

**FACILITY DEVELOPMENT AGREEMENT – SHADE STRUCTURE**

**by and between**

**THE CITY OF SUGAR LAND, TEXAS**

**AND**

**UNIVERSITY OF HOUSTON SYSTEM**

**Dated August \_\_\_\_, 2023**

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## FACILITY DEVELOPMENT AGREEMENT – SHADE STRUCTURE

THIS FACILITY DEVELOPMENT AGREEMENT (this “Agreement”), entered into as of the effective date set forth below, is by and between the **City of Sugar Land, Texas** (the “City”) and the **University of Houston System** (the “System”).

### RECITALS

WHEREAS, on or about December 6, 2005, the Sugar Land 4B Corporation, Texas, a non-profit corporation created by the City pursuant to the Development Corporation Act of 1970, codified in Chapters 501 through 505, Tex. Local Gov’t Code (the “SL4B”), entered into a Ground Lease Agreement with the System to lease a total of 52 acres of land (a 45-acre tract and a 7-acre tract) owned by the System (the “Ground Lease”); and

WHEREAS, effective September 19, 2012, the SL4B’s responsibilities, rights, and obligations under the Ground Lease were assigned to the City by Assignment of Ground Lease, which has been fully executed by the System, the SL4B, and the City; and

WHEREAS, effective November 20, 2012, the City and the System entered into Amendment No. 1 to the Ground Lease Agreement whereby the boundaries of the original total of 52 acres were amended; and

WHEREAS, Section 7 of the Ground Lease provides that the City and the System will enter into a Facility Development Agreement prior to constructing any Facility as defined in said Ground Lease; and

WHEREAS, effective April 4, 2013, the City and the System entered into that Facility Development Agreement Phase I – Infrastructure; and

WHEREAS, effective April 19, 2022, the City and the System entered into that Facility Development Agreement – Pumptrack; and

WHEREAS, as funding becomes available, the City desires to finance, design, construct, and maintain a shade structure and related improvements (the “Facility”) on the land that is subject to the Ground Lease, adjacent to the pumptrack;

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and agreed, the City and the System, each intending to be legally bound, do hereby agree as follows:

**1. DEFINITIONS.** All capitalized terms and phrases used in this Agreement have the meanings set forth below. Capitalized terms in this Agreement that are not defined herein have the same meaning given in the Ground Lease.

Agreement means this Facility Development Agreement – Shade Structure between the City and the System.

Applicable Laws means all state, federal, and local laws, ordinances, rules, regulations, codes, permits, licenses, authorizations, directives, orders and requirements of any governmental authority that now or hereafter may be applicable to the Facility or any aspect thereof, including the planning, designing, engineering, constructing, developing, maintaining, operating, managing, repairing, using, and/or demolishing the Facility and/or restoring the Site to its original condition, including without limitation those relating to zoning, health, safety environmental matters, accessibility of public facilities, and non-discrimination.

Approved Plans means the Conceptual Plan, site plans, Engineering Plans, Construction Plans, drawings, schematics, and specifications applicable to the Facility, and any Substantial Changes thereto approved by the City and the System in writing.

City means the City of Sugar Land, Texas, and any contractors it uses to manage and/or operate the Facility.

Conceptual Plan means the preliminary conceptual plan for the Facility, attached to this Agreement as **Exhibit B**, which is hereby approved by the Parties subject to the provisions set forth below regarding oversizing and Substantial Changes. The pumptrack shown on the Conceptual Plan is the subject of the Facility Development Agreement effective April 19, 2022 and is not included in the Approved Plans for this shade structure agreement.

Construction Contractor means the party or parties that contract with the City to construct the Facility.

Construction Plans means formal and/or informal design and construction plans, construction drawings and schematics, and specifications that have been and/or will be used to construct the Facility.

Development Agreement(s) shall mean one or more agreements to be executed by the City and its contractors concerning the planning, design, engineering, development, construction, equipment, furnishing, fixture, management, operation, maintenance, repair, use, cleaning, and/or demolition of the Facility and restoration of the Site to its original condition.

Development Standard shall mean performance of all activities described in the definition “Development Agreement” in a diligent and careful manner with the quality of services at least equal to the quality of services performed and practiced by other professional contractors nationally recognized as performing first-class work with respect to facilities of similar type, size and complexity to the Facility.

Engineering Contractor means the party, if any, that contracts with the City to develop and create the engineering plans and specifications for the Facility.

Engineering Plans means informal and/or formal design and engineering plans, engineering drawings, schematics, and specifications for the Facility, that have been and/or will be used to plan and construct the Facility Any Engineering Plans must comply with State of Texas

requirements. The City and the System acknowledge that the plans for the shade structure, footings, and concrete pad will consist of stamped engineering drawings.

Facility means a commercial shade structure and concrete pad adjacent to the existing pumptrack. The Facility will be located approximately 47 feet from the existing parking lot, 73.5 feet from the pumptrack, and 66.5 feet from the concrete pad to the Crown Festival Park ring road. The total area of the Facility will consist of a concrete pad not to exceed 35' x 35' underneath a shade structure not to exceed 30' x 30' as depicted in Exhibit B. Construction of the concrete slab will include excavation of 1,225 square feet to a depth of 5" – 6" below ground level. The concrete slab will be of suitable grade and at least 4 inches thick.

Ground Lease means the Ground Lease Agreement entered into on or about December 6, 2005 between the Sugar Land 4B Corporation (SL4B) and the System, assigned to the City by Assignment of Ground Lease from Sugar Land 4B Corporation to the City of Sugar Land effective September 19, 2012, and amended by Amendment No. 1 to the Ground Lease Agreement between the City and the System effective November 12, 2012.

