL COMPLETION OR FINAL SYSTEM ACCEPTANCE IN WHOLE OR IN PART SHALL WAIVE OR RELEASE ANY OF THE PROVISIONS OF THIS ARTICLE.

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 NEGLIGENT ACT, ERROR, OR OMISSION; INTENTIONAL TORT; INTELLECTUAL PROPERTY INFRINGEMENT; OR FAILURE TO PAY A SUBCONTRACTOR 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.

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 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.

IF A RESTRAINING ORDER OR TEMPORARY INJUNCTION IS GRANTED DUE TO ANY ACT, ERROR, OR OMISSION COMMITTED BY CLMA OR ANOTHER ENTITY OVER WHICH CLMA EXERCISES CONTROL, CLMA SHALL MAKE EVERY EFFORT, INCLUDING BUT NOT LIMITED TO SECURING A SATISFACTORY BOND, TO OBTAIN THE SUSPENSION OF ANY SUCH RESTRAINING ORDER OR TEMPORARY INJUNCTION.

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) NO FEDERAL EXCLUSION

A) CLMA warrants that CLMA is not an “Ineligible Person.” An “Ineligible Person” is an individual or entity who:

- i) is currently excluded, debarred, suspended, or otherwise ineligible to participate in any federal and/or state grant, health care program, or in federal and/or state procurement or non-procurement programs. This includes but is not limited to persons who are on the List of Excluded Individuals or Entities of the Inspector General, List of Parties excluded from Federal Programs by the General Services Administration or the Medicaid Sanction List; or,
 - ii) has been convicted of a criminal offense related to the provision of health care items or services [within the rules and regulations of 42 USC §1320a-7(a)], but has not yet been excluded, debarred, suspended, or otherwise declared ineligible.
- B) CLMA agrees to report immediately to the County if CLMA becomes an “Ineligible Person” during the term of this Agreement.

16) OWNERSHIP OF DOCUMENTS; COPYRIGHT

- A) CLMA agrees that for the purposes of assigning copyright ownership, any and all completed or partially completed data, information, reports, programs, inventions, software, firmware, designs, preliminary layouts, record drawings, digital files, photographs, sketches, and all other electronic or hardcopy documents or documentation (the “Documents”) developed pursuant to the Services performed under this Agreement, shall be the sole property of the County.
- B) CLMA represents that it has the right to assign and hereby assigns to the County all rights, title, copyright ownership and interest in any completed or partially completed data (including source codes), information, reports, programs, inventions, software, firmware, designs, preliminary layouts, record drawings, digital files, photographs, sketches, and all other electronic or hardcopy documents or documentation to be developed or has already been developed, created or invented pursuant to this Agreement or any other agreements that CLMA may currently have or had in the past, with the County.
- C) Within seven (7) days after its development, creation, or invention, CLMA agrees to deliver to the County, copies, in a form acceptable to the County, of any and all such Documents. CLMA may retain one set of reproducible copies of all Documents for the sole use of performing Services for the County. CLMA is expressly prohibited from selling, donating, licensing or otherwise marketing, or divulging to third parties, any Document, or using such Documents in the preparation of other work for any other client, without the express written permission of the County.

17) AUDIT RIGHTS

- A) Audit Rights. CLMA shall cooperate to the fullest extent with any and all federal, state, local, or County audits related to this Agreement. CLMA’s cooperation shall include, but not be limited to access to all books, records, contracts, spreadsheets, correspondence, and documents, in whatever form, that are applicable to this Agreement and requested by any federal, state, local, or County entity that has rights or jurisdiction over any part of this Agreement or the funds applicable to this Agreement.
- B) Record Retention. CLMA agrees to retain within the boundaries of Harris County, for six (6) years after the expiration of this Agreement, all books, records, contracts, spreadsheets, correspondence, and documents applicable to this Agreement. CLMA will retain and make

available, and insert the requisite clause in each applicable subcontract requiring its subcontractors to retain and make available, the books, records, contracts, spreadsheets, correspondence, and documents applicable to this Agreement.

18) 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.

19) 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.

20) 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.

21) 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.

22) 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.

23) 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.

24) 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.

25) 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]

HARRIS COUNTY, TEXAS

CINCO LANDSCAPE MAINTENANCE ASSOCIATION

By: _____
Lina Hidalgo, County Judge
Date: _____

DocuSigned by:
By: Jodd Schutte
President, Board of Directors
Date: 4/30/2021

APPROVED AS TO FORM:

ATTEST:

VINCE RYAN
County Attorney

DocuSigned by:
By: Harvey Miller
Secretary, Board of Directors

By: Philip Berzins
Philip Berzins
Assistant County Attorney
C.A.O. File No.: 20GEN1435

ORDER OF COMMISSIONERS COURT

The Commissioners Court of Harris County, Texas, met in regular session at its regular term at the Harris County Administration Building in the City of Houston, Texas, on _____, with all members present except _____.

A quorum was present. Among other business, the following was transacted.

ORDER AUTHORIZING AN INTERLOCAL AGREEMENT BETWEEN HARRIS COUNTY AND CINCO LANDSCAPE MAINTENANCE ASSOCIATION, INC. FOR MAINTENANCE OF LANDSCAPING AND IRRIGATION WITHIN THE EXISTING ROAD RIGHT-OF-WAY IN HARRIS COUNTY PRECINCT 3

Commissioner _____ introduced an order and moved that Commissioners Court adopt the order. Commissioner _____ seconded the motion for adoption of the order. The motion, carrying with it the adoption of the order prevailed by the following vote:

	Yes	No	Abstain
Judge Lina Hidalgo	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Rodney Ellis	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Adrian Garcia	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Tom S. Ramsey, P.E	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. R. Jack Cagle	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

The County Judge thereupon announced that the motion had duly and lawfully carried and that the order had been duly and lawfully adopted. The order adopted follows:

IT IS ORDERED that:

1. The Harris County Judge is authorized to execute on behalf of Harris County the attached Interlocal Agreement between Cinco Landscape Maintenance Association, Inc. for maintenance of landscaping, irrigation, medians and easements within the existing road right-of-way in Harris County Precinct 3.
2. All Harris County officials and employees are authorized to do any and all things necessary or convenient to accomplish the purposes of this order.