

**INTERLOCAL AGREEMENT**  
**REGARDING CULLINAN PARK**

This Interlocal Agreement (“Agreement”) regarding Cullinan Park (“Park”) is made and entered into by and between the CITY OF HOUSTON, a municipal corporation and home-rule city of the State of Texas, acting by and through its City Council, (hereinafter referred to as “Houston”), the HOUSTON PARKS BOARD, LGC, a local government corporation organized under Chapter 431, Texas Transportation Code, (“HPB”), the CULLINAN PARK CONSERVANCY, a Texas non-profit corporation, (the “Conservancy”) and the CITY OF SUGAR LAND, TEXAS, a municipal corporation and home-rule city of the State of Texas, acting by and through its City Council, (“Sugar Land”).

**RECITALS**

WHEREAS, Houston and HPB are the owners of 754.829 acres of land more or less in the M.M. Battle League, Abstract 9 and the Alexander Hodge League, Abstract 32 in Fort Bend County, Texas; and

WHEREAS, development on all tracts is restricted by covenants that allow only those uses that are consistent with its existence as a place of beauty and peacefulness as more fully set out below; and

WHEREAS, the Park generally known as Cullinan Park at Oyster Creek, is located on the west side Highway 6 between Voss and Highway 90A, Houston, and is designated and used as a public park and recreation area; and

WHEREAS, the Conservancy desires to raise funds to support and improve the Park consistent with the Deed Restrictions (attached as exhibit A) contained in the conveyances referenced in Exhibit A to Houston and HPB; and

WHEREAS, the Parties have discussed mutual goals regarding the construction and operation of permanent improvements in the Park in a manner consistent with the Deed Restrictions and appropriate for the use and enjoyment of residents of Sugar Land and Houston; and,

WHEREAS, Sugar Land is willing to operate and maintain the Park and to implement the construction of permanent improvements in the Park, and Houston is willing to make the land comprising the Park available to Sugar Land for such purposes.

NOW, THEREFORE, for and in consideration of the mutual covenants, agreements and benefits, the Parties agree as follows:

# AGREEMENT

## ARTICLE I. PERMISSION, USE AND TERM

- 1.01.1 Upon approval by the City Councils of Houston and Sugar Land, Houston will take action to release the Park from its Extra Territorial Jurisdiction.
- 1.01.2 **Release and Annexation.** Once the Conservancy has presented evidence sufficient to Sugar Land that it has \$500,000 ready to fund improvements for the Park, Sugar Land will begin proceedings to annex the Park.
- 1.01.3 **Effective Date.** This Agreement shall become effective as of the date on which Sugar Land takes final action to annex the Park.
- 1.02 **Right of Entry.** Houston and HPB hereby authorize Sugar Land, its officials, employees, agents, representatives and contractors to enter the Park and to establish, provide, maintain, construct, equip and operate park or recreational facilities consistent with the Deed Restrictions and appropriate for the use and enjoyment of residents of Sugar Land and Houston.
- 1.02 **Use.** The Park may be used only as a park and for purposes which are consistent with its enjoyment by the public as a place of beauty and peacefulness (the "Permitted Uses") as distinguished from active recreational acreage.

1.02.1 As stated in the Protective Covenants as shown in Exhibit A and recorded in the Fort Bend County Real Property Records, the following restrictions apply to the Park and constitute the Permitted Uses:

- (a) any work of art as defined in Section 2-326, Code of Ordinances, City of Houston, which has been approved by the Municipal Art Commission,
- (b) any other improvements which are usually situated in parks to enhance the public's enjoyment thereof (but which would not detract from the Park being a place of beauty and peacefulness, as distinguished from recreational acreage), such as, but not limited to, benches, picnic tables and grills, botanical gardens, fish ponds, gazebos, restrooms, and refreshment stands.
- (c) In reasonable amounts, paved parking areas or interior roads for motor vehicles and bicycles for the use of persons making use of the Park for permitted purposes.

1.02.2 Permitted Uses exclude:

- (a) golf course;
- (b) swimming pools;
- (c) playground or exercise equipment;
- (d) camping grounds;
- (e) fields for baseball, softball, football, polo, soccer or other sports;

- (f) courts for tennis, badminton, handball or other sports;
- (g) roller or ice skating rink;
- (h) bicycle or motorcycle trails or tracks; or
- (i) any other use that would detract from the Park being a place of beauty and peacefulness for enjoyment by the public.

Notwithstanding the forgoing, the utilization of the Park by visitors for informal games (for example Frisbee, softball, and touch football) shall not be prohibited when not encouraged or facilitated by Sugar Land or Houston and no facilities expressly promoting or encouraging such uses have been provided in the Park.