Project Costs shall mean all costs of every nature necessary to design, develop, construct, equip, manage, maintain, repair, clean, and operate the Facility in accordance in all material respects with the Approved Plans, Applicable Laws, this Agreement, the Development Agreements, the Development Standard, and all other contracts involving the Facility, including the costs of all permits, licenses, etc. relating to the design, construction, development, equipping, and demolition of the Facility and restoration of the Site to its original condition, including, without limitation, all attorneys' fees incurred by the City in connection with the Facility. Project Costs may also include the design, construction, installation, maintenance, and repair of landscaping, driveways and access areas located on the Site and to the extent set out in the Approved Plans, on easements benefiting the Facility.

Property means the 52-acres described in **Exhibit A**.

Site means the location on which the Facility will be constructed, installed, landscaped, and equipped on the Property, not to exceed 1,225 square feet in total, and located adjacent to the existing pumptrack.

Substantial Change means any change to the Conceptual Plan, Engineering Plans, Construction Plans and/or any work which will materially alter the Conceptual Plan and/or System approved Engineering Plans and Construction Plans.

System means the University of Houston System.

## 2. FACILITY COST AND PLANS; LIFE OF FACILITY; SIGNAGE.

2.1 Facility Cost. The City is responsible for all Project Costs for the Facility and all costs specified in the Ground Lease.

### 2.2 Approval of Plans.

a. The System has reviewed and approves the Conceptual Plan and proposed location for the Facility.

b. The System shall have an opportunity to review and shall approve in writing the Engineering Plans, Construction Plans, and any Substantial Changes thereto before they are finalized to ensure consistency in appearance and style with the landscaping and improvements on the System's adjacent tracts and to confirm the size and location of the Facility. System's approval shall not be unreasonably withheld. To facilitate such approvals, the System shall have thirty (30) calendar days after receipt of such plans or Substantial Changes thereto, to either approve or disapprove the plans or Substantial Changes, unless the need to implement such change requires faster action, in which event, the System shall reasonably try to accommodate the City's timing requirements, or if further time for approval is needed, the Parties will cooperate to extend such time, to a date specified in writing between the Parties. A copy of the altered plans and/or Substantial Changes thereto shall promptly be furnished to the System. If the System fails to respond within forty-five (45) calendar days, it shall be deemed that the System approves any such change, unless the Parties agree otherwise in writing. Should the City disagree with the System's suggestions and proposed changes, City shall discuss with the System potential options in order to reach an agreement in writing. Under no circumstances shall the System's approval be construed as indicating the System's responsibility for any aspect of the Engineering Plans, Construction Plans, any Substantial Changes thereto, or for any work performed by or on behalf of the City in connection with the Facility.

c. The System acknowledges it has an opportunity to request any over-sizing or additions to the Facility in accordance with Section 7 (ii) of the Ground Lease and its responsibility to pay its proportionate share of costs associated with its request. Any such request shall be made: (1) within fifteen (15) business days after the City notifies the System that the Construction Contractor will construct the Facility in accordance with the Conceptual Plan and provides the Certifications noted in in subsection (d) below; or (2) when the System comments upon its review of the Engineering Plans and Construction Plans in accordance with subsection (b) above. Any changes to the Engineering Plans and/or Construction Plans arising from the System's request shall be presented to the System for final written approval. The System shall have no financial obligation or other obligation of any kind under this Agreement, except as specifically set forth in this subsection (c).

d. To the extent the City intends to use the Conceptual Plan as the Approved Plans, the City shall notify the System accordingly and provide System with signed, dated, and written certifications from the City and the City's Construction Contractor both before and following completion of construction that the Facility will be and has been built solely in accordance with the Conceptual Plan without any other site plans, Engineering Plans, Construction Plans, drawings, schematics, and specifications applicable to the Facility.

e. Drainage. The Facility will be built so that water drains away from the asphalt and the Facility without causing drainage issues elsewhere. The City shall alleviate any and all drainage issues resulting from the construction and use of the Facility including without limitation, those resulting from impervious surface(s). The City shall be responsible for all costs associated with drainage, including the payment of all drainage impact fees associated with the Site.

2.3 Life of Facility and Term. Once constructed, the City anticipates the Facility will have a useful life of 20-25 years. If the City determines that the Facility has reached the end of its useful life, the City, after notification to and consultation with the System, will demolish the Facility and restore the Site to the condition it was in prior to the construction of the Facility. The City will be responsible for all costs and expenses of demolition of the Facility and restoration of the Site. The City and System may discuss alternate uses for the Site prior to any demolition or restoration of the Site to its original condition. This Agreement will remain in effect until the Facility is either demolished and the Site restored as noted above, or until a new Facility Development Agreement or other agreement between the parties is in effect for alternate usage of the Site. Notwithstanding the foregoing, termination or expiration of this Agreement shall not affect the parties' rights or obligations that, by their nature and context, are intended to survive termination or expiration, such as without limitation, Sections 3.5, 3.6, 5, 7, 8, 10, and 11.

2.4 Signage. The City will submit its proposed language, description(s) and location(s) of directional and other signage for the Facility, if any, to the System for System's final written approval. Such signage shall be consistent with other outside signage utilized by the System on the adjacent tract and comport with the System's signage guidelines and standards. Safety signage is addressed in Section 4.5(c) below.

2.5 Utilities/Infrastructure. No work (including, without limitation, electrical, plumbing or other work involving utilities) will be performed by or on behalf of the City in connection with the installation, alteration, maintenance, repair or removal of any utilities intended to serve the Site, Facility, or surrounding area, including parking areas, without the prior, written consent of System provided via easements, if applicable, and/or otherwise.

### **3. DESIGN AND CONSTRUCTION STANDARDS**

3.1 Construction Standards. The City agrees that the shade structure and concrete slab will be designed, engineered, and constructed to withstand appropriate foundation and severe storm and wind loads typical for the geographical region. The City and the System agree and acknowledge that the City will plan, design, engineer, construct and/or install, equip, operate, maintain, repair, demolish the Facility and/or restore the Site to its original condition, in accordance with all Applicable Laws, the Development Standard, the Engineering Plans, the Construction Plans, Approved Plans, including any Substantial Changes thereto, and the Development Agreements, The Development Agreements for the Facility will require each Engineering Contractor, Construction Contractor and all other contractors performing work with respect to the Facility to perform its duties, responsibilities and obligations in accordance with all Applicable Laws, the Development

Standard, the Engineering Plans, Construction Plans, the Approved Plans and the City's standard engineering and construction contract requirements.

b. To the extent the Applicable Laws or the System require the City to seek authorization and/or approval from additional governmental authorities, such as to meet accessibility standards for a public facility, the City or its agents, representatives, contractors, or subcontractors shall not indicate or otherwise imply orally or in writing the System, as the property owner, has any responsibility for the design, construction, maintenance, or repair of the Facility.

3.2 If the City becomes aware that the Facility and/or the Approved Plans do not comply with Applicable Laws and/or the Development Standard in any material respect, the City shall promptly notify the System and provide the System with suggestions regarding changes to the Facility and/or amendments to the Approved Plans to remedy such noncompliance. Under no circumstances shall the System be responsible or held liable for costs, penalties, fines, damages, and/or expenses resulting from the City's non-compliance with Applicable Laws, the Development Standard, and/or the Approved Plans in any respect. The City has sole responsibility for the Facility's compliance with all Applicable Laws and Development Standards associated with the planning, designing, engineering, constructing, developing, maintaining, operating, managing, repairing, using, and/or demolishing the Facility and/or restoring the Site to its original condition.

3.3 The Development Agreements shall require the Engineering Contractor, Construction Contractor, and any other contractor or subcontractor performing work in connection with the Facility to indemnify, defend, and save the System harmless from any liability, loss, cost, penalty, damage, or expense, including attorneys' fees, which the System may incur as a result of 1) any violation by such contractor(s) of any Applicable Laws, duty and/or standard (including but not limited to the Development Standard); 2), any breach or failure to comply with any Development Agreements, Engineering Plans, Construction Plans, Approved Plans, and/or Substantial Changes thereto; and 3) any act or omission of any such contractor or subcontractor. The City and/or its Contractors shall at their own cost and expense protect their employees and other persons from risk of death, injury or bodily harm, or loss of property arising out of or in any way connected with the design, engineering, construction, equipping, management, operation, use, repair, maintenance, cleaning, placement of signage and/or other safety features, demolition of the Facility, and/or returning the Site to its original condition.

#### 3.4 Insurance.

- a. During the life of the Facility, the City will require the Engineering Contractor, Construction Contractor and any other contractors performing work with respect to the Facility and/or operating the Facility to comply with the provisions of and provide, at a minimum, the types and amounts of insurance the City requires and/or obtains for other recreational facilities designed, engineered, and/or constructed by the City, described in the attached Exhibit C - Part A.

- b. During the life of the Facility, the City will maintain the types and amounts of insurance that, at a minimum, the City requires and/or obtains for other recreational facilities similar to the Facility owned by the City, described in the attached Exhibit C – Part B.
- c. All insurance policies noted above and in Exhibit C (other than the policy for workers' compensation) will be issued on an occurrence basis, as opposed to a claims made basis. The City will require the Engineering Contractor, Construction Contractor, and any other contractors performing work with respect to the Facility and/or operating the Facility to include the System and the University of Houston as Named Insureds. The City shall either name the System and the University of Houston as named insureds under its policies or obtain an endorsement through its insurer, or equivalent, naming the System and the University of Houston as indemnitees under contract. Copies of such documentation shall be provided to the System before construction begins and thereafter within ten (10) days of System's request.

3.5. Liens. The City shall not suffer or permit any security interest, mechanics' lines, materialmen's liens or any other liens to be enforced against the System's interest in the premises and/or personal property by reason of a failure to pay for any work, labor, services, or materials supplied or claimed to have been supplied to the City. If any such liens are recorded against the premises or the System, the City shall cause the same to be bonded around, discharged, or otherwise released of record.

3.6. Assumption and Risk of Loss. No portion of any property owned by the System or leased by the System to the City shall be contaminated, damaged, or detrimentally affected by any right granted pursuant to this Agreement, by the engineering, construction, installation, equipping, operation, use, maintenance repair, and/or demolition of the Facility, and/or the restoration of the Site to its original condition. To the extent that any such contamination or damage shall occur, including any impervious surface drainage issues or other drainage issues, the City and/or its contractors shall assume the risk and bear risk of loss with regards to any such contamination or damage and restore any property, or portion of such property, to its prior uncontaminated or undamaged condition at no extra cost or expense to System, all to the degree it is obligated to do so pursuant to the terms of the Ground Lease.

3.7. No Representations. The System makes no representation as to the accuracy or completeness of any information it has provided or may provide regarding the constructability or physical condition of the Site and is not responsible for any interpretations or conclusions reached by the City and/or its contractors with respect to any such information. The System expressly disclaims any warranty, express or implied, under statutory or common law, or otherwise, with respect to the constructability, suitability, and/or physical condition of the Site for the intended Facility.