- 1.03 Sugar Land may not use the Park, or a portion thereof, for any purpose other than as set forth in the foregoing Section 1.02.
- 1.04 **Archeological sites.** At least one prehistoric archeological site exists on the property. Sugar Land agrees that any development or use of the Park will respect the integrity of the site and will comply with all state and federal statutes governing archeological sites. Sugar Land will advise Houston of any and all communications from or with state or federal authorities with jurisdiction about the site(s).
- 1.05 **Term.** The Parties understand and agree that Sugar Land may enter upon and use the Park as described in Section 1.02 for a period of thirty (30) years commencing on the Effective Date, as hereinafter defined, of this Agreement. Subject to approval of Houston's City Council, Sugar Land shall have the option to renew this Agreement for an additional renewal term of thirty (30) years by giving Houston and HPB written notice of renewal not less than fifteen (15) months before the last day of the initial Term. The initial term and the renewal term are collectively referred to as the "Term".
- 1.06 **No Interest in Land.** It is expressly understood that Houston is not granting Sugar Land 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, Sugar Land will exclusively manage, operate, control and supervise the Park. Sugar Land will operate the Park according to Sugar Land's park rules and regulations. Sugar Land will maintain the Park during the Term of this Agreement in a safe condition in compliance with the Deed Restrictions, 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.** Houston may schedule use of the Park, or a portion thereof, provided that Houston coordinates such activities in advance with Sugar Land. Sugar Land shall not deny

any person use of the Park because of race, creed, national origin, religion, color, sex, sexual orientation or gender identity. Sugar Land shall provide that Houston residents have the use of all amenities of the Park on an equal basis with Sugar Land residents.

- 2.03 **Sugar Land Funding.** During the Term of this Agreement, Sugar Land is responsible for and shall pay any and all costs and expenses associated with the maintenance and operation of the Park.

Houston acknowledges and agrees that Sugar Land may enter into a funding agreement with the Conservancy or some other similar organization to raise funds needed under this agreement. Houston will cooperate with Sugar Land and the Conservancy or other organization in grant applications which require landowner consent, permission or other participation provided such participation does not require the expenditure of money by Houston.

The Parties acknowledge that Sugar Land (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 Sugar Land's sole discretion.

- 2.04 **Conservancy Funding.** The Conservancy agrees to engage in a capital campaign to improve access to the Park and provide for appropriate amenities to support enjoyment of the Park by the citizens of Sugar Land and Houston. The Conservancy agrees to continue fundraising to support conservation of the Park and environmental and educational programs at the Park.

- 2.05 **Houston Contribution.** Houston 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.

- 2.06 **Park Name.** Sugar Land shall not change the name of the Park without the prior written consent of Houston's Director of Parks and Recreation Department ("Parks Director") and HPB. Both Houston and Sugar Land will be included on any signage and promotions of the Park.

### ARTICLE III. DEFAULT, TERMINATION AND IMPROVEMENTS

- 3.01 **Default.** If, at any time during the term of this Agreement, Sugar Land (i) fails to operate and/or maintain the Park for the purposes stated in 1.02 for a period of ninety (90) continuous days, (ii) fails to maintain the Park to at least a level of maintenance comparable to the level currently maintain by Houston, or (iii) defaults under any other provision of this Agreement, Houston will provide Sugar Land written notice of such default, specifying in detail the nature of the default. Sugar Land will have sixty (60) days after receipt of the written notice to commence cure of the default. In the event Sugar Land 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 Houston is to terminate this Agreement. Sugar Land 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 Sugar Land to Houston, (ii) upon mutual agreement of Sugar Land and Houston, or (iii) upon ten (10) days prior written notice by Houston to Sugar Land upon an uncured event of default under Section 3.01.
- 3.03 **Ownership of Improvements at Expiration of Term.** Upon the expiration of the Term(s) of this Agreement or in the event this Agreement is terminated pursuant to this Article, any and all improvements to the Park by Sugar Land will become the property of Houston at no cost or expense to Houston and the management, operation, and control of the Park will become the sole responsibility of Houston.