#### **4. USE AND OPERATION OF FACILITY.**

4.1. Access and Purpose. The System's faculty, staff and students will have the same,



if not preferential, access to the Facility and on the same or better terms and conditions as apply to residents of the City. As necessary or applicable, the City and the System shall develop and incorporate a separate Operating and Scheduling Agreement enabling faculty, staff and students from the System and/or the System's educational partners, such as community colleges and school districts, to use the Facility for any purpose at specific times and to have procedures for System's and/or its educational partners to have priority reservation and use of the Facility.

4.3. The Parties agree to cooperate to ensure the use of the Facility conforms to the terms of the legislation and deed conveying the Property to the System.

4.3 The System, its authorized representatives, agents, employees, contractors, subcontractors, and attorneys may, but shall be under no duty to, enter the Facility at reasonable times and hours to inspect the Facility in order to determine compliance with this Agreement, the Ground lease, Applicable Laws, the Development Standard, and/or the Approved Plans. Such entry or inspection as the System may make of the Facility shall not constitute a trespass, breach of quiet enjoyment, or other wrongdoing on the part of the System or an eviction, in whole or in part, under the Ground Lease.

4.4 Access to Parking. To the extent parking is now or hereafter available at the Facility, the System's faculty, staff and students shall have the same access to parking as residents and employees of the City. The System shall review and approve any location or plans for any such parking. Any such parking shall be the subject of a separate Facility Development Agreement between the City and System.

4.5 Use Restrictions and Safety.

(a) The City shall supervise, manage, operate, maintain, repair, install, equip, and replace any aspect of the Facility, the Site, and or surrounding area including the parking lot, in in a good and workmanlike manner, in accordance with the Development Standard, in compliance with all legal requirements, and in accordance with standards traditionally used by the City in providing for the best interests, safety and security of the greater Fort Bend community.

(b) The City shall conduct the operations of the Facility, its surrounding areas and parking lots and control their employees, agents, representatives, invitees, visitors, and licensees in such a manner as not to create a nuisance or interfere with, annoy or disturb the higher educational purposes of the System, and to ensure the safety, security, and welfare of (i) employees, contractors, subcontractors, invitees, visitors, and licensees of the City and the System; (ii) faculty, staff and students from the System and its educational partners such as community colleges and school districts; and (iii) residents of the City that may be negatively affected and/or impacted by the use and operation of the Facility, its surrounding areas and parking lots.

(c) The City shall be responsible for the safety and security of the Site, the Facility, the surrounding areas including parking areas, and shall provide adequate security to protect the safety, welfare, and personal property of those entering

and/or using the Site, Facility, surrounding areas and/or nearby parking areas. Such safety and security measures will be, at a minimum, equivalent to that which is provided at other City parks and/or facilities similar to the Facility. Such safety and security may specifically include but is not limited to appropriate signage, lighting, and any other safety or security features, equipment or infrastructure determined in good faith to be needed by the City and to be provided, installed, maintained, and repaired by City at City's cost.

(d) Should there be multiple injuries and/or deaths, multiple incidents involving criminal activity, and/or other similar problems at the Site or in the surrounding areas and/or involving the Facility, the City shall take prompt steps to resolve potential causes of such issues.

4.6 Vendors. Vendors shall be selected and shall conduct their operations in compliance with Applicable Laws. Vendors shall not sell System merchandise or merchandise except in accordance with Section 4.7.

4.7 Use of University Name and Trademarks. The City and/or its contractors or vendors shall not use the name, logo, informal seal, or other symbols and marks of the System, any of its universities or component programs, or any part of said names, without written consent of the System Chancellor or his/her designee, and the System's Vice Chancellor/Vice President for Marketing and Communications. The City shall not delegate or assign the authority to use the System's name or symbols to any person or entity without the prior written approval of the Chancellor of the System or his/her designee, and the Vice Chancellor/Vice President for Marketing and Communications of the University.

## **5. RENT AND REVENUE SHARING.**

The City has the right to rent or authorize the use of the Facility for temporary events, including without limitation, athletic events and competitions. To the extent that the City enters into a contract with a for-profit entity for the operation of the Facility and/or Site, and such contract provides that the City shall receive rent (or some other flat-fee arrangement) or share in a portion of the profits from such operation of the Facility, the City will share such fee received equally with System. This amount shall be paid by the City to System within sixty (60) days of receipt accompanied by any invoices and/or other documentation relating to the fee. Notwithstanding the foregoing, the System shall not be financially responsible to the City for any financial loss incurred by the City with respect to the Facility.

## **6. NOTICE.**

All notices, consents, directions, approvals, instructions, requests and other communications and all payments, as applicable, given to a Party under this Agreement shall be given in writing to such Party at the address set forth below or at any other address as such Party designates by written notice to the other Party in accordance with this Section and may be (i) sent by registered or certified U.S. Mail with electronic tracking, (ii) delivered personally (including delivery by private courier services including reputable overnight courier service such as Federal Express or UPS) or (iii) sent by telecopy (with electronic confirmation of receipt of such) to the

Party entitled thereto, with a courtesy copy by email. Any notice shall be deemed to be duly given or made as of the date received (as confirmed by electronic or other confirmation so long as it was received during normal business hours of the receiving Party on a Business Day or otherwise such delivery shall be deemed to be made as of the next succeeding Business Day of the receiving party. Each Party hereto shall have the right at any time and from time to time to substitute or specify additional parties (“Additional Addressees”) to whom notice thereunder must be given, by delivering to the other Party five (5) days notice thereof setting forth a single address for each such Additional Addressee; provided, however, that no Party hereto shall have the right to designate more than two (2) such Additional Addressees. The notice addresses for the Parties shall be as follows:

If to the City:                   City of Sugar Land, Texas  
   P. O. Box 110  
   Sugar Land, Texas 77487-0110  
   Attention: City Manager

  Email: mgoodrum@sugarlandtx.gov

With a copy to:                   City of Sugar Land, Texas  
   P. O. Box 110  
   Sugar Land, Texas 77487-0110  
   Attention: City Attorney

  Email: cityattorney@sugarlandtx.gov

If to the System:               Jay Neal, Ph.D.  
   Assoc. VP Academic Affairs/ Chief Operating Officer  
   University of Houston at Sugar Land  
   14000 University Blvd., George Bldg Suite 204  
   Sugar Land, TX 77479

  Email: JNeal@Central.UH.EDU

With a copy to:               Dona H. Cornell  
   VC/VP for Legal Affairs & General Counsel  
   University of Houston System  
   4302 University Dr., Suite 317  
   Houston, Texas 77204-2028

  Email: DGHamilton@Central.UH.EDU

## **7. EVENTS OF DEFAULT AND REMEDIES.**

7.1. An “Event of Default” has occurred if the City shall fail to perform or cause to be performed any term, covenant, condition or provision hereof, and to correct such failure within thirty (30) days after the System specifies such failure in a written notice to the City. Notwithstanding the foregoing, any such failure that cannot with due diligence be corrected within

thirty (30) day period but can be wholly corrected within a period of time not materially detrimental to the rights of the System shall not constitute an Event of Default if the corrective action is instituted by the City within the applicable period and is diligently pursued until the failure is corrected in accordance with and subject to any directions or time limitations established in writing by the System.

7.2. Upon an “Event of Default”, System shall be entitled to (1) terminate this Agreement; (2) enforce specific performance; (3) seek all damages resulting from the default or any other remedies available at law or equity; (4) require the City to demolish the Facility and restore the Site to its original condition at the City’s expense; and/or (5) have the Facility and/or Site, together with any amenities, default to the System.

## **8. HOLD HARMLESS/INDEMNITY.**

8.1 The City is and shall be responsible, and at its own cost, for the supervision, management, design, engineering, construction, equipping, installation, operation, maintenance, use, repair, cleaning, placement of signage, lighting, safety, and/or security features or lack thereof, as well as the installation, maintenance, repair and replacement of any components, equipment, or features of the Facility, and/or demolition of the Facility and/or surrounding areas including, without limitation, parking lots, and/or restoration of the Site to its original condition. The City agrees and acknowledges that the System or any of its Universities, and each of their regents, officers, directors, agents, and employees shall have no responsibility or liability for the supervision, management, design, engineering, construction, equipping, installation, operation, maintenance, use, repair, cleaning, placement of signage, lighting, safety and/or security features or lack thereof, as well as the installation, maintenance, repair and replacement of any components, equipment, or features of the Facility, and/or demolition of the Facility and/or surrounding areas including, without limitation, parking lots, and/or the restoration of the Site to its original condition and shall bear no responsibility for any claims by City, its officers, officials, directors, agents, and employees, licensees, or invitees, or for any third party claims arising from or related in any way to any acts or omissions, breach of this Agreement, and/or supervision, management, design, engineering, construction, equipping, installation, operation, maintenance, use, repair, cleaning, placement of signage, lighting, safety and/or security features or lack thereof, as well as the installation, maintenance, repair and replacement of any components, equipment, or features of the Facility, and/or demolition of the Facility and/or surrounding areas including, without limitation, parking lots, and/or restoration of the Site to its original condition. The City agrees to cooperate with and assist the System in being dismissed from any such claims or lawsuits.

8.2 **To the extent permitted by applicable law, the City shall release, forever discharge, and/or indemnity and hold the System, its Universities (or any of its Universities), and each of their regents, officers, directors, agents, and employees, harmless from any and all claims, losses, costs, fees, fines, penalties, expenses (including attorneys’ fees), suits, demands, proceedings, causes of action of whatever kind and nature, damages or liabilities, including reasonable litigation costs and attorney's fees, of any kind and nature, whether arising out of contract, negligence, strict liability, in law or in equity, arising from or related in any way to the supervision, management, design, engineering, construction, equipping, installation, operation, maintenance, use, repair, cleaning, placement of signage, lighting safety, and/or security features or lack thereof, as well as the installation, maintenance,**

**repair and replacement of any components, equipment, or features of the Facility, and/or demolition of the Facility and/or surrounding areas including, without limitation, parking lots, and/or restoration of the Site to its original condition.**

**9. FORCE MAJEURE.**

In the event any party is rendered unable, wholly or in part, by force majeure to carry out any of its obligations under this Agreement, then the obligations of such party, to the extent affected by such force majeure and to the extent that due diligence is being used to resume performance at the earliest practicable time, shall be suspended during the continuance of any inability so caused to the extent provided but for no longer period. As soon as reasonably possible after the occurrence of the force majeure relied upon, the party whose contractual obligations are affected thereby shall give notice and full particulars of such force majeure to the other parties. Such cause, as far as possible, shall be remedied with all reasonable diligence. The term “force majeure”, as used herein, shall include without limitation of the generality thereof, acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders of any kind of the government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, pandemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, drought, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, or other occurrences whether similar to those enumerated or otherwise, which are not within the control of the party claiming such inability, which such party could not have avoided by the exercise of due diligence and care. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirement that any force majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party when such settlement is unenforceable to it in the judgment of the party experiencing such difficulty.