#### 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 prior to its execution by Sugar Land and the respective contractor and such approval(s) will not be unreasonably withheld or delayed Pursuant to the terms of this Agreement, Sugar Land will bear the full cost of construction, including architectural and engineering fees, and other professional fees, related to permanent improvements to the Park. Sugar Land will be solely responsible for providing for the management of each construction contract and the payment to each contractor. Prior to commencement of the construction of permanent improvements to the Park, Sugar Land will provide the Parks Director with evidence of the availability of funds for the total construction and construction management costs of the permanent improvements to the Park. Houston is a third party beneficiary to the construction contract between Sugar Land 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, Sugar Land agrees to cause the appropriate contractor or have Sugar Land's own personnel and equipment to make any necessary adjustments or repair any such damage or material variation. Sugar Land 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.** Sugar Land, 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. Houston, as owner of the land comprising the Park, agrees to cooperate fully in Sugar Land’s applications for such permits and consents.
- 4.03 **Subsurface Conditions.** Material below the surface of the Park 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 Sugar Land through Sugar Land’s engineers or Sugar Land’s contractors, Sugar Land shall have the authority to terminate this Agreement. If Sugar Land terminates this Agreement under this provision, Sugar Land will provide Houston with the information on the conditions encountered below the surface of the ground.

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  
2999 South Wayside  
Houston, Texas 77023

If to HPB, to the following address:

Copy to:

Executive Director, Houston Parks Board  
300 North Post Oak Lane  
Houston, TX 77024

If to the Conservancy, to the following address:

Cullinan Park Conservancy  
332 W. 32nd St.  
Houston, TX 77018

If to Sugar Land, to the following address:

City Manager  
City of Sugar Land  
2700 Town Center Blvd. N  
Sugar Land, Texas 77479

ARTICLE VI.  
RELEASE, INDEMNIFICATION AND INSURANCE

6.01 **Release.** To the extent permitted by the constitution and laws of the State of Texas, Houston, Sugar Land, and HPB, their successors and assigns hereby release, relinquish, and discharge each other, their predecessors, successors, assigns, legal representatives, and their former, present, and future agents, employees, and officers from any liability to each other as a result of the joint or concurrent negligence of any Party that results in 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.** SUGAR LAND WILL REQUIRE EACH CONTRACTOR PERFORMING DEMOLITION, CONSTRUCTION, OR MAINTENANCE WORK THAT CONTRACTS DIRECTLY WITH SUGAR LAND (COLLECTIVELY, "CONTRACTOR") UTILIZED IN CONNECTION WITH THIS AGREEMENT TO PROTECT, DEFEND, INDEMNIFY, AND HOLD HARMLESS HOUSTON AND HPB, THEIR 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. SUGAR LAND WILL REQUIRE EACH CONTRACTOR TO MAINTAIN THIS INDEMNITY DURING THE PERFORMANCE OF SUCH CONTRACTOR'S WORK AND UP TO THE DATE OF SUGAR LAND'S ACCEPTANCE OF SUCH WORK.

SUGAR LAND WILL 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 HOUSTON, HPB, AND CONTRACTOR, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT.

6.03 **Insurance.** Sugar Land 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 Houston and HPB as an additional insured. All such contracts must contain an agreement that the Contractor will notify Sugar Land in writing not less than thirty (30) days before any reduction in coverage or cancellation of any policy, which will be forwarded by Sugar Land to Houston and HPB within five days of receipt.

ARTICLE VII.  
MISCELLANEOUS

- 7.01 **Information Sharing.** Sugar Land shall promptly provide Houston with a copy of all reports submitted by third party contractors through Sugar Land 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 the Parties, it being understood and agreed that neither any provisions contained in this Agreement, nor any acts of the Parties shall be deemed to create any relationship between the Parties 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 Houston and Sugar Land. Houston shall not sell the land comprising the Park without the prior written consent of the Sugar Land.
- 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 operation, maintenance and improvement of the Park between the Parties.
- 7.09 **Entire Agreement; Amendment.** 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 Parties.

ARTICLE VIII.  
EXECUTION

IN WITNESS WHEREOF, this Agreement has been executed in multiple counterparts by the Parties

ATTEST:

**CITY OF HOUSTON**

\_\_\_\_\_  
Anna Russell  
City Secretary

\_\_\_\_\_  
Annise D. Parker  
Mayor

APPROVED AND RECOMMENDED:

COUNTERSIGNED:

\_\_\_\_\_  
Joe Turner, Director  
Parks and Recreation Department

\_\_\_\_\_  
City Controller  
Ronald Green  
Countersignature Date: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Steven Kirkland  
Senior Assistant City Attorney  
L.D. File No \_\_\_\_\_

HOUSTON PARKS BOARD LGC

By: \_\_\_\_\_

Attest: \_\_\_\_\_

CULLINAN PARK CONSERVANCY

By: \_\_\_\_\_  
Dan T. Neale, President

Attest: \_\_\_\_\_

CITY OF SUGAR LAND

By: \_\_\_\_\_  
James A. Thompson, Mayor

Attest: \_\_\_\_\_  
Glenda Gundermann, City Secretary

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Meredith Riede, City Attorney

EXHIBIT A: Deed Restrictions