**10. EXPIRATION OR TERMINATION OF GROUND LEASE.**

In the event the Ground Lease terminates or expires from any cause, the System is entitled to ownership, possession, and use of the Facility without further act or conveyance, without liability to make such compensation to the City or to anyone whomsoever, and free and discharged from all and every lien, encumbrance, claim and charge of any character created or attempted to be created by the City and/or its contractors at any time.

**11. MISCELLANEOUS TERMS.**

11.1 Relationship of the Parties. The relationship of the Parties under this Agreement is that of independent parties, each acting in its own best interests, and notwithstanding anything in this Agreement to the contrary, no partnership, joint venture, agency, or other business relationship is established or intended hereby between the Parties.

11.2 Cooperation. Each party hereby agrees that it will take all actions and execute all documents necessary to fully carry out the purposes and intent of this Agreement.

11.3 Waiver. No waiver of any provision of this Agreement shall be effective, unless set forth in a written instrument signed by authorized representatives of each of the parties.

The failure of either party hereto to insist, in any one or more instances, upon performance of any of the terms, covenants or conditions of this Agreement, shall not be construed as a waiver or relinquishment of the future performance of any such term, covenant or condition by the other party hereto, but the obligation of such other party with respect to such future performance shall continue in full force and effect.

11.4 Assignment. No party may assign or transfer its rights and obligations under this Agreement without prior approval of the other party.

11.5 Audit. Execution of this Agreement constitutes the City's acceptance of the authority of System, the Texas State Auditor and/or any of their designated representatives (collectively, "Auditor") to conduct audits or investigations in connection with this Agreement. The City agrees to cooperate with the Auditor conducting such audits or investigations and to provide all information and documents reasonably requested.

11.6 Severability. If a court finds or rules that any part of this Agreement is invalid or unlawful, the remainder of the Agreement continues to be binding on the parties.

11.7 Entire Agreement and Amendment. This Agreement represents the entire agreement between the City and the System and supersedes all prior negotiations, representations, or contracts, either written or oral, except the Ground Lease. This Agreement may be amended only by written instrument signed by authorized representatives of both parties.

11.8 Duties, Obligations and Responsibilities Not Affected. Approval or consent by the System of or to a matter submitted by the City shall neither, unless specifically otherwise provided, (i) relieve the City of its duties, obligations or responsibilities under this Agreement with respect to the matter so submitted, nor (ii) shift the duties, obligations or responsibilities of the City with respect to the submitted matter to the System.

11.9 Table of Contents; Headings. The table of contents, if any, and headings, if any, of the various articles, sections and other subdivisions of this Agreement are for convenience of reference only and shall not modify, define, interpret, or limit any of the terms or provisions hereof.

11.10 Parties in Interest; Limitation on Rights of Others. The terms of this Agreement shall be binding upon, inure to the benefit of and be enforceable by the Parties and their permitted successors and assigns. Nothing in this Agreement, whether express or implied, shall be construed to give any Person (other than the Parties and their respective permitted successors and assigns) any legal or equitable right, remedy or claim under or in respect of this Agreement or any covenants, conditions or provisions contained herein or any standing or authority to enforce the terms and provisions hereof. No Person shall be a third-party beneficiary of this Agreement or have the right to enforce this Agreement or any provision hereof.

11.11 Counterparts This Agreement may be executed by the Parties in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same Agreement. All signatures need not be on the same counterpart.

11.12 Governing Law. Texas law governs this Agreement (excluding principles of conflict of laws) and any lawsuit on this Agreement must be filed in a court that has jurisdiction in Fort Bend County, Harris County, or Travis County, Texas.

11.13 Interpretation and Reliance. No presumption will apply in favor of any Party in the interpretation of this Agreement or in the resolution of any ambiguity of any provisions hereof.

11.14 Compliance with Ground Lease. The System agrees that the provisions of this Agreement comply with the Ground Lease requirements for Facility Development Agreements, and in the event of any discrepancy or conflict between the Ground Lease and this Agreement, the Ground Lease shall control.

11.15 Exhibits. The exhibits attached hereto are as follows and are hereby incorporated in their entirety into this Agreement by reference and are hereby made a part hereof for all purposes:

<u>Exhibit A</u>	--	Legal Description of the Property
<u>Exhibit B</u>	--	Conceptual Plan for the Facility
<u>Exhibit C</u>	--	Contractor/City Insurance Requirements
<u>Exhibit D</u>	--	Site

11.16 Dispute Resolution Procedures. The City and the System desire an expeditious means to resolve any disputes that may arise between them regarding this Agreement. If either party disputes any matter relating to this Agreement, the parties agree to endeavor in good faith, to resolve any dispute first in the ordinary course of business and then through mediation before bringing any legal action. Any mediation shall be before a third party who will be selected by agreement of the parties. The parties will each pay one-half of the mediator's fees.

11.17 Review and Approval Process. Except as otherwise set forth in this Agreement, in exercising any review and approval rights under this Agreement, each party will act reasonably, in good faith, and with due diligence. If no response is received from the System within 40 days of submission, the matter will be considered approved.

11.18 Survival. Termination or expiration of this Agreement shall not affect the parties' rights or obligations that, by their nature and context, are intended to survive termination or expiration.


***Signatures on Following Page***

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective as of \_\_\_\_\_, 2023.


**CITY OF SUGAR LAND, TEXAS**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**UNIVERSITY OF HOUSTON SYSTEM**

By:  \_\_\_\_\_  
Name: Raymond S. Bartlett \_\_\_\_\_  
Title: Senior VC/VP, Administration & Finance

APPROVED AS TO FORM BY:

  
OFFICE OF THE GENERAL COUNSEL  
UNIVERSITY OF HOUSTON SYSTEMS



**EXHIBIT A****LEGAL DESCRIPTION OF THE PROPERTY**

K-23-00036

CITY OF SUGAR LAND  
FESTIVAL SITE  
52.00 ACRES

JANUARY 26, 2012  
JOB NO. 1134-00  
PAGE 1 OF 2

DESCRIPTION OF A 52.00 ACRE TRACT OF LAND SITUATED  
IN THE M. M. BATTLE SURVEY, ABSTRACT NO. 9 AND  
THE ALEXANDER HODGES SURVEY, ABSTRACT NO. 32,  
CITY OF SUGAR LAND, FORT BEND COUNTY, TEXAS

BEING a 52.00 acre tract of land situated in the M. M. Battle Survey, Abstract No. 9 and the Alexander Hodges Survey, Abstract No. 32, City of Sugar Land, Fort Bend County, Texas and being part of that certain called 84.7185 acre tract described as Tract 5, Part 1 and a called 213.2261 acre tract described as Tract 5, Part 2, both as shown on the plat titled State of Texas Department of Transportation Partition Plat of 1087.7527 Acres, recorded under Slides 1655B and 1656A of the Fort Bend County Plat Records (F.B.C.P.R.), also described and recorded under Fort Bend County Clerk's File Number (F.B.C.C.F. No.) 98103479 also being part of a called 0.228 acre tract described as Part One in the deed recorded under F.B.C.C.F. No. 2007109433, said 52.00 acre tract being more particularly described by metes and bounds as follows:

Bearing orientation is based on the Texas State Plane Coordinate System, South Central Zone 4202, NAD83. Scale Factor = 1.00013.

COMMENCING at an aluminum monument stamped TxDot found for an angle point in the eastern right-of-way line of U. S. 59 as shown on the plat recorded under slides 1655B and 1656 A of the F.B.C.P.R. and described and recorded under F.B.C.C.F. No. 8600222, said angle point bears N 52°31'30" E, 676.72 feet from the northwest corner of a called 121.8529 acre tract described as Tract 5, Part 8 of said Partition Plat of 1087.7527 Acres also described and recorded under F.B.C.C.F. No. 9823683, said aluminum monument having coordinates of X=3,029,440.16, Y=13,771,896.18;

THENCE N 50°57'50" E, a distance of 710.25 feet along said eastern right-of-way line to a 5/8-inch iron rod with cap stamped "Cobb Fendley & Assoc." found for the north corner of a called 1.3671 acre water storage tank easement described and recorded under F.B.C.C.F. No. 2011005156 and being the northwest corner of the herein described tract and the POINT OF BEGINNING;

THENCE N 50°57'50" E, a distance of 889.62 feet continuing along said eastern right-of-way line to a 5/8-inch iron rod with cap stamped "Brown & Gay" set for the most northerly northeast corner of the herein described tract

THENCE leaving the eastern right-of-way line of said U. S. 59 and going over and across said 84.7185 acre tract and said 213.2261 acre tract also said 0.228 acre tract the following two (2) courses;

S 51°09'37" E, 1,624.87 feet to a 5/8-inch iron rod with cap stamped "Brown & Gay" set for an angle point;

N 87°20'43" E, 381.66 feet to a 5/8-inch iron rod with cap stamped "Brown & Gay" set for the most easterly northeast corner of the herein described and being in the western line of a called 1.562 acre tract described and recorded under F.B.C.C.F. No. 2007109433;

THENCE in a southeasterly direction along the western line of said 1.562 acre tract, 403.59 feet along the arc of a curve to the left, having a radius of 618.50 feet, a central angle of 37°23'15" and a chord which bears S 10°22'58" E, 396.47 feet to a 5/8-inch iron rod with cap stamped "Brown & Gay" set for the point of tangency;

THENCE S 29°04'35" E, 310.34 feet continuing with said western line to a 5/8-inch iron rod with cap stamped "Brown & Gay" set for the southeast corner of the herein described tract and being in a northern line of a called 40.618 acre tract described and recorded under F.B.C.C.F. No. 2007056877;

THENCE along the lines common to said 40.618 acre tract and said 84.7185 acre and 213.2261 acre tract the following three (3) courses;

S 89°02'49" W, 1,388.26 feet to a 5/8-inch iron rod with cap stamped "Brown & Gay" set for an angle point from which a found 5/8-inch iron rod with cap stamped "Huit-Zollars" bears N 13°25' W, 0.41 feet;

K-13-00036

CITY OF SUGAR LAND  
FESTIVAL SITE  
52.00 ACRES  
PAGE 2 OF 2

N 77°32'21" W, 445.14 feet to a 5/8-inch iron rod found for an angle point;

N 34°02'11" W, 865.94 feet to a 5/8-inch iron rod with cap stamped "Cobb Fendley & Assoc." found for the southeast corner of said 1.3671 acre easement;

THENCE N 39°02'10" W, 401.32 feet along the eastern line of said 1.3671 acre easement to the POINT OF BEGINNING and containing 52.00 acres of land.

This metes and bounds description was prepared based on an on the ground survey performed during the month of January, 2012 and is part of a Land Title Survey of 52.00 Acres, dated January 19, 2012.



*Larry E. Grayson*  
Larry E. Grayson RPLS No. 5071  
Brown & Gay Engineers, Inc.  
10777 Westheimer Road, Suite 400  
Houston, Texas 77042  
(281) 558-8700 Fax: (281) 558-9706

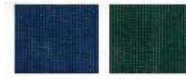
R:\PROJECTS\City of Sugar Land\Sugar Land Entertainment\ADMIN\52\_00MB1.doc

**EXHIBIT B**  
CONCEPTUAL PLAN

❖ *Shade Structure*



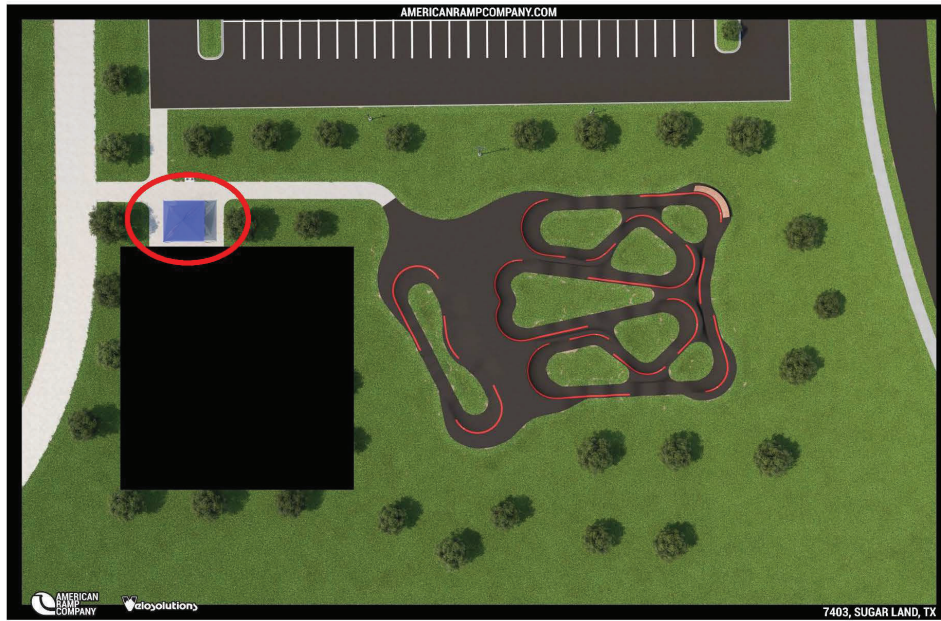
■ *Mariner Pyramid Shade Structure (Color to be decided)*



■ Blue  
■ Green



Festival Park Site Plan – Cost Proposal



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**EXHIBIT C**

Parts A and B of this Exhibit shall apply in conjunction with Section 3.4 of the Agreement.

**PART A - CONTRACTOR INSURANCE REQUIREMENTS**

<u>TYPE OF COVERAGE</u>	<u>LIMITS OF LIABILITY</u>
<i>Worker's Compensation</i>	Statutory Limit – State of Texas
<i>Employer's Liability</i>	\$1,000,000 per accident \$1,000,000 per employee \$1,000,000 policy limit
<i>Commercial General Liability</i>  Coverage shall not contain any endorsement(s) excluding or limiting Products / Completed Operations, Contractual Liability, or Cross Liability.	\$1,000,000 per occurrence \$2,000,000 aggregate
<i>Commercial Auto Liability</i>	\$1,000,000 combined single limit
<i>Professional Liability</i>  For Professional Services only (ex: Engineer, Architect)	\$1,000,000 per occurrence; \$1,000,000 aggregate
<i>Builder's Risk</i>	All Risk coverage to be written at 100% of the construction value.
<i>Excess Liability/Umbrella</i>	\$5,000,000

(a) Additional Insureds/Loss Payees. The System, its officials, directors, employees, representatives, and volunteers and the City shall be added as additional insureds as respects operations and activities of, or on behalf of the contractor for work performed. The additional insured status must cover completed operations as well. This is not applicable to the workers' compensation policy.

(b) Waiver of Subrogation. Each policy of Required Insurance shall contain a complete waiver of subrogation clause or endorsement favoring the System.

(c) Certificates of Insurance/Endorsements. Each contractor shall furnish (or cause to be furnished) to the City and the System, a certificate or certificates that evidences the above insurance and provides that the insurer will notify the City (if applicable) and the System, in writing at least thirty (30) days prior to canceling or modifying any such insurance.

(d) Failure to Provide Certificates. Failure to demand such certificates or other evidence of Contractor's full compliance with these insurance requirements or failure to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

(e) Primary and Non Contributory. It is agreed that Contractor's insurance shall be deemed primary with respect to any insurance or self-insurance carried by either City or System for liability arising out of operations under the Contract.

(f) Contractor's Liability. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to City or System.

(g) Insurance Limits. The insurance coverage and limits established herein shall not be interpreted as any representation or warranty that the insurance coverage and limits necessarily will be adequate to protect Contractor.

(h) Insurers. Coverage shall be written on an occurrence basis by companies authorized and admitted to do business in the State of Texas and rated A-, VII or better by A.M. Best Company or similar rating company.

(i) Railroad Protective Liability. If the Work involves any activities within fifty (50) feet of any railroad, railroad protective insurance may be required by the affected railroad, written for not less than the limits required by such railroad.

(j) Claims Made. For any policies written on a claims-made basis, coverage must be in force during the course of the contract and extend for three (3) years after completion.

## PART B – CITY INSURANCE REQUIREMENTS

<u>TYPE OF COVERAGE</u>	<u>LIMITS OF LIABILITY</u>
<i>Worker's Compensation</i>	\$1,000,000 per occurrence
<i>General Liability</i>  Coverage shall not contain any endorsement(s) excluding or limiting Products / Completed Operations, Contractual Liability, or Cross Liability.	\$5,000,000 per occurrence \$10,000,000 aggregate
<i>Auto Liability</i>	\$1,000,000 per occurrence



**EXHIBIT D**

**Site**

